



Europe Economics

# Delay Repay Claims Companies Market Review

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# Contents

Executive Summary.....	1
Lessons that can be learnt from other regulated sectors.....	1
Theoretical drivers of consumer engagement.....	1
Assessing how TPIs could increase consumer engagement.....	2
Conclusions.....	3
1 Introduction.....	4
2 Lessons from the Aviation Sector.....	6
2.1 Services offered by TPIs in the aviation sector.....	6
2.2 Promoting and increasing consumer engagement.....	7
2.3 Driving innovation in the aviation claims sector.....	8
2.4 Concerns about TPIs in the aviation sector.....	9
2.5 Regulators' approach to TPIs in the aviation sector.....	10
2.6 Lessons for TPIs in the Delay Repay claims market.....	11
3 Lessons from the Business Retail Energy Market.....	14
3.1 Services offered by TPIs in the energy sector.....	14
3.2 Promoting and increasing consumer engagement.....	15
3.3 Driving innovation in the energy sector.....	16
3.4 Concerns about TPIs in the energy sector.....	17
3.5 Regulators' approach to TPIs in the energy sector.....	19
3.6 Lessons for TPIs in the Delay Repay claims market.....	21
4 Lessons from the Non-household Water Retail Market.....	23
4.1 Services offered by TPIs in the water sector.....	23
4.2 Promoting and increasing consumer engagement.....	23
4.3 Driving innovation in the water sector.....	24
4.4 Concerns about TPIs in the water sector.....	27
4.5 Regulator's approach to TPIs in the water sector.....	27
4.6 Lessons for TPIs in the Delay Repay claims market.....	28
5 Lessons from the Financial Services Sector.....	30
5.1 Services offered by TPIs in the financial services sector.....	30
5.2 Promoting and increasing consumer engagement.....	32
5.3 Driving innovation in the financial services sector.....	34
5.4 Concerns about TPIs in the financial services sector.....	35
5.5 Regulators' approach to TPIs in the financial services sector.....	37
5.6 Lessons for TPIs in the Delay Repay claims market.....	39
6 What Drives Low Consumer Engagement with Delay Repay?.....	41
6.1 Insights from mainstream economics.....	41

6.2	Insights from behavioural economics.....	45
7	To What Extent can Claims Companies Improve Consumer Outcomes?.....	50
7.1	Mechanisms by which TPIs could increase consumer engagement.....	50
7.2	Impact on consumers of engaging with Delay Repay through TPIs.....	54
7.3	Possible adverse impacts from TPI activities.....	55
7.4	Current innovation by Delay Repay claims companies .....	57
8	Conclusions .....	60
	Appendix I: Summary of CMA studies.....	64
	CMA (2016): Retail banking review.....	64
	CMA (2017): Digital Comparison Tools study.....	65



# Executive Summary

Europe Economics was commissioned by the Office of Rail and Road (ORR) to undertake research into claims companies operating in the Delay Repay market in which delayed passengers can claim compensation following delayed train journeys. These claims companies are an example of third-party intermediaries (TPIs) that provide intermediary services between firms and their customers.

Key elements of the research included:

- research into lessons that can be learnt from other regulated sectors;
- theoretical analysis of the drivers of consumer engagement; and
- an assessment of how TPIs could increase consumer engagement.

We summarise each of these elements of the research below, and then draw out our overall conclusions from the study.

## Lessons that can be learnt from other regulated sectors

Our review of the lessons that can be learnt from other sectors has focused on TPIs in the following sectors:

- aviation, where we focus on claims companies that assist customers in claiming compensation for delays;
- business retail energy, where TPIs assist firms in switching energy supplier;
- non-household water retail, where TPIs again assist customers in switching retailer; and
- financial services, where we focus on claims management companies (CMCs) and financial advisers.

In our view, the most relevant comparators for Delay Repay claims companies are claims companies operating in the aviation sector and claims management companies in the financial services sector, given the similar nature of the activity being carried out. However, we consider that some lessons can also be drawn from experience in other sectors of the impact of TPIs that assist customers in choosing a supplier.

The table on the next page summarises the key lessons that can be learnt from each of these four sectors in terms of the benefits of TPI activity, potential problems arising from TPI activity, and regulatory actions that can be taken to mitigate problems. The final column of the table highlights key differences between the sector and the Delay Repay claims market, which need to be borne in mind when transferring lessons from these sectors to Delay Repay claims companies.

Taken as a whole, these other sectors suggest that TPIs can give rise to various benefits, including increasing consumer engagement with markets, helping to overcome problems of information asymmetry faced by consumers, giving rise to innovation (e.g. involving the application of technology), providing value-added services, and assisting consumers with complex cases or cases where compensation is refused.

At the same time, experience in these other sectors also suggests that there are potential problems that can arise from TPI activity. A common theme is that the information provided to consumers on the TPI's commission can sometimes be opaque. Clearly, the commission paid to TPIs ultimately comes from consumers, and has to be set against the benefits that TPIs provide. There have also been concerns in some of these sectors about aggressive or misleading marketing, and about low quality service from TPIs. Finally, our research in the financial services sector also highlighted concerns about fraudulent claims being made by CMCs and about the impact on consumers with claims in progress when CMCs exit the market.

Our research into TPIs in other sectors also identified policies that have been used by other regulators to mitigate problems arising from TPIs. The energy and water sectors highlight the potential role for voluntary

codes of conduct. In the aviation sector, a fee charged by the CAA for handling complaints gives firms a financial incentive to belong to an alternative dispute resolution body. A recognised system whereby customers can authorise TPIs to act on their behalf (along the lines of Ofwat's rules for letters of authority) may help to limit unauthorised TPI activity and to ensure that the retailer engages with TPIs that are operating legitimately on behalf of customers. In the financial services sector, more interventionist policies are in place — such as a requirement for authorisation for CMCs, rules that regulate their activity and caps on CMC fees — which may reflect the fact that information asymmetry issues are particularly significant in this sector.

**Summary of key lessons from other sectors**

Sector	Lessons relating to...			Limitations of comparison with rail
	Benefits of TPI involvement	Potential problems with TPI involvement	What regulator can do to mitigate potential problems	
<b>Aviation</b>	<p>Use of technology and artificial intelligence</p> <p>Information on options where claim is rejected</p> <p>Partnerships with card providers to increase engagement</p> <p>Offering (financial) incentives to consumers who are already active to recruit others</p>	<p>Information on commissions is opaque</p> <p>Passengers who would claim anyway might be better off without a TPI</p>	<p>Apply a charge to airlines that are not part of an alternative dispute resolution body for each complaint that is handled by the authority</p>	<p>Airlines do not have to pay compensation if delay or cancellation was due to extraordinary circumstances</p> <p>Information on passengers affected by delays is readily available for airlines but not for train operating companies (TOCs)</p> <p>Level of compensation available is usually higher in the aviation sector</p>
<b>Energy</b>	<p>Increased customer engagement with the market</p> <p>Provision of value added services such as advice on energy usage</p> <p>Power of attorney services so that TPI has full authorization to act on customer's behalf</p>	<p>Selling practices may include misrepresentation or mis-selling of products by TPIs</p> <p>Risk of low quality service by TPIs (e.g. failure to obtain best quote)</p> <p>Information on commissions is opaque</p>	<p>Voluntary Code of Conduct for TPIs active in the market</p>	<p>Energy TPIs mainly assist consumers with switching</p> <p>The number of active TPIs is significantly higher in the business energy sector</p>
<b>Water</b>	<p>High levels of satisfaction with TPIs reported by customers which have used them</p> <p>Provision of value-added services e.g. monitoring of consumption and data management</p>	<p>[No published information on problems]</p>	<p>Principles for voluntary TPI codes of practice</p> <p>'Letter of Authority' listing the activities that a customer authorises a TPI to perform on its behalf</p>	<p>Water TPIs mainly assist consumers with switching</p> <p>The non-household water retail market only opened in April 2017, so it is not a mature market</p>



Sector	Lessons relating to...			Limitations of comparison with rail
	Benefits of TPI involvement	Potential problems with TPI involvement	What regulator can do to mitigate potential problems	
<b>Financial Services (CMCs and financial advisers)</b>		Information on commissions is opaque		
		Poor level of service		
	Overcome information asymmetry by clarifying eligibility criteria and claim process	Financial loss to consumers due to lack of clarity on the cost and level of service by CMC	Requirement for CMCs to apply for authorisation to provide services	Information asymmetries are likely to be bigger in the financial services sector given the complexity of the products  Likelihood of spurious claims may also be greater in the financial services sector
	Minimise discomfort felt by consumers in engaging with providers or being assertive	CMCs may encourage consumers to make spurious or fraudulent claims	Rules that regulate CMC activity e.g. restrictions on marketing practices, requirement to highlight alternative options for making claims	
Help secure redress in more complex cases	Aggressive or misleading marketing or sales practice	Cap on CMC fees		
	Consumers may suffer financial loss or delay in CMCs exit and enter the market frequently			

## Theoretical drivers of consumer engagement

We developed an analytical framework to assess the key drivers of consumer engagement in the Delay Repay market, which we use later to inform our view of the potential benefits and dis-benefits of TPI activity.

