November 2012

CAB evidence briefing:

The claims pests

CAB evidence on PPI and claims-management companies

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Summary

Regulatory action following Citizens Advice's 2005 super complaint about mis-sold payment protection insurance (PPI) has meant that the banks have had to put aside some £8-£10 billion to compensate affected customers. However, so far only around half of that has been reunited with customers. The scale of this prize has spawned a whole intermediary market of thousands of regulated claims handlers and unknown numbers of unregulated firms who in many cases are looking to top slice this compensation by up to a third, including charging upfront fees. With up to £2 billion of potential earnings on the table, these firms have engaged in a frenzy of marketing activity whereby as many as three quarters of adults in Great Britain receive unsolicited emails, texts or phone calls telling them to claim compensation for mis-sold PPI or an accident.

The evidence suggests that many claims management companies (CMCs) are linked to an unknown number of lead generator operations, often working overseas, feeding them with consumer contact details. We consider that the industry is out of control, and that the sector specific regulator lacks the tools to address the problem. Although 400 claims management firms have been struck off or barred by the claims management regulator, and many hundreds more operate without a licence, the rules governing how CMCs are allowed to operate do not prevent them from cold-calling or "cold-texting" consumers or trading in names. The inadequacies of CMC regulation is impacting on other regulators: complaints about the cold-calling to Ofcom and the ICO are up by 190 per cent and 43 per cent respectively. The key issues which consumers are most concerned about are the constant calling, to such an extent they often believe these things are scams. Consumer protection bodies are warning consumers not to respond to what ought, in theory, to be a legitimate offer of service.

Furthermore, CMCs are charging disproportionate fees – up to third of compensation awards – to help consumers do something which they can easily do for free. Put simply, this is money for old rope. So it is not surprising then that CMC turnover grew by 66 per cent last year, three times the growth in the personal injury claims handling market. 80 per cent of consumers think upfront fees should be banned and the regulator's rules should align with this. The harm to consumers from all this sharp practice outweighs the benefits of the CMC services introducing them to compensation in the first place.

The report draws on surveys we have undertaken and reports from bureaux setting out how consumers have been treated unfairly by either CMCs or their lead generating partners. It calls for a review and up-scaling of regulation and enforcement, including bans on unsolicited contacts and upfront fees, a crackdown on the lead generator feeds and a strengthening of consumer protection in this market against misuse of data and misleading contracts. Finally it calls for a more proactive approach to PPI redress to bottom out the problem.

Introduction

"We have been trying to contact you regarding your PPI Claim, we now have details of how much you are due, just reply POST and we will post you a pack out"

"URGENT you are owed £3350 for the PPI you took out, time is running out to claim, please visit [website address] to claim, thank you."

"Banks are to repay £5bn in mis-sold PPI. Average claims are worth £4000. To start your claim reply PPI or click [website address] and use our FREE Claims Assessor"

Do these statements sound familiar? It is likely that any reader of this briefing will have recently received a text message like the ones above to their mobile phone offering assistance with reclaiming a mis sold payment protection insurance (PPI) policy, or help with some other type of compensation.

Current economic conditions provide fertile ground for unscrupulous claims marketing and management practices. The most recent annual report of the Ministry of Justice's (MoJ) claims management regulation unit reported a 21 per cent increase in turnover to £455 million for legitimate claims companies handling personal injury claims, and a 66 per cent increase to £313 million for those processing PPI claims, compared to the previous year.[1] With major financial firms having set aside substantial compensation funds for PPI, especially after a High Court ruling last year which held that banks must compensate customers where appropriate and treat them fairly,[2] the text messages just keep on coming. In response to concerns raised in the House of Lords, Justice Minister Lord McNally said "there is something like £8 billion or £9 billion that could be returned to consumers and there are some very dodgy practices at work with people trying to get their hands on that money."[3] And the Financial Ombudsman Service, the free and independent dispute resolution service for problems with financial products and services, estimates that, "Of £9 billion provisioned by businesses to pay compensation to consumers, up to £2 billion could be passed direct to a sector that has added virtually no value to consumers in terms of helping them get redress, and that many consumers have paid for because they were mis-sold the service."[4]

So payment protection insurance has emerged as a growth market for the claims industry. Designed to cover debt repayments where borrowers become ill or lose employment, millions of PPI policies were sold alongside other financial products such as credit cards or personal loans. Mis-selling claims arose after it became clear that many consumers did not know the insurance was added, or had been sold the product despite being ineligible to make a claim.[5] Data released recently by the financial services regulator, the Financial Services Authority (FSA), showed complaints about general insurance and pure protection had risen by 99 per cent to 2,541,430, 88 per cent of which were about PPI.[6] The FSA's data is reaffirmed by complaints statistics released by the Financial Ombudsman Service (FOS), who provide an independent dispute resolution service to consumers who feel they have been treated unfairly by financial services providers.[7] 62 per cent of new cases going to the FOS over the last six months were about the sale of PPI – a total of 99,174 cases over this six month period.[8] However over two in three PPI claims to FOS come from claims management companies.[9]

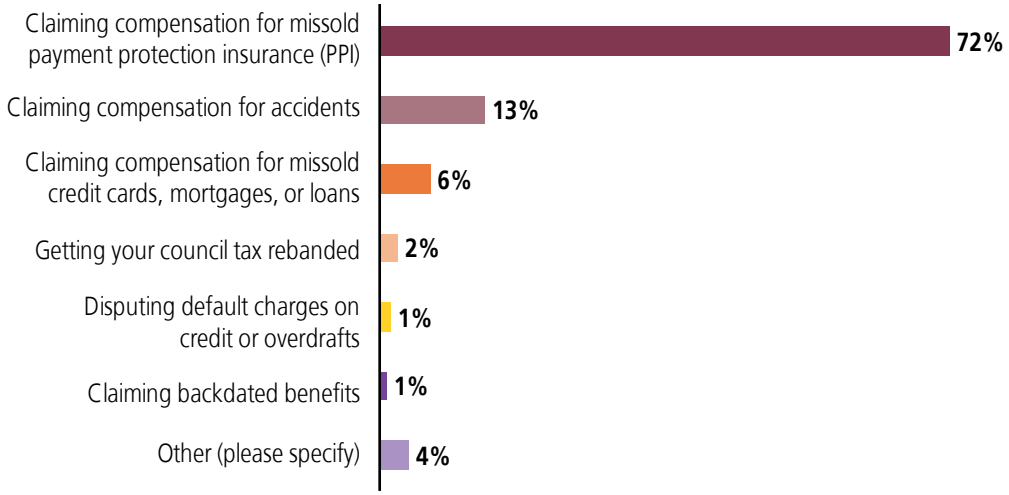
1. Ministry of Justice Claims Management Regulator *Annual Report* 2011-12
2. *British Bankers Association v Financial Services Authority and Financial Ombudsman Service* [2011] EWHC 999
3. Justice Questions, *Hansard*, 5 March 2012 : Column 1551
4. Letter from Natalie Ceeney, CEO of the Financial Ombudsman Service, to Andrew Tyrie MP, Chair of the Treasury Select Committee, 30 May 2012
5. For the origins of the PPI misselling crisis see *Protection Racket: CAB evidence on problems with payment protection insurance, Citizens Advice 2005*
6. www.fsa.gov.uk/consumerinformation/.../monthly-ppi-payouts
7. Financial Ombudsman Service press release 11 September 2012
8. Memorandum from the Financial Ombudsman Service to the Treasury Select Committee for evidence session on 30 October 2012

