

FINANCIAL GUIDANCE & CLAIMS BILL

Supplementary Memorandum (2) from the Department for Work and Pensions & HM Treasury to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Financial Guidance & Claims Bill (“the Bill”). It supplements the memorandum originally provided to the Committee on 30 June 2017. The Bill was introduced in the House of Lords on 22 June 2017.

2. This memorandum identifies three new clauses in the Bill which have been proposed by way of a government amendment. The new clauses insert an interim fee cap provision which will prohibit claims management companies (“CMCs”) and lawyers from charging more than 20% (excluding VAT) of the final amount of compensation for claims management services in relation to payment protection insurance (‘PPI’) claims. The interim fee cap will be enforced by the relevant regulator during the interim period between two months after Royal Assent and the coming into force of the FCA’s fee cap under clause 21 of the Bill.

3. Under the second new clause the relevant regulators are under a duty to ensure that they have appropriate arrangements for monitoring and enforcing the interim fee cap. The relevant regulators are therefore given a power to make rules for this purpose.

B. ADDITIONAL DELEGATED POWER

Part 2: Claims Management Services

4. The government has proposed an amendment to introduce an interim fee cap measure to be enforced and monitored by the relevant regulator. Under that provision, the Secretary of State (Ministry of Justice) as the current CMC regulator and the relevant legal services regulators are given a power to make rules to ensure they can monitor and enforce the cap.

Amendment to insert a new Clause – “PPI claims: restrictions on charges before transfer of regulation to FCA” after Clause 21

Power conferred on: the Secretary of State and the relevant legal services regulator

Power exercised by: general rules made by the Ministry of Justice and the relevant legal services regulator

Parliamentary Procedure: none

5. The new second clause – “PPI claims: restrictions on charges before transfer of regulation to FCA” will be inserted into Part 2 of the Financial Guidance and Claims Bill after Clause 21. The new sub-clause (4)(b) gives the Secretary of State (Ministry of Justice) and the relevant legal services regulators the power to make rules to enforce and monitor the prohibition on claims management companies and lawyers charging above 20% (excluding VAT) of the final compensation amount for regulated claims management services.

6. In order for the fee cap to be effective before the transfer of regulation to the FCA, it is essential that those regulators have the ability to monitor and enforce it. The power provided in sub-clause (4)(b) will therefore ensure the relevant regulators have the ability to give effect to the fee cap, if they do not already have such powers within their respective regulatory framework. The Ministry of Justice considers that it has sufficient existing powers within the current CMC regulation framework to monitor and enforce the interim fee cap without the need to make additional rules.

7. The Treasury and the Ministry of Justice consider that no Parliamentary procedure is required in respect of this power for the relevant regulator to make general regulatory rules, where necessary for the purpose of monitoring and enforcing the fee cap. The general regulatory arrangements of the relevant legal services regulators, such as conduct or disciplinary rules, are not made by statutory instrument, although they are generally subject to the approval of the Legal Services Board in accordance with the provisions of the Legal Services Act 2007.

**Ministry of Justice / HM Treasury
14 November 2017**