### Mainstream economics

We first analyse consumer decision-making within the framework of mainstream economics, in which consumers are assumed to act rationally given their preferences and the information available to them.

Our framework considers the costs, benefits and uncertainties that passengers may face in relation to three steps of the claim submission process, namely:

1. becoming aware of the available compensation schemes;
2. gathering information about eligibility and the claims process; and
3. submitting compensation claims for specific delays.

Some consumers may actively search for information about possible compensation in going through the first step, whereas other consumers may passively be made aware of the existence of Delay Repay schemes (e.g. through advertising or on-train announcements).

At any of these steps, consumers that actively engage with Delay Repay may incur time and hassle costs. The costs incurred in the first two steps will not generally depend on the number of claims that are subsequently submitted (since once consumers know how to claim they will not generally have to spend further time finding out). By contrast, the costs associated with the third step will be incurred each time a claim is submitted by the consumer.

In deciding whether it is worthwhile to incur the costs of engaging with Delay Repay, consumers will be influenced by the level of financial compensation that is available, any psychological benefit of receiving compensation, and the perceived likelihood of a claim being successful. Their decisions about whether to invest the time and effort to go through the first two steps are also likely to be influenced by their view of how often they may be eligible for compensation in the future, as well as train delays that they have already experienced.

We then considered what additional insights are available from behavioural economics, in which it is assumed that consumer behaviour may not always be rational due to the existence of various behavioural biases. Behavioural biases could relate to non-standard preferences (i.e. preferences that do not have the properties that are assumed in mainstream economics) or cognitive errors in decision-making.

### Behavioural economics

A key finding from our behavioural economics analysis is that some behavioural biases might increase engagement with Delay Repay schemes while other behavioural biases might reduce engagement.

An example of a behavioural bias that that may increase engagement with Delay Repay is consumer concern about fairness and consumer spite, which might lead passengers to make claims because the delayed train is perceived as unfair or because they have a desire to spite the train operating company. Similarly, projection bias (in which consumers wrongly assume that their current preferences will continue into the future) may cause passengers to overestimate the future claims they will make, which could make them more likely to incur the initial fixed cost of finding out about Delay Repay schemes and thus more likely to claim.

An example of a behavioural bias which may reduce engagement with Delay Repay is the default bias, which might lead passengers to stick with the default of not claiming even when this is not the rational choice.

It is not possible to determine the net effect of these behavioural biases on consumer engagement using theoretical analysis alone.

## Assessing how TPIs could increase consumer engagement

In light of our analytical framework developed in the previous section, we assessed how TPIs in the Delay Repay market could affect consumer engagement levels.

### Mainstream economics

Within the framework of mainstream economics, Delay Repay claims companies may have the following effects:

- Through advertising, they could make more passengers aware of the existence of Delay Repay compensation schemes.
- They could reduce the time and hassle cost to passengers of finding out about Delay Repay schemes and submitting claims e.g. through user-friendly apps with claim submission forms which are partially pre-filled.
- They could increase the success rate of compensation claims e.g. by automatically checking whether forms are filled out correctly.
- In cases where the claims company applies a charge (rather than being funded in some other way e.g. through advertising), they may reduce the net financial compensation received by the passenger.

Overall, it may be rational for a consumer to engage a claims company to assist it with Delay Repay compensation claims if the reduced time and hassle costs and the increased chance of success more than offset any reduction in net financial compensation.

Further, there could be cases in which a consumer might rationally not engage in the Delay Repay market in the absence of the TPI, but begin to engage once a TPI offers its services (e.g. because the TPI provides a user-friendly app which changes the consumer's rational decision about whether it is worthwhile to engage).

In other sectors such as aviation, TPIs have developed digital solutions (e.g. smartphone apps), illustrating the potential for TPIs to bring consumer benefits through innovation which may reduce the costs and hassle of engaging in a market.

However, consumer harm could result if TPIs win customers through misinformation e.g. by exaggerating the compensation available, hiding information about their charges or misleading the consumer into thinking that they cannot claim directly from the TOC. In such cases, consumers might end up using a TPI even though it may make them worse off than if they had claimed directly. Indeed, they might end up using the TPI even though they would have been better off not engaging in the Delay Repay market at all given the time and hassle costs involved. Our research into other sectors identified concerns about opaque information on the charges levied by TPIs.

Similarly, TPIs could cause harm if they submit fraudulent claims, either with or without the knowledge of the customer. Any such conduct could undermine the willingness of TOCs to work with Delay Repay claims companies, as well as undermining consumer confidence in the market. In the financial services sector, there have been concerns about CMCs submitting fraudulent compensation claims.

### Behavioural economics

Behavioural economics provides additional insights into how TPIs may affect consumer behaviour and consumer outcomes.

First, TPIs could play a positive role in helping consumers to overcome behavioural biases that might otherwise reduce engagement with Delay Repay schemes. For example, travel management companies may help to overcome the default bias by offering claims compensation as part of a package of services to business consumers, thus making it the default option for the business to claim compensation for train delays.

At the same time, there is also a danger that TPIs could exploit consumer biases to persuade them to claim through the TPI even in cases where they would be better off claiming directly from the TOC or not claiming at all. For example, a TPI could in theory exploit consumer spite by working up consumer anger about train delays through the messages that it sends to the consumer, prompting consumers to invest more time and effort in submitting compensation claims through the TPI in order to spite the TOC. While this may lead to passengers obtaining more financial compensation, they may end up worse off given the detriment of the anger they have been encouraged to feel by the TPI.

Consumers could also suffer from choice overload if they are presented with too many options from competing TPIs about how to go about making compensation claims. This could make them unable to choose effectively between the alternatives, with the result that they may not engage with the market at all or may make a sub-optimal choice about which TPI to use.

## Conclusions

We have drawn on our research into other sectors and our theoretical analysis of the impact of TPIs on consumer engagement to derive conclusions from the study as a whole.

Overall, our analysis suggests that TPIs have the potential to bring value to the Delay Repay market by helping consumers engage and claim compensation, in particular through the use of technology-driven innovation. At the same time, there are possible negative effects that may need to be guarded against, such as misinformation or opaque information (e.g. about fees), exploitation of customers' behavioural biases, and the submission of fraudulent claims. Our research into other sectors identifies various policy options (e.g. encouraging voluntary TPI codes of conduct) that could be used to mitigate these effects, although ORR would need to carry out impact assessment work to determine the potential effect of such policies in the Delay Repay market.

# 1 Introduction

ORR has commissioned Europe Economics to undertake research into Delay Repay claims companies operating in the UK rail delay compensation market.

Claims companies are third-party intermediaries (TPIs) that offer services to passengers to assist them with compensation claims when their train journey has been delayed. Train operating companies (TOCs) in the UK principally<sup>1</sup> offer compensation under two schemes: Delay Repay 15 and Delay Repay 30. Delay Repay 15 offers compensation to affected passengers if their train is delayed by 15 minutes or more while compensation is available under Delay Repay 30 if the delay is 30 minutes or longer. Currently most TOCs offer compensation under Delay Repay 30 and some of them also offer it under Delay Repay 15.

Third-party intermediaries (TPIs) are present in numerous product markets offering a range of services. The common type of services provided by TPIs in this report can be summarised as follows:

- Facilitating market-matching: these intermediaries can assist consumers accessing and engaging with a range of products through reducing their search costs (for example, in the case of switching energy or water retail suppliers);
- Facilitating market engagement: TPIs active in certain markets (such as aviation or claims management) can increase consumer engagement through reducing the information costs faced by consumers wishing to participate in the market or through increasing the benefits of engagement;
- Alleviating information asymmetry: intermediaries can also help consumers better understand the products and services offered by providers (for example in the financial services sector) and thus improve their purchasing decisions;
- Managing moral hazard: especially in the case of TPIs active in credit markets, these intermediaries often can better monitor borrowers than lenders themselves.

Due to the span of activities of TPIs across sectors, we use various terms interchangeably to refer to these intermediaries in the sectors we examine. These terms include TPIs, claims companies, brokers, CMCs and financial advisors.