Citizens Advice's own research supports the data suggesting that there has been massive commercialisation of claims activity in this area. From April to beginning of November 2012, the Citizens Advice Consumer Helpline dealt with 4,814 calls and queries about claims management companies offering PPI compensation services. It is hard, however, to estimate the precise scope and scale of this claims activity and harder still to pin down the volumes of unsolicited marketing communications, especially as claims companies operate across multiple financial products and services sectors. For example, the Office of Fair Trading has estimated in 2010 around 19 per cent of UK consumers aged 18 and over were unexpectedly contacted by a businesses offering help in writing off debts, some were from claims management companies but others were from debt management companies.[10] Research for the Association of British Insurers (ABI) by YouGov found that over three quarters of adults in Great Britain have been contacted by a claims management company asking if they have been involved in an accident or been mis-sold PPI.[11] Research by Which? found that 65 per cent of people had received telephone calls from CMCs about PPI, 55 per cent had received text messages and 54 per cent had received letters.[12]

But it is clear from the data that is available that consumer dissatisfaction with PPI claims services and activity is extremely high. The Claims Regulator's complaints data, for example, shows that over 93 per cent of all complaints they received were about claims businesses operating in the financial products and services sector – even though less than a third of all authorised claims companies are active in that sector.[13] The ABI research referred to above also found that 75 per cent of GB adults backed a ban on unsolicited text messages by CMCs.

In our online survey of the public (see below) 72 per cent of respondents were contacted by claims management companies about payment protection insurance.

Thinking about any contact you have had with a claims management company, what did they contact you about?



Base: 344 respondents, Citizens Advice public survey, July-September 2012

9. FOS Annual Review 2011/12
10. *Marketing and charging practices in the sub-prime credit brokerage and debt management sectors: OFT Response to the super-complaint* by Citizens Advice June 2011
11. ABI press release, 19 June 2012
12. Which? Press release 23 April 2012
13. Claims Management Regulation Annual Report 2011/2012

But obtaining redress for mis-sold financial products through the Financial Ombudsman or directly from product providers is not a process which requires professional expertise – all it requires is the ability to make a complaint. The role of claims management companies (CMCs) is only an intermediary one. It thrives because consumers have limited awareness of their rights. As such, claims management activity can have a legitimate role – for example market research from Which? found that 37 per cent of people who have used a CMC agreed that they wouldn't have known they were able to make a claim without being contacted by a claims management company. However, Which?'s research from an earlier survey of the general public in Great Britain showed that 25 per cent of people did not know that CMCs took a fee for their work, and only 49 per cent of people knew that using a CMC would be no more successful than making the claim themselves.[14]

Some claims management activity may provide a legitimate service to consumers, where firms are "regulated" by the Ministry of Justice and compliant with all licence requirements, consumer protection standards, best practice and pay attention to customer care. But there is significant consumer detriment in the market. Aggressive marketing, fraudulent and scam activity abounds but is not being tackled robustly, fees are often frontloaded and there is abundant evidence that the outcomes from this sector are extremely poor.

Citizens Advice is not the only organisation highlighting these concerns. Which? MoneySavingExpert.com, the claims regulator, the Financial Ombudsman, the Association of British Insurers and the banks themselves have all publicly warned that there is a serious problem with the operation of claims management in the financial services field.

This briefing analyses the issues from the perspective of evidence from Citizens Advice Bureaux in England and Wales. We will look at:

- How claims management market their services to consumers, including through the proliferation of unwanted digital communications.
- How consumers enter into contracts with claims management services and the risks and fees involved.
- The poor service outcomes for consumers from using claims management companies
- The level of consumer protection and the adequacy of the regulatory system surrounding claims management and their related marketing activities.
- Alternative systems of redress for consumers.

This briefing attempts to bring together actions for Government and regulatory authorities, actions for the redress system itself, with actions from consumers and consumer bodies to achieve better outcomes and protection from the claims pests all round.

14. Results supplied by Which?. Both pieces of research were undertaken in 2012.

Methodology

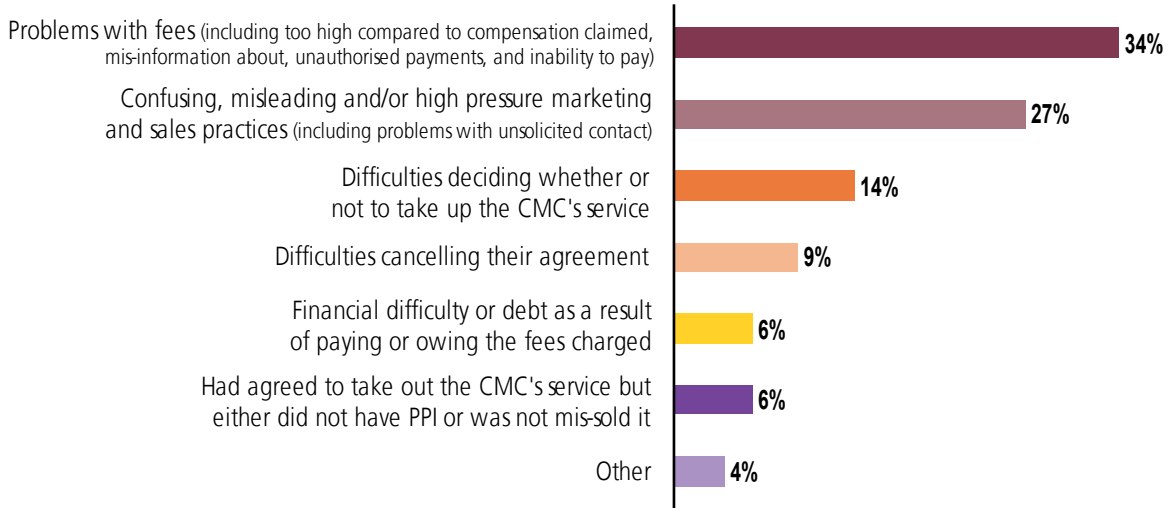
Citizens Advice ran two online surveys over August 2012; one for members of the public who had been contacted by claims companies which had 468 respondents, and one for CAB advisers with 288 respondents about some of the clients who had sought advice about claiming compensation for mis-sold payment protection insurance (PPI) from a fee-charging claims management company in 2011/12.