Consumer engagement levels and thus claim submission rates have historically been low in the Delay Repay market. Engagement levels appear to have increased slightly following a super-complaint submitted by the Which? consumer group in 2015 and subsequent awareness campaigns. However, according to the latest statistics published by the Department for Transport (DfT), in 2018 it was still the case that only 39 per cent of eligible passengers chose to claim under Delay Repay 30 (4 per cent up from two years before) with this number decreasing to 18 per cent under Delay Repay 15.<sup>2</sup>

Currently there are two different types of claims companies operating in the market, using terminology suggested to us by ORR in January 2019:

- B2C (business to consumer) claims companies, which assist individual passengers and businesses with their claims
- B2B (business to business) claims companies, which assist TOCs themselves with handling claims more efficiently for example by developing applications

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<sup>1</sup> For a full list of TOC schemes see [https://orr.gov.uk/\\_data/assets/pdf\\_file/0009/40230/delay-compensation-claims-factsheet-1819-Q2.pdf](https://orr.gov.uk/_data/assets/pdf_file/0009/40230/delay-compensation-claims-factsheet-1819-Q2.pdf).

<sup>2</sup> Department for Transport (2018): Rail Delay and Compensation 2018 Research Summary”.

The Delay Repay claims companies market in the UK is believed to be relatively small with about a dozen companies (including both B2C and B2B) operating in the market and the large majority of claims being submitted directly to TOCs by passengers. In terms of their business model, there are at least three different approaches being used. First, some claims companies offer their services free of charge (we note that some claims companies may charge fees to other third parties such as travel management companies or train operating companies for their services, however we have not found further details on how claims companies get their revenue). Second, others charge passengers a fee on 'per claim' basis which is then calculated as a percentage of the amount of compensation awarded (and is usually only charged in the case of a successful claim). A third model is to charge a (monthly) fixed fee for their services. Most claims companies also offer innovative services in the form of website or smartphone-based applications.

ORR wishes to see whether claims companies in the Delay Repay market are working well for passengers and businesses, and the likely impact of increasing their role. The study looks at the theoretical drivers of consumer engagement and how innovation by claims companies could increase consumer participation in the market. The study draws on evidence from research into TPIs in other sectors, including the aviation sector, the business energy retail market, the non-household water retail market and the financial services sector.

This report sets out the findings from our analysis and is structured as follows:

- Section 2 presents our research into the lessons that could be learnt from the aviation sector;
- Section 3 presents our research into the lessons that could be learnt from the business retail energy market;
- Section 4 presents our research into the lessons that could be learnt from the non-household water retail market;
- Section 5 presents our research into the lessons that could be learnt from the financial services sector;
- Section 6 analyses the theoretical drivers of consumer engagement by drawing on insights from both mainstream and behavioural economics;
- Section 7 considers the ways in which innovation by TPIs could improve consumer outcomes; and
- Section 8 presents our conclusions.

Appendix I provides more detail on the findings from the two studies the Competition and Markets Authority (CMA) undertook in relation to how digitalisation could improve consumer outcomes in digital retail markets.

## 2 Lessons from the Aviation Sector

First, we present our research into claims companies operating in the aviation sector, which we consider as one of the most relevant comparators for Delay Repay claims companies due to the similarities in the activities performed by these companies.

### 2.1 Services offered by TPIs in the aviation sector

Claims companies (or third-party intermediaries) in the European aviation sector normally offer services in relation to Regulation (EC) No 261/2004 (EU216). EU216 establishes the legal grounds upon which air passengers are entitled to compensation in cases in which their flight is cancelled or delayed by at least three hours or if they are denied boarding against their will. If travellers meet the conditions set out in the regulation, airlines are legally required to pay them compensation.<sup>3</sup> However, compensation is not automatic and passengers need to submit a claim to receive it. Third-party intermediaries have entered the claims market to assist passengers in claiming compensation.

Claims companies active in the aviation sector could provide assistance solely relating to EU261 claims or provide a broader range of services such as also helping with luggage issues claims and other problems covered under the Montreal Convention. Similarly, some companies might specialise in air passenger rights compensation while others may also provide claims compensation assistance in the wider travel sector or in other industries such as energy.<sup>4</sup>

In addition, price comparison websites (PCWs) that are best known for helping consumers find the best available deals on the market could also inform passengers about their rights to compensation in case of a flight cancellation or long delay. These sites may also give customers information or advice on the compensation process itself, for example in the form of a template letter<sup>5</sup> or providing the contact details of relevant authorities or specialist service providers offering compensation assistance. A further possibility, as for instance done by Kayak<sup>6</sup>, is to offer to help customers with their claims, often including checking the validity of their claim as well as processing it on their behalf, which may be done in partnership with a dedicated claims company (AirHelp in the case of Kayak). Finally, some websites such as MoneySavingExpert<sup>7</sup> also have a dedicated section on their website informing passengers about their right to compensation and may also offer help with claims processing through some specialist tool (often provided in partnership with another company) such as Resolver.

In terms of their financial models, a significant majority of claims companies appear to operate on a “no win, no fee” basis, meaning that passengers do not owe any fees to claims companies if the claim submitted on their behalf by the company is not successful. A survey conducted as part of a report for the European

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<sup>3</sup> Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (Text with EEA relevance) - Commission Statement. ECC (2015): “Net Air Passenger Rights Report 2015.”

<sup>5</sup> For example, see the template letter provided by Travel Supermarket, available at:

<https://www.travelsupermarket.com/en-gb/blog/travel-advice/template-letter-flight-delay-compensation-claim/>.

<sup>6</sup> Kayak: “A Guide to Your Air Travel Rights”, available at: <https://www.kayak.co.uk/magazine/air-travel-rights-guide/>.

<sup>7</sup> MoneySavingExpert: “Flight Delay Compensation”, available at: <https://www.moneysavingexpert.com/travel/flight-delays/#resolvertool>.



Consumer Centre (ECC)<sup>8</sup> also found that in the event of failure the consumer owes nothing, as indicated by 15 of the 18 private claims companies surveyed. Turning to the level of commission that companies charge, 62 per cent of them stated that they clearly explained their cost procedures and in 15 out of 18 cases they charged a commission as a percentage of the compensation awarded (usually between 20 and 33 per cent). In two cases, companies responded that they charged a fixed price which consumers are required to pay regardless of the outcome. Other models reported include charging a fixed fee for handling and processing the case as well as a commission in the event of a successful outcome (expressed as a percentage of the compensation awarded). Furthermore, the level of commission may also vary depending on whether legal action is required as part of the claims process. By way of example, AirHelp generally charges a commission equivalent to 25 per cent of the final compensation received by the passenger which rises to 50 per cent if legal action has been required.<sup>9</sup>

## 2.2 Promoting and increasing consumer engagement

Consumer group Which? calculated that of the approximately 900,000 eligible travellers who suffered delays or cancellations in relation to their flights between June 2014 and May 2015 only 38 per cent of them filed a claim for compensation. Furthermore, Which? also found that half of the delayed customers it surveyed did not receive any information or assistance regarding the claims process from the airlines. According to a travel expert the low claims ratio might be due to reasons such as passengers not being aware of their entitlement to compensation or the claims process being complicated.<sup>10</sup>

According to views expressed by a flight compensation company, the ratio of eligible passengers actually claiming compensation is even lower: in 2017 it estimated that there are around 8 million passengers entitled to compensation<sup>11</sup> yet only about 2 per cent of them submitted a claim.<sup>12</sup> Another website specialising in claims compensation reported similarly low numbers in relation to the number of compensation claims submitted, stating that less than 2 per cent of passengers ended up receiving the compensation to which they were entitled.<sup>13</sup>

Claims companies or price comparison websites may be able to promote and increase consumer engagement in the claims compensation market by providing specialised information on passengers' rights when they are affected by flight cancellations or delays and giving advice about the claim compensation process itself. Other mechanisms may include ensuring that the relevant tools required for submitting a claim (such as a template letter or an online form<sup>14</sup>) are available at passengers' disposal.

Another benefit claims companies may bring to the market is informing passengers about their options when their initial claim has been rejected, such as turning to the relevant authority or alternative dispute resolution body. Furthermore, some claims companies also offer to act on behalf of consumers in these cases, especially when travellers may not have the relevant knowledge or tools at their disposal to submit claims. Examples relate to airlines rejecting claims based on 'extraordinary circumstances' such as weather conditions or technical issues. For example, a case study reported by ClaimCompass, a claim compensation website, found that an unnamed airline had misused and abused the meaning of 'bad weather'. The claimant in that case ended up missing a connecting flight due to delays in the first leg of his journey, which resulted in him arriving more than three hours late at his final destination. The passenger submitted a claim to the carrier operating

<sup>8</sup> ECC (2015): "Net Air Passenger Rights Report 2015, available at: [https://forbrukereuropa.no/wp-content/uploads/2012/01/ecc-net\\_air\\_passenger\\_rights\\_report\\_2015.pdf](https://forbrukereuropa.no/wp-content/uploads/2012/01/ecc-net_air_passenger_rights_report_2015.pdf)."

<sup>9</sup> The Telegraph (2017): "Delayed flight? This app will automatically reimburse you".

<sup>10</sup> BBC (2015): "Delayed airline passengers 'missing out on millions in compensation'".

<sup>11</sup> It lists delayed, cancelled or overbooked flights as the basis for being eligible for compensation.