The majority of clients who came into bureaux with issues concerning CMCs were confused by misleading marketing, were seeking advice about fees, wanted to complain about aggressive marketing, or wanted advice as to whether or not to use a CMC (see graph below).

We also wanted to get a better understanding of our clients' interactions with claims management companies in relation to PPI reclaims and their personal reactions, so we reviewed over 750 evidence forms (a small sample of which provide the case studies in this report) on claims and PPI issues submitted over 2011 to 2012 by Citizens Advice Bureaux in England and Wales to Citizens Advice's Social Policy department.

We then looked at other available evidence, including Which?'s recent surveys, the Claims Management Regulator's reports, and complaints data from the Financial Services Authority (FSA) and the Financial Ombudsman (FOS).

What were the main reasons the client sought advice regarding the claims management company (CMC)?

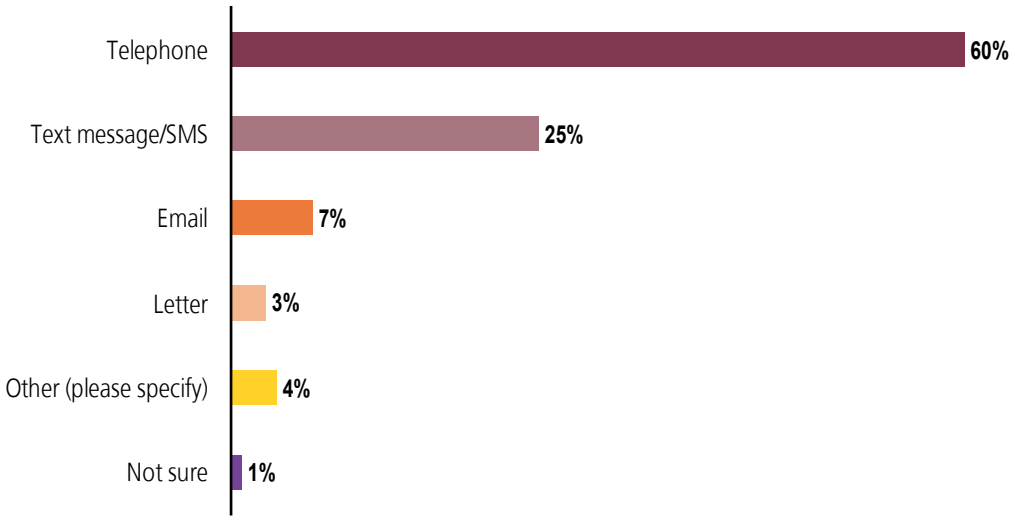


Base: 447 responses, Citizens Advice adviser suvery, July-September 2012

Aggressive marketing

Whilst no service sector, such as claims management, can legitimately grow its business unless consumers are aware of these services, there is evidence that marketing techniques in this sector can be aggressive, intrusive and misleading. Many CMCs are primarily using unsolicited telephone and text messages to market their services to consumers. 85 per cent of respondents to Citizens Advice's survey public were contacted in this way.

How did the claims management company make contact?



Base: 343 respondents, Citizens Advice public survey, July-September 2012

Cold-calling

"I am getting at least one phone call a day sometimes three from different companies for PPI's and accident claims companies"

"I am completing this questionnaire on behalf of my 89 year old mother who gets at least two to three of these calls a week. She is hard of hearing and gets worried about this type of call. She tries to answer the call herself but it is a recorded message,"

"For months I have had payment protection calls at least four times a day. I keep telling them I don't need help but they don't stop"

As the quotes above from our public survey suggests, cold-calling is a common marketing practice for claims management companies. But it can also operate as a channel through which claims management companies are able to get away with providing a poor service without consumers receiving the relevant information, or benefiting from existing consumer protection provided by the regulator's licence rules or other consumer protection law. People have told us how they have been persuaded to pay over money to claims firms as a direct result of the cold call, and received a poor service in return.

For example:

A South East of England CAB saw a woman who had taken out PPI with a bank loan. She had been cold-called by a claims management company repeatedly. Eventually she gave in and agreed that they would act on her behalf to reclaim what she had paid. She subsequently received just over £1,000 but was charged nearly 40 per cent fee by the company. The bank then paid her further £47 to her account and the company demanded another £17 fee, in spite of having sent a statement with a nil balance. The client insisted that she was not informed of the charges during her phone contact, and she was provided with nothing in writing.

A CAB in the North West of England saw a 59 year old single unemployed man in receipt of disability benefits who had been cold-called by a claims management company about PPI misselling. He was confused and signed up with them, giving them his account details, even though he did not have and had never had any PPI. Nevetheless £249.99 was subsequently taken from his account and later he was told by the claims management company that no claim was possible. He asked for, and believed he was promised a refund but that never arrived and now the claims management company claimed to be in receiveship. To add to the client's annoyance, he was also registered with the Telephone Preference Service and so should not have been cold called at all.

A CAB in the East of England advised an 84 year old woman who had a credit card which was not covered by PPI.. Nevertheless she was persuaded over the telephone to enter into an agreement with a claims management company. They charged her £359 via her credit card. She managed to cancel the agreement with help from the CAB.

In many cases money has been taken from the consumers' bank or credit card accounts without their express authorisation after firms had succeeded in getting them to reveal their debit card details. And at worst consumers can be pushed into over-indebtedness as a result of cold-calling claims firms offering redress for defective debt protection policies, which is clearly a perverse outcome.

A London CAB saw a woman who had two loans from her bank, each of which had an associated PPI policy. She was unable to repay the loans and renegotiated payments down to an affordable amount. She received cold calls from a CMC pestering her to use them to reclaim PPI. She agreed that they could her send the forms and she eventually signed them. The client said that she understood there would be a charge but she thought they would take this out of the money reclaimed and the rest could go against her bank loans. The two claims were successful but the money was paid into her bank account and immediately used to pay off a small part of the two loans. But she subsequently received letters from the CMC demanding 39 per cent of the reclaimed money, about £55 in respect of one loan and about £83 for the other. The client did not dispute that she signed the papers for the CMC to act on her behalf, but thought that she would be improving her situation rather than incurring a further debt which she could not pay.

We believe that the current level of protection against cold-calling is far too weak. Whilst claims management regulatory rules state that a business must not engage in high pressure selling and that cold-calling in person is prohibited, any other cold-calling is permissible as long as it is accordance with the Direct Marketing Association's (DMA) code of practice, a voluntary code of standards for the marketing sector. This approach relies on an opt-in model of protection, by consumers wishing to stop receiving marketing calls registering their phone numbers with the Telephone Preference Service (TPS). Whilst it is a legal requirement for companies to avoid calling numbers registered on the TPS, the TPS has no powers of enforcement, which is the responsibility of the Information Commissioner (ICO). Until recently ICO did

not have suitable legal powers to act, but has now acquired the power to impose fines of up to £500,000.

Registration with the Telephone Preference Service seems to make little difference to these types of communications. The Direct Marketing Association which runs the Telephone Preference Service has been passing to the ICO up to 2,000 complaints per month about unwanted communications. The most recent stakeholder update from Ofcom shows an increase of over 190 per cent in the number of complaints received by the TPS in the past two years.[15]

However, often those consumers who may be unaware of TPS can become a target group for cold-calling. And for those who are registered, the protection is weak as the legal requirements are difficult to enforce. A typical loophole used is that telephone subscribers who have at some time consented to be called, perhaps by filling in a long-forgotten web form years ago with a box to tick "if you don't want to receive further information", may still legally be called, and calls purporting to be for market research are not covered.

The Claims Regulator's permissive approach to cold-calling relying only on the TPS for protection is in stark contrast to the current rules from the Financial Services Authority for first charge mortgages which unambiguously prohibits all unsolicited real time promotions.[16] And consumers who are not registered with the TPS appear to have no protection at all against their contact details being passed on to other further firms for use in unsolicited phone marketing.

With evidence of extensive abuse of telemarketing in the claims sector, there is a case for the regulator to look at banning CMCs from cold-calling. Given extensive advertising by claims management firms in the media and online, and the consumer need for effective redress, we do not believe that a total ban on cold-calling would close down legitimate claims management activity, or channels for genuine claimants to contact and interact with genuine claims management services. We are therefore disappointed that in its recent consultation on the regulatory rules the Ministry of Justice is not looking at considering a total ban on all cold-calling.[17]

In making this recommendation we are clear that we are not advocating for a blanket ban on cold-calling in all business marketing practice. Telemarketing and communications can play an important role in informing consumers of goods and services. Rather we believe that this issue needs to be addressed on a sector by sector basis. Where consumers are being exposed to high risk products with a high risk of detriment, and where many of those consumers may be from vulnerable groups, there is a clear case for a sectoral regulator or licensing authority to restrict what companies can do by way of unsolicited cold-calling and contact inducements. And nor would any ban apply to customer calls to those consumers who have specifically and intentionally signed up to receive specific communications from specific companies as part of their customer communications.

15. Telecoms Complaints Bulletin – August 2012, Ofcom,
16. Mortgage Conduct of Business rules (MCOB) FSA MCOB 3.7.3R
17. Claims Management Regulation – Proposals for Amendments to the Conduct of Authorised Persons Rules, August 2012

Texting

"Please can you do something to stop the never ending bombardment of messages and calls from these criminals!!!"

"I am contacted several times on a daily basis, between texts, emails and the occasional phonecall. I have never provided any of them with my contact details, as I have no need for their services."

"Cold texting puts me off"

Unsolicited electronic communications such as indiscriminate SMS texts – often from third parties as a lead generator – are also frequently used to attempt to lull potential consumers into believing that they may be entitled to compensation, when often they are not. For example:

A CAB in the South East of England reported that an older woman brought her mobile phone into the bureau to show a text message she had received saying she had been mis-sold PPI and to contact the sender for help claiming her refund. She said she had never had PPI. The adviser informed her it was a possible scam in any event and that she should ignore it.

Another CAB in the South East of England saw a man who had been contacted by a text message from a CMC for assistance in reclaiming any PPI. He was not aware of paying PPI for his mortgage or loans, but wanted advice regarding contacting the claims company, who charged a 25 per cent fee for any successful claims. The bureau advised the client that he should not use a claims company to reclaim PPI as it was straight forward to make a claim himself without any cost. However, the client was bothered by the persistent text messaging.

A CAB in the West Midlands advised a man who had received a number of unsolicited texts from claims management companies shortly after getting a new phone. The texts suggested that he was entitled to PPI compensation and one invited him to take a lump sum from his pension. The client was concerned that the senders of the texts had his personal details – although they were highly likely to be part of a scattergun distribution – but felt compelled to reply.

Indiscriminate digital spam is now widely recognised as a problem that needs to be tackled and has become a serious nuisance for consumers. The Telephone Preference Service does not cover unsolicited texts.

The issue of scattergun nuisance texts goes wider than claims management. Technological advances have made it ever more feasible to obtain and subsequently trade the personal data of large numbers of individuals. Such data is often obtained and used in ways that breach consumer and data protection law. It also offers unscrupulous individuals who can easily and cheaply acquire sim cards to text many consumers at once to make large sums of money at the expense of individual privacy. And given that this activity operates cross-border, it is extremely difficult for regulatory agencies to trace.

The Information Commissioner's Office's (ICO) annual report for 2011/12 found that complaints from the public about breaches of the Privacy and Electronic Communications Regulations (known as PECR) 2003 had increased by 43 per cent and that 83 per cent of complaints from the public concerned unsolicited phone calls and texts/SMS. In December 2011, the ICO published the results of its spam text survey which found that out of 1,014 respondents, 681 people said that receiving a text caused them concern, 205 people said that it was inconvenient, while 61 respondents said the text had caused them substantial damage or distress.[18]

Ofcom, as the telecoms regulator, are rightly concerned. In a recent submission to the Department of Culture, Media and Sport (DCMS) they say "We are particularly concerned by the number of calls and messages caused by companies seeking to generate leads for compensation claims,

18. http://www.ico.gov.uk/news/current_topics/spam_text_survey_comments.aspx

such as for Payment Protection Insurance mis-selling. We believe there is a need to review the operation of the existing regulatory system to identify the action that could be taken to reduce consumer harm in both the short and medium-term....As well as taking enforcement action against companies which generate nuisance calls and messages, we should consider the need for action against companies (particularly claims management companies) that generate 'leads' from nuisance calls".[19]

Some steps are now being taken to tackle the problem. A working party has been established involving relevant regulators (Ofcom, the Ministry of Justice Claims Management Regulator, the ICO), the Direct Marketing Association (TPS), consumer groups and others to agree on necessary action to tackle the issue of unsolicited voice and SMS calls. However, the focus is on education initiatives, both for consumers and firms, rather than enforcement. Whilst this is welcome, in that it may come up with better consumer information on how to report unsolicited calls/SMS messages, and Ofcom will start publishing statistics on the number of complaints about unsolicited communications, it is unclear whether this will really tackle the problem at its root cause.