<sup>12</sup> The Telegraph (2017): "Delayed flight? This app will automatically reimburse you".

<sup>13</sup> ClaimCompass: About us, available at: <https://www.claimcompass.eu/en/about/>.

<sup>14</sup> For example, see the information, template letter and online form provided by Travel Supermarket, available at: <https://www.travelsupermarket.com/en-gb/blog/travel-advice/template-letter-flight-delay-compensation-claim/>.



the first flight and the claim was refused as the airline attributed the delay to bad weather conditions.<sup>15</sup> Following the rejection of the claim by the airline, the passenger raised the complaint with ClaimCompass who was able to verify the meteorological conditions at the time and place of the scheduled arrival and departure points, as well as throughout the journey concluding that these were optimal for a safe flight operation. Furthermore, it also found that flights taking place between the same departure and arrival points at similar times did not experience delays. In light of the information gathered by ClaimCompass, the airline then reassessed the claim and awarded compensation to the passenger.<sup>16</sup> Similarly, in the *van der Lans v KLM* case the European Court of Justice (ECJ) in 2015 ruled that flight delays or cancellations arising from unforeseen technical problems (i.e. not discovered during routine maintenance) are also eligible for compensation under EU261.<sup>17</sup> In these cases, claims companies may also increase future passenger engagement by turning initially rejected claims into successful ones.

Another way in which claims companies can promote participation of travellers in the claims market is offering (financial) incentives to consumers who are already engaged to reach out to those not currently active. For example, airFair has expressed plans to include a feature in its platforms that would allow consumers to introduce potential claimants to the scheme and receive payment in return.<sup>18</sup> Furthermore, claim companies could also increase market engagement and claim submissions by cooperating with other intermediaries in the travel sector. One such example is AirHelp, which offers a “get money when they get paid” service to partner organisations which send claims from their own customer base to AirHelp.<sup>19</sup>

An aspect that may hinder the effectiveness of claims companies trying to promote consumer engagement is refusal by some airlines to accept compensation claims submitted by certain third parties. By way of example, Resolver advises passenger to use their freely provided letters for ten airlines that only accept direct claims from consumers.<sup>20</sup>

### 2.3 Driving innovation in the aviation claims sector

In recent years there have been a number of new, innovative software and applications launched by compensation companies, often jointly with fintech or other enterprises.

In 2017 AirHelp, a flight compensation company launched a new app that passengers can use to claim compensation for delayed or cancelled flights. The tool checks if passengers are entitled to compensation by scanning their boarding passes (using their phones’ camera) and offering to make the claim on passengers’ behalf stating that the whole process only takes a few seconds. The company emphasised that the new app is meant to make the claims process easier for travellers as previously all flight details needed to be entered manually.<sup>21</sup>

Furthermore, in 2017 AirHelp also launched its first “robot lawyer”, powered by artificial intelligence (AI). Once Herman’s (the robot lawyer) artificial brain is fed with the relevant details of a claim (such as operating airline or departure/ arrival airport), it suggests the best options and jurisdiction for legal action. Based on the testing of 35,000 claims, the process for Herman to identify a jurisdiction takes less than a second, compared to a processing time of about twenty minutes when done manually, depending on the claim’s complexity. It can also deal with more complex claims, such as multiple-leg journeys, and eliminates human

<sup>15</sup> ClaimCompass notes that indeed, airlines are not required to pay compensation for results arising from bad weather conditions.

<sup>16</sup> ClaimCompass (2018): Can I Get a Compensation When my Flight was Delayed or Canceled because of Bad Weather? Maybe.”

<sup>17</sup> The Independent (2015): “The Van Der Lans v KLM court case: Five things you need know”.

<sup>18</sup> FinTech Profile (2017): “Fintech firm launches revolutionary new software in the flight delay compensation space”.

<sup>19</sup> AirHelp: Partners, available at: <https://www.airhelp.com/en-gb/partners/>.

<sup>20</sup> MoneySavingExpert (2019): “Flight delay compensation: get up to £530/person for free”.

<sup>21</sup> The Telegraph (2017): “Delayed flight? This app will automatically reimburse you”.

error from the process. Therefore, in line with AirHelp's objective to empower consumers, the use of an AI-powered lawyer has the potential to make the claims process more accessible and cost effective for passengers.<sup>22,23</sup>

Visa has announced a partnership with AirRefund, an air-claim management company, which processes flight compensation on behalf of passengers in the case of delayed, cancelled or overbooked flights. Visa's statement notes that apart from benefitting from an easier and quicker claims process, passengers who have purchased their flight tickets using their Visa card would also be charged a lower commission by AirRefund: instead of its general commission rate, set at 30 per cent of the compensation received, Visa Gold, Platinum or Infinite card holders will be charged at a rate of 20 per cent of the compensation awarded, while the applicable rate will be 25 per cent for all other Visa card holders. Furthermore, after a successful pilot programme in France in 2016, Visa has expanded the programme to customers in other European countries such as Spain, Italy and Portugal from 2017 onwards.<sup>24</sup>

Allay, a fintech specialist company, launched new software in 2017 that allows UK consumers to check their eligibility for compensation arising from flight-related issues as well as to submit such claims from start to finish within the new app called airFair<sup>25</sup>. Allay has explained that the main objectives of the new software were to speed up the compensation process for passengers, cut the costs associated with claims and increase the likelihood of successful claims. The company also stated that while the new app has a user-friendly, multilingual interface that allows consumers to follow the status of their claim, it could also help other organisations such as tour operators or airlines themselves through its potential to significantly reduce the administrative costs associated with the claims. Moreover, Allay also expressed plans to develop a feature that would allow members of the general public to refer potential claimants to airFair and receive some sort of financial reward in return.<sup>26</sup>

A further product launched in 2017 in relation to flight delay compensation is Flight Delay Insurance, an innovative insurance cover offered to UK residents by Chubb European Group in partnership with Swiss Re and FlightStats.<sup>27</sup> Chubb notes that the insurance's coverage is wider than consumers would be entitled to under EU compensation rules as it includes provisions for unexpected costs such as taxi or refreshment expenses, as well as covering flights outside the EU. Moreover, passengers could receive compensation for delays of one hour (compared to three-hour threshold specified under EC261 for a person to be eligible for compensation). Claims are validated using real-time flight data provided by FlightStats and payment is received within 72 hours after the passenger has arrived at their destination.<sup>28</sup>

## 2.4 Concerns about TPIs in the aviation sector

The key issues and concerns we discuss about TPIs in this section include the fees charged by claims companies for their services, transparency around these fees, exclusivity and cooling off periods.

Research undertaken by consumer organisation Which? has found that passengers could be as much as £216 better off when they file their own claim for flight compensation compared to using a claims company to process the claim on their behalf. Which has compared the total charges deducted by some of the most

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<sup>22</sup> AirHelp blog (2017): "Meet Herman, AirHelp's Robot Lawyer, Who Will Save Time, Money & Frustration ... For Everyone",

<sup>23</sup> Incentive Travel (2017): "AirHelp launches world's first AI-powered lawyer to fight for faster flight compensation claims".

<sup>24</sup> Visa Europe (2017): "Visa expands partnership with air-claim management company AirRefund across Europe".

<sup>25</sup> The could be downloaded from: <https://www.airfair.com/download-our-app/>.

<sup>26</sup> FinTech Profile (2017): "Fintech firm launches revolutionary new software in the flight delay compensation space".

<sup>27</sup> In 2018 Chubb has also made Flight Delay Insurance available to Australian residents as well. See, for example: <http://chubb.mediaroom.com/news-releases?item=125001>.

<sup>28</sup> Chubb (2017): "Chubb and App in the Air launch fully-automated and real-time Flight Delay Insurance in partnership with Swiss Re and FlightStats".

popular claims management companies which tend to vary between £164 and £216<sup>29</sup> when a passenger is entitled to receive £550 in compensation.<sup>30</sup> While it is generally accepted that claims companies might be able to save time for consumers as well as could make the claims process quicker and easier, some argue that these companies regard EU compensation rules as “milking a cash cow” and believe that “it’s money for nothing” as airlines are legally required to pay compensation to passengers who only have to fill out and submit a form in order to receive this.<sup>31</sup>

Information on the fees charged by claims companies can also be lacking or displayed in an unclear, non-transparent way on their websites. A survey by the European Consumer Centre (ECC) revealed that only 69 per cent of the companies in their sample<sup>32</sup> published their rules or terms and conditions on their websites and only 62 per cent of the companies studied clearly indicated their applicable fees and charges. Turning to information availability and lack of transparency around any eventual court fees, the ECC report found that for a third of the companies reviewed no information at all was available on their website regarding who would be responsible for paying any court fees.<sup>33</sup>

Other practices of claims companies that could be detrimental for consumers include not giving a clear indication of cooling off periods for the contract. In particular, among the claims companies studied by the ECC in its report, only 38 per cent of them gave information about applicable cooling off periods, in the majority of cases indicating an applicable cooling off period of 14 days.<sup>34</sup>

In addition, the European Commission has also published an information notice on how consumer protection, marketing and data protection laws apply to the activities of claims companies. In particular, the notice states that claims agencies are required to display on their website a price for their services that includes all additional costs and taxes, as well as to provide a signed power of attorney<sup>35</sup> and not to undertake persistent unsolicited telemarketing activities. The Commission’s notice also highlights the applicable requirements in relation to the protection of passenger data.<sup>36</sup>

## 2.5 Regulators’ approach to TPIs in the aviation sector

While the activities of Claims Management Companies (CMCs) offering claims assistance in relation to financial services, personal injury or employment are currently regulated by the Ministry of Justice’s Claims Management Regulator, CMCs operating in the aviation sector are not subject to such regulation.<sup>37</sup> From 1 April 2019, the Financial Conduct Authority (FCA) will take over the regulation of CMCs. In preparation of this transfer, the FCA has undertaken a consultation period relating to the behaviour of claims companies and received responses suggesting potential issues around complaints going missing, problems with Letters of Authority or customers being denied compensation without a full investigation taking place.<sup>38</sup> In addition,

<sup>29</sup> Which? also notes that the total deduction is £0 when the claim is made through its own website ([which.co.uk/flightright](http://which.co.uk/flightright)).

<sup>30</sup> Which (2017): “Make your own flight delay compensation claim and save up to £216”.

<sup>31</sup> The Guardian (2018): “Beware firms trying to take a cut of your flight delay claim... you can do it for free”.

<sup>32</sup> The questionnaire was filled out for a total of 36 companies.

<sup>33</sup> ECC (2015): “Net Air Passenger Rights Report 2015.”

<sup>34</sup> ECC (2015): “Net Air Passenger Rights Report 2015.”

<sup>35</sup> This needs to be provided together with a copy of document such as a passport or ID card that can be used for the verification of signature.

<sup>36</sup> European Commission (2017): “Information Notice to Air Passengers”.

<sup>37</sup> Claims Management Regulator, for further information, see: <https://www.gov.uk/government/groups/claims-management-regulator>.

<sup>38</sup> Insurance Business (2018): “FCA ready to take over regulation of claims management companies”.

the consultation responses also included proposals to extend the scope of regulation to other sectors such as aviation or timeshares.<sup>39</sup>

Citizens Advice has stated that while the Claims Management Regulator has improved its practices and approach to policing the claims management market, there are still issues yet to be addressed. In particular, it has highlighted unsolicited telephone calls and texts by these companies, the lack of clear and upfront information about the charges they apply for their services (which are often disproportionate in relation to the amount of work involved) and poor customer service.<sup>40</sup>

If passengers experience issues with airlines not awarding them the compensation to which they are entitled, they can also turn to the Civil Aviation Authority (CAA) for advice. While issues related to airlines refusing to pay out compensation to those entitled to it may be reported to the CAA by any passenger, the CAA is only able to consider the complaint and act on behalf of claimants through the Passenger Advice and Complaints Team (PACT) if the airline is not part of an approved alternative dispute resolution body (ADR). However, the CAA notes that in contrast to ADR bodies, “PACT cannot impose a decision on an airline”.<sup>41</sup> Furthermore, the CAA has also announced that from 1 June 2016 it will bill a £150 per-passenger complaint charge to airlines that are not part of a Delay Repay scheme for each complaint it handles.<sup>42</sup>

In December 2018 the Civil Aviation Authority (CAA) announced that it was taking legal action against Ryanair<sup>43</sup> for refusing to pay compensation to thousands of UK passengers following a series of strikes by the airlines’ pilots and cabin crew earlier that year.<sup>44</sup> While the airline argues that delays or cancellations arising from strikes are not covered under EU261 and thus affected passengers are not entitled to compensation, the CAA stated that the airline is indeed responsible and required to pay compensation if the delay or cancellation occurs as a result of strike action by the airline’s own employees and it has not warned passengers of the cancellation at least two weeks in advance, in line with EU rules.<sup>45</sup>

## 2.6 Lessons for TPIs in the Delay Repay claims market

The developments and practices of claims companies in the aviation sector suggest some useful lessons for Delay Repay claims companies in the rail sector.

Overall, the two markets are similar in a number of aspects: consumers are entitled to compensation both under the EU261 regulation and under the relevant Delay Repay schemes that train operating companies have signed up for, and while both airlines and train companies are required to pay compensation for delays and cancellations, consumers need to actively claim this from the operators in both markets.

Despite these similarities, there are also important differences between the aviation and rail markets. Firstly, TOCs are required to pay compensation under the Delay Repay30 and Delay Repay15 schemes irrespective of the cause of the delay while airlines do not have to pay any compensation under EU261 if the delay or cancellation was due to extraordinary circumstances. Moreover, information availability on passengers affected by delays or cancellations is more readily available in the case of air travel as this information is usually required by airlines for check-ins, whereas train operating companies (TOCs) do not have the same

<sup>39</sup> HM Treasury (2018): “Claims management regulation: response to the consultation on secondary regulations and policy statement for transitional provisions”.

<sup>40</sup> Citizens Advice: “Review of claims management regulation - Citizens Advice’s response to HM Treasury and Ministry of Justice”.

<sup>41</sup> CAA: “How to make a complaint”, available at: <https://www.caa.co.uk/Passengers/Resolving-travel-problems/How-the-CAA-can-help/How-to-make-a-complaint/>.

<sup>42</sup> CAA statutory charges 2016-17, available at: <https://publicapps.caa.co.uk/docs/33/CAP1407%20MAY16.pdf>.

<sup>43</sup> We note that since 30 November 2018 Ryanair is no longer part of AviationADelay Repay, an alternative dispute resolution body.

<sup>44</sup> BBC (2018): “Ryanair compensation claims to go to court”.

<sup>45</sup> Engage Customer (2018): “CAA urges Ryanair customers to claim compensation as strike cause cancellation”.

information on rail travellers. As a result, TOCs may not be able to determine with certainty whether a passenger has indeed travelled on a delayed or cancelled train which will have important implications on their ability to assess claims and eliminate any potential fraudulent claims. A further difference is the level of compensation available to consumers, with the available amounts usually being higher in the aviation sector. For example, as set out in Article 7 of EU 261/2004, a passenger experiencing a delay on a flight of up to 1,500 kilometres is entitled to a compensation of €250 which rises to €400 for flights between 1,500 and 3,500 kilometres or intra-Community flight of over 1,500 kilometres.<sup>46</sup> In the case of Delay Repay if your train is delayed by 15-29 you are entitled to 25 per cent of the cost of a single journey<sup>47</sup> which increases to 50 per cent if the delay is between 30-59 minutes and to a 100 per cent for delays between 60-119 minutes.<sup>48</sup>

Due to the similarities between the activities of aviation and Delay Repay claims companies, the lessons that could be drawn from TPI experience in the aviation sector are likely to be highly relevant for the Delay Repay claims companies market. Our research into the aviation sectors suggests that TPIs can bring various benefits to consumers, such as giving rise to innovation (through the use of technology and artificial intelligence), providing information and assistance to consumers where compensation is refused or forming partnerships with other parties (e.g. card providers) to increase engagement in the market. At the same time, potential problems including opaqueness around the information provided to consumers on the commissions charged for services or decreasing consumer welfare for those who would have claimed anyway may also arise from TPI activity.

#### Use of technology and artificial intelligence

By their own account, claims companies in the Delay Repay market have made substantial use of the available advances in technology to automate the claims process and thus to speed up the processing of claims. Some of the innovation introduced by companies in aviation such as the use of artificial intelligence could possibly also be used in the rail TPIs market to bring benefits to consumers. For instance, rail claims companies might be able to provide better services to consumers if they developed a tool similar to AirHelp's robot lawyer which may be used to deal with claims involving more complex, multiple-leg journeys.<sup>49</sup>

We also note that while jurisdictional issues seen in the aviation sector do not exist in the same way in the rail sector, solution developing using artificial intelligence may still be a useful lesson learnt in terms of the type of solution that claims companies may bring to the market if they allowed to innovate.

#### Information on options when initial claim is rejected

In the rail industry, claims companies could bring a benefit similar to that delivered by some TPIs in the aviation sector if they provided information on the options available to passengers when their initial claim has been rejected by TOCs (in cases where rail travellers believe that they are entitled to compensation). This could involve setting up a dedicated website (for example akin to the one run by MoneySavingExpert) or simply adding information to the existing website that offers impartial advice and information on the various dispute resolution mechanisms available to consumers, such seeking help from the Rail Ombudsman.<sup>50</sup>

#### Partnership with card providers

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<sup>46</sup> [https://eur-lex.europa.eu/resource.html?uri=cellar:439cd3a7-fd3c-4da7-8bf4-b0f60600c1d6.0004.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:439cd3a7-fd3c-4da7-8bf4-b0f60600c1d6.0004.02/DOC_1&format=PDF)

<sup>47</sup> Around £6 for the average mainline rail fare for a single journey in Great Britain, although given that longer journeys are likelier to attract delays the average eligible fare under Delay Repay 15 and Delay Repay 3 is likely to be higher. Source: given by ORR.