Data protection law does provide for consent based restrictions on when and how firms can use consumer contact information passed onto them by other firms, or share customer data with third parties. However, the Data Protection Act only generally requires explicit consent where the information is classed as sensitive personal data and consumer contact details do not usually fall into this category. It does, however, require all firms to act fairly in the way they process information about their customers, and guidance on the Act stipulates that passing details of customers and their interests to other companies for marketing is likely to be unfair unless they have agreed to this.[20]

However, the lack of clarity in the law over whether consumers have consented for their data to be shared, leaves them exposed. Too often the traffic in personal data spreads on the basis of consumers' internet or mobile usage in accessing other goods and services. Consent is assumed and the law fails to keep up. Data harvesting can therefore present new risks and nuisances for consumers. The growth in availability of mobile phone number databases, low cost internet-to-SMS gateways, and cheap sim card technologies has made it very easy and profitable for "sim-farmers" to send out huge volumes of texts indiscriminately.

Data protection law is currently being kept under review by the Ministry of Justice to keep up with developments in the EU on e-privacy rights, and we would urge that policymakers in this area should look again at the problem of telemarketing spam with a view to strengthening both sanctions and protections against unsolicited communications, alongside enhancing the ICO's enforcement capacity. As the trade in lead generating data seems to be a two way process between firms and data harvesters or suppliers, the ICO needs to work with the relevant sectoral regulators and telecommunication networks to stem the tide of unsolicited communications.

From a consumer perspective, however, the regulatory system is confusing. At present the regulation and enforcement of various types of unsolicited communications is spread across different organisations including Ofcom, Phonepayplus, the ICO, National Fraud Authority, the FSA and other regulators. The distinction between unsolicited marketing and outright scams, and the sector involved, helps determine which organisation is the appropriate point of contact in any circumstances. This is confusing for consumers who are unsure whether they are on the receiving end of a scam or not. If a communication is unsolicited, it is effectively 'spam' in the eyes of the recipient regardless of the intention of the sender. It would be more straightforward to have one point of contact for all unsolicited communications, with an overriding requirement that consumers must opt-in specifically to receive such contacts.

19. The consumer perspective – Ofcom's response to the DCMS consultation, September 2012
20. The Guide to Data Protection, Information Commissioner's Office. 2011

Action for Government and regulators

- The UK Government should review data protection provisions and Information Commissioner Office's enforcement capacity in respect of unsolicited communications
- All cold-calling should be banned in the Claims Management Regulator's Conduct of Authorised Persons Rules
- The Claims Management Regulator should ban all authorised firms from entering into any arrangements with third parties (eg 'sim-farming' marketing companies) trading in personal data, and take immediate enforcement action against those that do.
- The Claims Management Regulator also needs to work closely with Ofcom and the Information Commissioner and other relevant law enforcement and regulatory agencies to tackle marketing and data abuses in the claims management sector, share data about it, and deliver a common enforcement strategy
- There should be a single point of contact for consumer complaints on all unsolicited communications backed up operational processes which ensure that the complaints data goes to the relevant regulatory body.

Action for consumers

It's against the law for companies to send you send marketing texts unless you have already given them permission. To help tackle this, you can

- Forward spam texts to your mobile provider
  – for Orange, O2, T-mobile or 3 forward to **7726**
  – for Vodafone forward to **87726**.
- Inform Trading Standards – call the Citizens Advice Consumer Helpline **08454 04 05 06** (talk to a Welsh-speaking adviser on **08454 04 05 05**).
- Complain to the Information Commissioner's Office
  Information Commissioner's Office online complaint form,
  telephone **0303 123 1113** – they enforce the rules on marketing texts.

Contracts with claims management companies

"They have written to say they will take me to the small claims court as I have refused to pay their high fees, although I had initially cancelled the agreement within the seven days"

"Under the 14 day cooling off legislation I demanded my fee returned within 30 days. More than 30 days have passed, I am still waiting for refund."

Our evidence suggests that it is all too easy for consumers to enter into agreements with CMCs without actually realising that they are committing to a financial relationship, let alone understanding the risks and fees involved. It is common practice for claims firms to charge before commencing any work on a claim. Some companies will charge an upfront fee as well as a win fee. In Citizens Advice's survey of cases seen by

bureaux involving claims management firms, 42 per cent of clients had paid upfront fees. Fees are typically around 30 per cent of any compensation package. Frequently we see cases where clients tell us that a claims firm has taken money from their bank account without their express permission after being persuaded to give the firm their debit or credit card details, but had not yet agreed to use the firm's service or pay a fee when an unauthorised deduction was made from their account. The following examples illustrate the problems of unauthorised pre-payments or advance fees:

> The client of a CAB in the East of England was contacted by phone by a company offering to reclaim mis-sold PPI. She verbally agreed to allow them to look into her situation. She subsequently received letters from the claims management company, one dated in March 2012, the other undated. Neither letter constituted a contract, actually stating that she had not taken up their services. However, she verbally agreed to the company taking £250 as a "joining fee" from her bank account in April and gave her debit card details to the claims firm for their use. The client was confused – her original intention was to pursue the claim unaided, but she felt pressured into a agreeing a payment even though there was no contract.

> A CAB in Wales reported that a 75 year old woman who lived alone had been contacted by telephone by a company specialising in PPI claims. She signed forms and agreed for the company to act on her behalf, but she then contacted the bank and the bank sent £18,000 to her direct in compensation as a result of contacting them. The claims company was now chasing her for charges, but the client told the CAB that they had done nothing to warrant payment. She did not have a copy of the contract terms and conditions which she signed. She was extremely worried as to how she could pay this debt which was increasing by £50 a month interest.

The potential for consumer detriment arising from upfront fees is significant in PPI cases, especially when it is unclear whether consumers have any mis-sold insurance in the first place. CMCs do not actually need to charge an upfront fee if the claim is legitimate and fees can be recovered on the claim. However, many CMCs seem to charge fees before they even know whether the consumer has a legitimate claim or a PPI policy. And it is vulnerable consumers who are particularly susceptible to cold-callers taking them by surprise and getting them to part with their money. Consumers' liability for additional fees and costs may also be affected by pre-existing debts, loans or prior claims on a PPI policy, for example:

> A London CAB saw a man who had previously made successful claims on his PPI policy on a loan for two periods between 2005 and 2010 before succumbing to the promises made by a CMC in an unsolicited call to make a claim about mis-sold PPI. They did so and the bank upheld the complaint forwarding the compensation to the insurance company as payments received under the policy which exceeded the compensation by some £10,000. The CMC however started chasing their fee which was 25 per cent of the compensation gained. The client did not understand how his indebtedness could have increased or why the claims company encouraged him to make the claim. He assumed that the claims management company already knew about the circumstances of his loan when they called him.

Another common practice is for claims companies to charge on future PPI savings or on existing loan repayments. For example:

> A South East of England CAB reported that a pensioner was mis-sold PPI insurance by a bank and used a claims management company to obtain a £8,575 refund. The bank used their right of set-off to reduce his loan by the whole claim leaving him to find the firm's fee of £3,000. As a pensioner the client had no funds to pay the claims' management company's fees and felt that they should

have explained that this situation could arise. He also realised he could have handled the claim himself by letter at no cost. Whilst his loan had been reduced to £600, he was having to negotiate monthly payments with the claims management company as well as paying off his bank loan. If he had handled the claim himself, he would have almost have cleared his debts.

Pre contractual information, cancellation and cooling off rights

Consumers should only be considered to be in a position to make a formal contractual decision once all the information needed to make that decision has been properly communicated by the firm from which they are purchasing goods or services. This is the accepted standard across the EU in the Unfair Commercial Practices Directive – as transposed to the UK in the Consumer Protection from Unfair Trading Regulations (2008). So in the case of claims management services, the really relevant information that needs to be communicated is about the level of risk that the consumer may be entering into, the validity of the claim, liability for fees, an advance quote based on a standard process and a clear pricing structure. The firm should also ensure that the whole claims process is explained not just with reference to one standardised example but by reference to best, typical and worst scenarios.

Yet we see examples of where the process and contractual relationship is seriously misrepresented, and where cancelling agreements can be all but impossible. Only 20 per cent of respondents to Citizens Advice's public survey reported that the CMC in their initial contact had told them how much they would charge for their services. Often keeping consumers in the dark seems very deliberate. For example:

A West Midlands CAB saw an unemployed 28 year old man with dependents who had entered into a no win no fee agreement with a claims management company to bring a claim against his bank for mis-sold PPI. Prior to signing the agreement, the client was told that this was a completely free service. He won his claim and received £1,049.56 but was later contacted by the claims company which demanded payment of £301.74 for their service (25 per cent of his award plus VAT). He asked to see the documents that he signed as he insisted that he entered the agreement on the understanding that it was a free service. The CMC sent him a document which had been signed by the client, stating that it was indeed a free service. However he was also sent a second document which he had not signed, stating the above mentioned service charge. He had never even seen the second document before. The claims company then commenced court action to recover the alleged debt. The bureau advised that the CMC had seriously misrepresented their service.

A CAB in the East Midlands saw a disabled man who needed advice about the claims management service he had taken up. The client told the bureau that he had been contacted by one company and agreed to use their services to pursue a claim against his bank for mis-sold PPI. At the initial visit he paid an admin fee of about £200 and was assured this would be a one-off payment. At the end of the visit, the company showed him some paperwork, but did not give him a copy. They did give him a brochure which contained details of what action a sister company would carry out and their fee structure. However this was not explained to the client and because he was dyslexic, he did not read it in detail. When contacted by the sister company, he specifically asked if their involvement meant further fees and was told he would not have to pay anything else. Ultimately the client received £1350 compensation from the bank and a demand for £450 in fees from the claims management company. The company were extremely rude when he phoned them to query this, refusing to discuss the situation and insisting that he owed the money.

A CAB in the North West saw a woman who had been contacted by a claims management company about mis-sold PPI. She said that because they were insistent, she agreed to them pursuing one of her loans but that actually didn't have PPI attached. Subsequently they pursued claims for mis-sold PPI on a number of other credit agreements taken out by the client and her ex-husband, without asking her for her permission to do so, and recovered money for her. They now wanted a payment of £2,766.19. The client says she only expected them to pursue the one loan and is unhappy they continued with the rest. When the CAB contacted the claims management company to request a copy of their agreement with the client, the claims management company explained that the terms and conditions stated that by signing the client did agree to further searches, but the client was adamant this was not explained to her.

Citizens Advice therefore welcomes the proposals of the Claims Management Regulator that in future all contracts should be in writing, making terms and conditions clearer, and all pre-contractual information displayed clearly on CMC websites.[21]

However, we would urge the Ministry of Justice to go further than this by banning pre-payments and strengthening the right to cancel. We note that in Which?'s survey of consumers who had used a CMC to make a claim, 81 per cent agreed that upfront fees should be banned.[22]

The best way to do this might be to simply state in the regulatory rules that no costs at all should be incurred by clients prior to the expiry of the cooling off/cancellation period, and that there should be no penalty for the cancellation of contracts. Clear information about the right to cancel must also be provided. However percentage based contingency fees, whereby claims management firms take a percentage proportion of compensation received, provide scant incentive for consumers to cancel their contract even in the event of poor service. As fees paid are a proportion of any redress received from a claim, a consumer would receive no benefit from cancelling a contract if they still owe a pro rata fee without having gained anything themselves. Consumers may also be unable to benefit from work already undertaken by the CMC if they chose to cancel the contract and pursue other means of redress.

Service outcomes for consumers

Bureaux regularly report consumers' frustrations with poor service, slow communications and ultimately unsatisfactory outcomes from using claims management companies. In Citizens Advice's online survey, only five per cent of respondents actually reported that the claims management company which engaged them had managed to obtain any compensation for them at all. For example:

A CAB in the South West of England saw a woman who had been contacted by a claims company in 2010 and had signed a contract with them to reclaim a mis-sold PPI policy. She heard nothing further from them, so about a year later she came to the bureau and they provided her with self-help materials to claim back over £3,000. The bureau did not know that the client had signed a contract with the claims company as she had forgotten all about it. She did get the money back paid to her in full so was therefore surprised to receive letter from the claims company asking for fee of around £1,000. The bureau looked at the contract that the client had signed in 2010 and it clearly stated that should the client get any money they should inform the company so they could claim their fee. However, the client had now spent the money repaying her debts. The bureau asked the claims company for evidence of their work towards getting the PPI refund and received brief details of this, but they clearly did not keep the client informed of progress in her case by sending her copies of all relevant correspondence.