<sup>48</sup> For example, see: <https://www.thameslinkrailway.com/help-and-support/journey-problems/delay-repay>.

<sup>49</sup> We note that since for multi-leg journeys passengers are supposed to claim directly from the TOC whose service was delayed, the system could cause considerable confusion to passengers, however, the claims process need not to be logistically difficult.

<sup>50</sup> <https://www.railombudsman.org/>

Claims companies that form partnership with other companies such as card providers may bring benefits to rail passengers by engaging them in the Delay Repay market. In the aviation sector, such marketing strategies by claims companies have included offering lower commissions to travellers who engage through this route.

#### Offering (financial) incentives to active consumers to engage non-participants

Rail claims companies could increase consumer engagement and the uptake of Delay Repay if, in a similar way to some initiatives in the aviation market, they offered financial or other incentives to consumers already active in the Delay Repay market for persuading their personal contacts to engage in the market as well.

#### Commissions charged by claims companies and transparency around these charges

Opinions in the air travel industry appear to differ as to whether claims companies bring real benefits to the market or whether they are simply taking advantage of regulation that awards compensation to passengers affected by flight cancellations and delays.

To avoid the issues arising from non-transparent pricing that are observed in the aviation sector (such as passengers not realising the percentage of compensation claims that companies charge in the case of a successful claim), claims companies operating in the Delay Repay market would need to ensure that information on their charges are displayed and communicated to consumers in a clear and transparent way before consumers enter a contract. For example, AirHelp provides detailed pricing information about its services on the website.<sup>51</sup>

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<sup>51</sup> <https://www.airhelp.com/en-gb/price-list/>



## 3 Lessons from the Business Retail Energy Market

In this chapter we present our research into the business retail energy market. Energy brokers and other TPIs active in this market mostly offer switching and other advisory services to non-domestic customers, however despite these differences between the activities performed relative to Delay Repay claims companies we consider that lessons could still be drawn from the experience of TPIs in this sector.

### 3.1 Services offered by TPIs in the energy sector

Third party intermediaries (TPIs) are particularly active in the energy market. The contract between a supplier and a business customer is typically negotiated privately and often on a case-by-case basis, and TPIs facilitate search and comparison of energy price quotes and contract terms and help to find a better deal for the customer.

Ofgem notes that there are significantly more TPIs present in the non-domestic energy sector than those serving domestic consumers.<sup>52</sup> In particular, in 2014 Ofgem estimated that there were more than a thousand non-domestic TPIs operating in the retail energy market, receiving in total £200 million of commissions.<sup>53</sup> Similarly, Ofgem believes that there may be hundreds of white-label price comparison websites present in the domestic sector.<sup>54,55</sup> According to the Competition and Market Authority (CMA)'s report on its energy market investigation, TPIs are an important channel to market for both for the six large suppliers and for new market entrants.<sup>56</sup> Furthermore, the Cornwall Insight TPI index lists 201 TPIs that work with small and medium business customers (SME TPIs), and another 156 TPIs that work with larger industrial and commercial customers (I&C TPIs).<sup>57</sup>

The range of activities performed by TPIs could vary significantly between the provision of independent energy advice and actively engaging with consumers in negotiating a new energy contract. Services offered by TPIs may also include information and advice about products, services, or schemes and initiatives such as collective switching. It is also worth noting that third party services may go beyond acting as intermediaries between consumers and suppliers and could include, for example, energy management, whereby TPIs also advise consumers on their energy usage (facilitated by data from smart meters).<sup>58</sup> Ofgem noted that in 2014 about 26 per cent of smaller businesses have used an energy broker as their main source for their energy contract or tariff while around 12 per cent of them reported having used a price comparison website. For the case of large consumers, this number was reported to be significantly higher, with around four-fifths of them stating that they've used a broker, representing an increase from 2013 when three-quarters of these businesses reported using a broker.<sup>59</sup>

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<sup>52</sup> Ofgem (2013): "Third Party Intermediaries: exploration of market issues and options".

<sup>53</sup> Ofgem (2014) "Proposals for regulating non-domestic Third Party Intermediaries (TPIs)."

<sup>54</sup> Ofgem does not know the exact number of price comparison websites (PCWs) present in the domestic sector. Furthermore, PCWs are the most widespread type of TPIs serving domestic consumers.

<sup>55</sup> CMA (2015): "Energy Market Investigation - Price Comparison Websites".

<sup>56</sup> Competition and Market Authority (2016) "Energy Market Investigation. Appendix 16.1: Microbusinesses".

<sup>57</sup> Cornwall Insight (2017): "Three key trends in the TPI sector".

<sup>58</sup> Ofgem (2013): "Third Party Intermediaries: exploration of market issues and options".

<sup>59</sup> Ofgem (2015): "Retail Energy Markets in 2015".

There are three common types of TPIs that offer energy procurement advice and services:

- Sales agents – representing directly or indirectly an energy supplier. A sales agent could also represent a single or multiple suppliers and may also operate across a number of sectors.
- Brokers – involved in reviewing and presenting offers from suppliers to consumers with price comparison websites being a typical example.
- Consultants – similar to brokers, offering TPI and energy consultancy services sometimes in exchange for a fee from the consumer.<sup>60</sup>

In terms of funding arrangements, the most prevalent arrangement involves the TPI being directly paid by the supplier, which could be a one-off fee or based on, for example, the level of energy consumption. Differences may also exist between domestic consumers and industrial and commercial (I&C) consumers — in the latter segment of the market, fees appear to be more bespoke (e.g. comprising a fixed fee and per cent savings achieved by consumers).<sup>61</sup>

### 3.2 Promoting and increasing consumer engagement

Through their activities TPIs bring certain benefits to the energy market such as promoting and increasing consumer engagement.

The use of TPIs varies between small and large consumers. Businesses' motives for using TPIs can vary significantly, and are sometimes dependent upon the range of services offered by the TPIs themselves: some TPIs only cater for businesses with large energy spending, while others may serve the needs of all consumers in the market.

The CMA's investigation into the energy market in 2016<sup>62</sup> revealed generally low levels of engagement for microbusinesses, while also highlighting that some microbusinesses do actively engage with the market and that engagement levels are higher than those observed among domestic consumers.

TPIs encourage consumers to engage in the energy market, including by switching to better deals. According to the Ofgem barometer for SME energy customers, TPIs are the key source of the existing contract for over half of customers.<sup>63</sup> At the same time, various surveys report that between 28 and 39 per cent of micro and small businesses use TPIs as their main source of information about energy supplier contracts but then proceed to contract the supplier directly for a contract. Large customers would work more closely with the TPI, seeking advice not only on prices but also on energy management.<sup>64</sup>

A report by Abtrain and Cornwall Insight in 2017 revealed that despite several initiatives and discussion on increasing engagement, there was still a significant portion of consumers who did not actively engage in the energy market, concluding that this may have implications for a fully competitive market. The report further highlighted the need for suppliers to be able to communicate clearly the differences between their and their rivals' offerings, as coordinated behaviour by suppliers could discourage consumers from taking an active interest in the market and lead to them (mistakenly) concluding that "each supplier is as bad as the other"<sup>65,66</sup>

Based on a much broader view of engagement, that includes activities such as attempted switches or changing tariffs with the current supplier, a report prepared for Ofgem in 2016 found that levels of this broader kind of engagement point towards more active and engaged consumers than would be the case when examining switching rates on their own. In particular, the report found that while 79 per cent of the businesses in its

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<sup>60</sup> Ofgem (2013): "Third Party Intermediaries: exploration of market issues and options".

<sup>61</sup> Ofgem (2013): "Third Party Intermediaries: exploration of market issues and options".

<sup>62</sup> Competition and Market Authority (2016) "Energy Market Investigation. Appendix 16.1: Microbusinesses".

<sup>63</sup> Quadrangle (2017) "Micro and small business customer engagement in the energy market. A report for Ofgem",

<sup>64</sup> Competition and Market Authority (2016) "Energy Market Investigation. Appendix 16.1: Microbusinesses".

<sup>65</sup> The report notes that this is especially the case for market when the product sold is relatively homogenous.

<sup>66</sup> Abtrain and Cornwall Insight (2017): "Attracting and retaining customers in a disrupting energy market".



sample did not switch supplier in the previous 12 months, more than half of these non-switching businesses did participate in the market in some way.<sup>67</sup>

Consumer engagement and protection initiatives are also present in relation to innovative solutions such as smart meters. As an example, the then Department of Energy and Climate Change (DECC) describes a consumer engagement strategy in its smart metering implementation programme that aims to build support for the roll-out by increasing consumer confidence in the programme, facilitating the realisation of consumer benefits by, for example, helping consumers manage their energy consumption through the use of smart meters, and ensuring that vulnerable consumers are also among the beneficiaries of the programme.<sup>68</sup> Furthermore, in another consultation DECC also stated that customised, actionable advice can help promote the engagement of even small suppliers in the market that may often be time-constrained or otherwise resource-constrained.<sup>69</sup>

In addition, in 2013 Ofgem also cited collective switching as a potential way in which consumer engagement could be facilitated by TPIs, especially for vulnerable or disengaged consumers. However, it also notes the lack of evidence available at the time of the report on the actual benefits brought to consumers by collective switching due to the fact that the scheme had only recently been launched in Great Britain.<sup>70</sup>

A survey by Ofgem in 2018 looking at consumer engagement in the energy market found that common reasons for engaging among consumers were saving money (avoiding immediate or future price increases, selected by 87 per cent of respondents), getting a better customer service (selected by 9 per cent of respondents) and getting a fixed term/ price deal or a green tariff (selected by 7 and 6 per cent of respondents, respectively). 34 per cent of respondents stated that they were prompted to switch tariffs by an end of fixed term tariff notice while reasons for switching supplier included receiving a price increase notice or moving to a new house (selected by 17 and 3 per cent of supplier switchers).<sup>71</sup>

### 3.3 Driving innovation in the energy sector

Ofgem's report into Third Party Intermediaries highlights the potentially significant role of TPIs (such as supporting and empowering consumers to make more informed and effective choices) in realising the benefits from innovative solutions in the market, such as smart metering or demand side response (DSR) initiatives.<sup>72</sup> At the same time, other sources note that smart meters may have 'revolutionary impacts' on the way energy companies interact with consumers<sup>73</sup> as well as having the potential to increase both the variety of services offered or the number of switching sites available as a consequences of access to smart meter data.<sup>74</sup>

In addition to smart meters enabling TPIs to expand both the scope and size of their reach, as explained in a report by Department of Energy and Climate Change (DECC), third parties could also serve as a potential accelerated route to bringing smart metering-enabled innovation and benefits to SMEs. One of the key areas identified by the DECC where third parties could potentially lead innovation is the so-called 'power of attorney services', already existent in the domestic sector, that essentially offer consumers automatic switching when a cheaper, better deal becomes available for them. There are two important differences between these power of attorney services and switching sites: first, unlike switching sites they do not charge

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<sup>67</sup> Quadrangle (2017) "*Micro and small business customer engagement in the energy market. A report for Ofgem*",

<sup>68</sup> Department of Energy and Climate Change (2013): "Smart metering implementation programme: smart metering for non-domestic consumers".

<sup>69</sup> Department of Energy and Climate Change (2015): "Forward look: smart metering-enabled innovation in energy management in the non-domestic sector".

<sup>70</sup> Ofgem (2013): "Third Party Intermediaries: exploration of market issues and options".

<sup>71</sup> Ofgem (2018): "Consumer engagement in the energy market in 2018: Report on a survey of energy consumers."

<sup>72</sup> Ofgem (2013): "Third Party Intermediaries: exploration of market issues and options".

<sup>73</sup> Abtran and Cornwall Insight (2017): "Attracting and retaining customers in a disrupting energy market".

<sup>74</sup> Department of Energy and Climate Change (2015): "Forward look: smart metering-enabled innovation in energy management in the non-domestic sector".

any commission to the consumer and second, personal data (such as current supplier or previous consumption information) that is provided by the consumer is stored in the system.<sup>75</sup> The success of these services is attributed to two factors — impartial advice being given to consumers and the right amount of information given to consumers that in turn facilitates their decision-making. The report concludes that third parties are especially suited to bringing such services to the market for the non-domestic consumers (given these third parties are granted access to smart meter data) as the development of this service could mean breaking away from the energy broker model where commission is paid to TPIs by energy suppliers which in turn may not lead to completely independent outcomes. In addition, these power of attorney services are likely to be more attractive for smaller businesses given that these customers are less likely to require the handling of complex accounts. The paper also notes that entry into the market by TPIs with the potential innovation that this may bring may be hindered by the relatively immaterial nature of energy costs to SMEs as well as by the difficulty of finding ways to offer services that represent value for these businesses at a cost that they are able and willing to pay. The report concludes that if TPIs were to enter the market successfully, having access to smart meter data would play a key role in their development.<sup>76</sup>

A second area highlighted by the report where third parties could represent an accelerated route to innovation enabled by smart metering is demand side response (DSR). DSR enables consumers to sign up for schemes that offer rewards for adjusting their electricity usage<sup>77</sup>: for example, a commercial building might decide to reduce its electricity consumption by lowering air-conditioning or heating that doesn't significantly change the building's performance and receive compensation for it. While this process is fairly well-known for larger consumers, in 2014 Ofgem initiated a project that aimed to settle larger domestic and smaller non-domestic consumers every half hour as well, thus further improving the efficiency and security of energy provision. DECC also noted that third parties could play an important role in supporting and delivering this programme for smaller consumers by aggregating them into groups akin to virtual plants. Nonetheless, DECC also added that as opposed to power of attorney services, any innovation and benefits from third parties in relation to DSR are more likely to be suited for larger businesses with higher energy consumption.<sup>78</sup>

### 3.4 Concerns about TPIs in the energy sector

There have been a number of problems in the course of the development of the TPI market. A more recent survey in 2016 of micro and small business customers revealed that nearly half of customers were dissatisfied with the services provided by energy brokers.<sup>79</sup> However, the 2016 survey is less clear on the reason for dissatisfaction or the nature of problems. Two earlier surveys of non-domestic TPIs in 2011 and 2013 revealed that customers experienced a range of problems when dealing with TPIs.<sup>80,81</sup> The CMA 2016 Energy Market Investigation provided a separate review of problems that microbusinesses experienced with TPIs.

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<sup>75</sup> This information provided by the consumer only has to be entered in the system once (thus potentially implying a cost saving for users) and then it is stored in a 'Personal Data Store' (PDS) where all data is kept under strict control and can be shared with third parties at the consumer's request.

<sup>76</sup> Department of Energy and Climate Change (2015): "Forward look: smart metering-enabled innovation in energy management in the non-domestic sector".

<sup>77</sup> Ofgem: "Electricity system flexibility", available at: <https://www.ofgem.gov.uk/electricity/retail-market/market-review-and-reform/smarter-markets-programme/electricity-system-flexibility>.

<sup>78</sup> Department of Energy and Climate Change (2015): "Forward look: smart metering-enabled innovation in energy management in the non-domestic sector".

<sup>79</sup> Quadrangle (2017) "*Micro and small business customer engagement in the energy market. A report for Ofgem*", Section 3.1

<sup>80</sup> Ofgem (2014) "*Non-domestic TPI Project. Summary of industry feedback to date.*" For more details, see Research Perspective and Element Energy (2013) "*Quantitative Research into Non-Domestic Consumer Engagement in, and Experience of, the Energy Market. A report for Ofgem.*"

<sup>81</sup> Cornwall, Nigel and Buckley, Robert (2011) "*Watching the middlemen. Brokerage services for micro-business energy consumers*", section 3.

The key issues with energy TPIs identified across these different studies were:

- Poor selling practices:
  - Misrepresentation of TPIs' own identity.
  - Misrepresentation of tariffs, and sales terms and conditions.
  - Pressure on customers to force sales.
- Risk of low quality of TPI service:
  - Incomplete survey of the market to obtain best price quotes.
  - No obligation to negotiate better terms on behalf of customer.
  - Suppliers providing confusing information about tariffs to TPIs.
  - Preferential relationship between some TPIs and suppliers.
- Lack of transparency about the TPI's commission.

We examine each of these issues in turn.

### Poor selling practices

TPIs sometimes do not introduce themselves clearly as TPIs or energy brokers. For example, a TPI might use official language to present itself as a non-commercial entity, such as an ombudsman or someone working on behalf of Ofgem, with the purpose of extracting metering and billing information and enforcing a contract.<sup>82</sup>

There have been complaints that TPIs approach business customers too frequently when attempting to establish contact. This issue appears to be persistent as it was reported both in the 2011 and 2016 surveys. For example, in 2014, 14 per cent of the businesses surveyed reported being approached by brokers more than 50 times with this figure increasing to 19 per cent in 2015 and to 22 per cent in 2016.<sup>83,84</sup>

### Risk of low quality TPI services

The TPI is not bound to search the whole market and may only contact a few suppliers for a price quote, and hence may miss a better deal for the customer.<sup>85</sup> It is therefore important that the customer is provided with clear information about how much of the market is covered by the TPI.