21. Claims Management Regulation – Proposals for Amendments to the Conduct of Authorised Persons Rules, MoJ 2012
22. Figures supplied by Which?

A CAB in the North West of England saw a woman who had made a claim against a bank for mis-sold PPI with the help of a CMC. The bank offered to pay her £1,383.22. The letter said if the client accepted the offer she would not need to do anything as they would pay her either via cheque in due course or deduct it from any mortgage arrears. The client immediately contacted the bank asking for the cheque as she had to pay the CMC from the proceeds. She felt the CMC had done little to justify their fee of £414.97 and despite receiving the letter awarding compensation, the client had still to be paid and was unhappy with the delay. But as a consequence of receiving a letter awarding compensation, the client received further pressure from the CMC, who had sent numerous letters to her demanding payment of their fee.

We would like to see the regulatory rules go further than what is currently proposed. Not only should it be impossible to levy speculative upfront fees, but all charges should only be levied against the actual monetary compensation obtained, and at the point at which this has been confirmed.

Whilst we welcome the proposed move towards standardised written contracts, we are disappointed that there are no proposals to strengthen claims management regulation in terms of customer care. We believe that the rules should require CMCs to provide an update to their clients at least once a month on the progress of their claim and to give their clients a brief report at the end of the process. It is difficult for consumers to quantify and judge the value of the work done by a CMC, especially in the case of PPI claims where the CMC may have done little more than submit a claim form to the Financial Ombudsman.

Action for the Claims Management Regulator

- The Claims Management Regulator should introduce new client care rules, a ban on upfront fees, and a requirement to provide clear consumer information on risks and cooling-off rights.
- The Claims Management Regulator should require that fees should only be levied against actual monetary compensation.

Action for consumers

Complain: All authorised businesses are required by law to have a complaints handling procedure, so do exercise this if you are not happy with any service a CMC has provided you with – if you do not have a copy of this you should request it from the CMC or can obtain it from the business's website. It is recommended that you put your complaint in writing and send it to the business by recorded delivery, as they might be in breach of contract and you can ask.

It is possible to report issues directly to the Regulator, but a good starting point is informing form Trading Standards – call the Citizens Advice Consumer Helpline **08454 04 05 06** (talk to a Welsh-speaking adviser on **08454 04 05 05**).

If you believe you have been a victim of a scam you should report the matter to Action Fraud on **0300 123 2040** or via the website.

www.actionfraud.police.uk/report_fraud

Improving regulation and consumer protection

"I am disappointed that the MoJ do not answer their phones when you try to complain"

The problems we have highlighted above all point to the need for robust and forensic regulation of claims management and marketing firms at all stages of their interactions with consumers. Citizens Advice has long been on the case about the claims management sector needing effective regulation. Our 2004 report *No Win, No Fee No Chance* exposed massive problems in the personal injury claims market. This work was influential in persuading Government to take initial steps to regulate claims management companies on a statutory basis. A sector specific regulator now sits within Government (Ministry of Justice), whilst compliance and enforcement functions are outsourced to Staffordshire County Council Trading Standards.

The regulatory architecture requires that, subject to some exemptions, claims management firms must hold a licence to be engaged by customers in claiming any financial benefit or entitlement classified as "compensation".[23] As of April 2007, no company or individual may provide claims management services by way of business unless authorised by the Claims Management Services Regulator. Initially it was anticipated that around 700 businesses would apply to be authorised. However, in total since regulation commenced there have been more than 5,000 businesses authorised to provide claims management services.

These regulatory arrangements are unusual, designed when the main problems with claims intermediaries related to personal injury legal claims commenced under conditional fee arrangements, which had given rise to perceptions about a rampant "compensation culture". The regime was designed to be an immediate solution and intended to be both light touch and low cost. The enabling legislation provided for three options: the Secretary of State could establish a new regulatory body, designate an existing regulatory body to be the regulator, or be the regulator himself. In an unusual twist of regulatory policy and precedent, the latter option was chosen.

It is a criminal offence for any unauthorised person or company to provide or offer claims management services, or to pretend to be authorised. Offenders can be punished on conviction by a fine of up to level five or one weeks' imprisonment, or if convicted on indictment in the Crown Court, sentenced to an unlimited fine or two years' imprisonment. However, there is yet to be a single prosecution under these provisions. Yet no fewer than 260 firms had their authorisation withdrawn this year, and 140 failed authorisation by the claims regulator.[24] So there is still an active unauthorised market that evades regulation and escapes criminal sanctions, with the regulator receiving 40 reports of unauthorised trading per month.[25]

The regulatory system, as operated by the Claims Management Regulator, also has few of the tools currently or proposed to be available to financial and utilities regulators such as product intervention powers, powers to impose requirements or powers to fine. And currently there is no independent complaints resolution system available for consumers who have experienced poor service or a breach of regulations, although it is now proposed that from April 2013, consumers will be able to have these complaints considered by the Legal Ombudsman.

As a bare minimum, we would argue that there should be a regulatory power to fine authorised firms for breaching the rules, and these fines should be specified

23. Compensation Act 2006
24. Claims Management Regulator *Annual Report* 2011-12, Ministry of Justice
25. Claims Management Regulator *Annual Report* 2011-12, Ministry of Justice

in the rules. The regulator should also be empowered to make use of the injunctive powers under section 213 of the Enterprise Act 2002 and of the Consumer Protection from Unfair Trading Regulations (2008) and other appropriate consumer protection sanctions such as protections under the Consumer Protection (Distance Selling) Regulations 2000 as amended. Compliance with these requirements should be included as licence conditions.

This may involve reconsidering the whole model of regulation for this sector, and whether this regulatory function might fit better with a financial regulator rather than the Ministry of Justice, given that much of the work undertaken in this market involves redress and consideration on defective financial products.

Action for Government

- It should undertake a root and branch review of the regulatory structure and powers for the Claims Management Regulator.
- It should provide the Claims Management Regulator with a power to fine/impose financial sanctions.
- It should encourage the Claims Management Regulator to use criminal prosecutions where appropriate.
- It should ensure that the Claims Management Regulator should become a designated enforcer under the Enterprise Act 2002.

Access to redress

"I am able to complete any claim myself by following advice from sites such as MoneySavingExpert"

Consumers may be losing out on over £2 billion in payment protection insurance (PPI) redress by going to claims management companies. With claims management companies typically taking 25 per cent of compensation awarded or more, questions need to be asked about whether the current system and process of redress is delivering value for consumers. Last year Which? launched a campaign to encourage consumers to go it alone with PPI claims using an online tool.

The Financial Ombudsman Service also provides easy step guides and support in filling out their questionnaire and have consistently complained that claims forwarded by CMCs are generally poorly processed: "During the year we have again seen some claims-management companies taking a disappointingly lax approach to completing the questionnaire on behalf of consumers – we have required a number of them to withdraw their complaints and to re-complete the questionnaires again in full… .[some CMCs] make general allegations, some of which have no relevance to the individual dispute…. We have also continued to see a significant number of cases where, after investigation, it emerged that no PPI policy had ever been in place."[26] The result is that the FOS have been overwhelmed with PPI complaints.

Payment protection insurance (PPI) complaints to FOS

Year ended 31 March	Number of complaints
2012	157,716
2011	104,597
2010	49,196
2009	31,066
2008	10,652
2007	1,832

26. *Annual review 2011-12*, the Financial Ombudsman Service

The more effective system of redress though may be delivered not just through the Financial Ombudsman's investigative jurisdiction and power to order compensation, but rather through a restorative justice process. In other words there is scope for financial firms themselves to be more proactive about identifying and contacting consumers who may be eligible for compensation, pursue a "back-book" review process and put in place a settlement strategy for their customers, rather than just setting aside funds to deal with complaints from the Financial Ombudsman. Relying on Ombudsman investigations alone can lead to unnecessary disputes over past transactions (for example over whether a policy was sold) and unnecessary delays in obtaining redress.

This more proactive approach has been happening to some extent. In 2007 the FSA first agreed a package of measures with the PPI industry relating to the fairness and transparency of refunds.[27] The FSA then published guidance in 2010 for firms that sold payment protection insurance (PPI) on best practice in contacting customers who may have been mis-sold a policy but have yet to complain. The guidance outlines steps firms should take when writing customers and stresses the importance explaining clearly why the customer may have been mis-sold and could be entitled to redress, what the customer should do to respond to the firm, the time limits involved and the need to act promptly. Finalised guidance has now been reissued, following the conclusion of legal proceedings between the British Bankers Association and the FSA last year.[28]

These letters are part of a process being undertaken by firms who sold PPI to establish what caused the large number of complaints; what the FSA calls "root cause analysis". When an FSA authorised firm identifies recurring or systemic problems in its sales processes, it is required by the FSA to correct them. The firm should consider what action it may need to take to treat fairly affected customers that have not complained – including contacting them and giving them the opportunity to claim redress without having to complain to the Ombudsman. Citizens Advice welcomes these initiatives and would encourage all firms that have sold PPI to extend compensation to all consumers who may be entitled to it, and to work with consumer organisations to ensure that consumers are made aware of these rights.

Action for banks and FSA

- The FSA and banks should work together to speed up the "back-book" review processes so that all customers are informed of possible redress entitlement for PPI

Action for consumers

- Contact your bank, credit or insurer provider to inquire about whether you have a PPI policy
- If you want to claim redress yourself without using a CMC, you can contact the Financial Ombudsman consumer helpline on **0800 023 4567** or try Which?'s online tool **www.which.co.uk/campaigns/personal-finance/the-ppi-campaign/claim-back/**

27. FSA press release, 29 March 2007
28. *Finalised guidance – Payment protection insurance customer contact letters (PPI CCLs) – fairness, clarity and potential consequences,* FSA, July 2012

Conclusion

This briefing has argued that it is time to take a fresh look at claims management activity in the financial sector in light of all the evidence on systemic bad practice, especially in respect of PPI claims. Whilst, some claims management activity is entirely legitimate, consumer detriment can arise on the back of predatory targeting of consumers likely to be vulnerable because of financial difficulties, and from misrepresentation over fees and charges. The report has also highlighted ongoing problems with cold-calling and unsolicited texts in the claims management sector. We have found that:

- **unsolicited real time promotions have led consumers into agreements with CMCs without proper opportunity to understand the nature and terms of the products and services offered**
- **cold-calling has resulted in unauthorised deductions from the bank accounts of consumers who have been persuaded to part with their payment details**
- **consumers are frustrated in their attempts to gain refunds or cancel contracts**
- **there is deliberate and significant non-compliance with marketing regulations, data privacy rules, and consumer protection law**
- **the practice of upfront fees can often result in a poor service for consumers.**

Whilst we welcome the efforts that the Claims Management Regulator and others are taking to address the issues, we would urge Government and the regulators to go further still. We also think that it is time to reverse the presumption in policy that consumers wish to be bombarded by marketing unless they have said no. We argue that the presumption should be that no one wants to receive intrusive calls and texts unless they have quite specifically consented to or requested them.

In the short term we recommend that:

- **the Claims Management Regulator's Conduct of Authorisation Rules should include a complete ban on cold-calling and lead generating arrangements with third parties that feed cold-calling, and a ban on all upfront fees**
- **implementing the Claims Management Regulator's recommendation for all contracts to be physically signed by the consumer, thus eliminating verbal contracts**
- **that fees should only be levied against actual monetary compensation, rather than against any other restitution such a restructuring of a consumer's PPI package or credit agreement.**

In the longer term, Citizens Advice recommends that:

- **a full review of claims management regulation is undertaken to include within its terms of reference whether a bespoke regulator within the Ministry of Justice remains the most effective model for dealing with claims management activity in the financial sector**
- **consideration should be given to bringing forward a wider range of regulatory tools and powers, including the power to impose financial penalties**
- **work on updating EU data protection legislation should look at how to prevent the commodification of consumers' data which leads to the nuisance of indiscriminate unsolicited marketing communications, and whether further powers or sanctions are needed to prevent this**
- **in both consumer and data protection regulations and regulatory policy and practice, any concept of presumed or passive consent by consumers to receiving unsolicited electronic or telemarketing communications from claims intermediaries should be replaced with specific, active and evidenced consent.**

Written by James Sandbach

Our aims

- To provide the advice people need for the problems they face.
- To improve the policies and practices that affect people's lives.

Our principles

The Citizens Advice service provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities. It values diversity, promotes equality and challenges discrimination.

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