Alternatively, the contract(s) found by the TPI might still not represent the best deal for the customer and could be improved e.g. by changing the contract duration or the payment method, yet the TPI is not bound to offer such improvements.<sup>86</sup>

While TPIs might seek best price deals for their customer, some suppliers do not provide full tariff information on their website or provide multiple names for similar (core) tariffs when dealing with TPIs, which is likely to affect the quality of service that TPIs can provide.<sup>87</sup>

### Non-transparent commission

TPI commissions often lack transparency.<sup>88</sup> The TPI's commission might be hidden in the price quote that the customer receives from the supplier via the TPI.<sup>89</sup> In some cases, the commission might represent a

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<sup>82</sup> Cornwall, Nigel and Buckley, Robert (2011) "Watching the middlemen. Brokerage services for micro-business energy consumers", section 3.2.

<sup>83</sup> Cornwall, Nigel and Buckley, Robert (2011) "Watching the middlemen. Brokerage services for micro-business energy consumers", section 3.2.

<sup>84</sup> Quadrangle (2017) "Micro and small business customer engagement in the energy market. A report for Ofgem", page 23.

<sup>85</sup> Ofgem and Citizens Advice (2015) "Third Party Intermediaries: what your small business needs to know."

<sup>86</sup> Ofgem and Citizens Advice (2015) "Third Party Intermediaries: what your small business needs to know."

<sup>87</sup> Ofgem (2015) "Information flows between suppliers and TPIs", Appendix 1.

<sup>88</sup> Competition and Markets Authority (2016) "Energy Market Investigation. Appendix 16.1: Microbusinesses", para 121.

<sup>89</sup> Competition and Markets Authority (2016) "Energy Market Investigation. Appendix 16.1: Microbusinesses", para 123.

signification proportion of the energy price (e.g. a commission of 2 to 3 p/kWh representing 20 to 30 per cent of the initial price of 10 p/kWh).<sup>90</sup>

### 3.5 Regulators' approach to TPIs in the energy sector

To address some of the concerns about TPIs and barriers that they face in their activities, Ofgem conducted a series of consultations and developed a number of policy options in 2013-15. For some of the problems, the industry offered solutions that seek to reduce the extent of malpractice by TPIs.

#### Poor selling practices

Since late 2013 Ofgem has had powers to enforce the Business Protection from Misleading Marketing Regulations (BPMMRs).<sup>91</sup> The BPMMRs cover business-to-business advertising and marketing and prevent the seller from providing misleading information about its products and services or derogatory/defamatory information about its competitors. Ofgem can directly accept and investigate complaints about TPI sales behaviour and refer a non-compliant TPI to the courts. As of early 2018, there is no public evidence that Ofgem has applied the BPMMR powers to any TPI.

Ofgem also considered other means to regulate non-domestic TPIs, such as licencing and a code of conduct, neither of which was implemented.<sup>92,93</sup>

The idea of a TPI licence was not implemented following opposition from market players, even though an impact assessment by the Department for Energy and Climate Change recommended that Ofgem should be granted the licencing power.<sup>94</sup> Ofgem also considered a requirement for energy suppliers to deal with accredited TPIs only, which was not implemented either. As an immediate indirect remedy, Ofgem published a guidance letter in 2012 stating that energy suppliers were responsible under their licence for their representatives.<sup>95,96</sup>

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<sup>90</sup> Competition and Markets Authority (2016) "Energy Market Investigation. Appendix 16.1: Microbusinesses", para 126.

<sup>91</sup> Ofgem (2013, November 20) "Ofgem gains new powers to protect businesses from misleading marketing. Press-release." Available online at: <https://www.ofgem.gov.uk/press-releases/ofgem-gains-new-powers-protect-businesses-misleading-marketing>

<sup>92</sup> Ofgem (2014) "Proposals for regulating non-domestic Third Party Intermediaries (TPIs)."

<sup>93</sup> For responses to the Ofgem consultation on the TPI licence and code of conduct, see:

<https://www.ofgem.gov.uk/publications-and-updates/third-party-intermediaries-tpi-proposals-regulating-non-domestic-tpis>

<sup>94</sup> Department for Energy and Climate Change (2013) "Consumer Tariff Amendments (power f) - Clarify the power to make, upon a request from Ofgem, the activities of energy Third Party Intermediaries (TPIs) licensable." IA No: DECC0127.

<sup>95</sup> Ofgem (2012) "Marketing of energy supply to domestic customers by Third Party Intermediaries (TPIs) – clarification of Standard Licence Condition (SLC) 25 of the gas and electricity supply licences".

<sup>96</sup> Although outside the scope of the case study, we note that while accreditation initiatives in the non-domestic sector were abandoned, Ofgem did provide accreditation to a number of price comparison websites operating in the domestic market. Ofgem states that the accreditation process ensures that consumers "can be sure that the prices and options displayed have been calculated fairly in an unbiased way". For more details, please see: <https://www.ofgem.gov.uk/consumers/household-gas-and-electricity-guide/how-switch-energy-supplier-and-shop-better-deal/compare-gas-and-electricity-tariffs-ofgem-accredited-price-comparison-sites>. Moreover, Ofgem has also published its first report on consumer impacts in 2018 that reported benefits brought to consumers by the changes made to the Confidence Code such as increasing consumer trust as a result of PCW accreditation and increased competition between suppliers leading to lower prices. For details, see: [https://www.ofgem.gov.uk/system/files/docs/2018/07/consumer\\_impact\\_report\\_-\\_published0307.pdf](https://www.ofgem.gov.uk/system/files/docs/2018/07/consumer_impact_report_-_published0307.pdf).

Ofgem also proposed a draft Code of Conduct for TPIs which was abandoned following interim findings in the CMA's energy market investigation.<sup>97</sup> Instead, Ofgem proposed a set of principles that TPIs are expected to follow: honesty, respect, accuracy, transparency, customer-focused, and professionalism.<sup>98</sup>

Market solutions to improve TPI conduct include Codes of Conduct developed by trade associations, energy companies and associations of business buyers of energy.<sup>99,100,101</sup> Further, small and micro businesses can seek support when dealing with energy suppliers and TPIs not only from Ofgem but also from Citizens Advice. For example, E.On developed a Code of Practice for B2B (Business to Business) TPIs that are involved in selling E.On's products to non-domestic consumers which sets out various principles for TPIs providing the service (such as ensuring that the consumers is aware how much the market was searched for the offer they receive as part of its second principles to provide fair and transparent services). The Code also outlines E.On's approach to monitor these practices and intervene in case of a misconduct, however it may only apply to TPIs directly working with E.On and not across the whole non-domestic energy TPI market.<sup>102</sup>

### Risk of low quality of TPI service

To address the issue of the confusing tariff names used by the energy suppliers, Ofgem re-iterated in its 2014 letter the requirements for suppliers to provide a single name for the core tariff and to ensure that tariff information is easily accessible by anyone.<sup>103</sup>

Following its energy market investigation, the CMA published an Order that required suppliers to provide microbusiness energy tariffs and price quotes on their websites.<sup>104</sup> The CMA conducted a consultation on the Order (as well as on other Orders pertaining to the investigation) and published the responses on the energy market investigation webpage.<sup>105,106</sup> While the explanatory note accompanying the CMA Order provides guidance on the information that should be provided to microbusiness customers and how it should be presented,<sup>107</sup> a quick scan of large energy suppliers' websites shows a high variation in the format of price

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<sup>97</sup> Ofgem stated that it had deferred the implementation of its proposed Code of Conduct for TPIs following the expansion of scope of the CMA's energy market investigation "until there is greater clarity, so we can determine the appropriate level of intervention". For further details, see:

[https://www.ofgem.gov.uk/sites/default/files/docs/2015/03/open\\_letter\\_tpi\\_principles\\_march\\_2015\\_for\\_web\\_0.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2015/03/open_letter_tpi_principles_march_2015_for_web_0.pdf)

<sup>98</sup> Ofgem (2015) "Next steps on our project for a code of practice for the non-domestic third party intermediary (TPI) sector." The principles are also reproduced in the factsheet by Ofgem and Citizens Advice (2015) "Third Party Intermediaries: what your small business needs to know."

<sup>99</sup> As an example of a trade body, see Utilities Intermediaries Association (UIA) for energy TPIs and its "Codes of Practice". Available online at: [http://www.uia.org.uk/code\\_of\\_practice.htm](http://www.uia.org.uk/code_of_practice.htm);

<sup>100</sup> As an example of Code of Conduct developed by an energy company, see E.On "Code of Practice" Available online at: <http://www.tpicodeofpractice.co.uk/>

<sup>101</sup> As an example of energy buyers association, see Energy Market Association (EMA) for energy management professionals, and its "Code of Practice for Non-domestic Third Party Intermediaries and Energy Brokers." Available online at: <http://www.theema.org.uk/code-of-practice-for-non-domestic-third-party-intermediaries-and-energy-brokers/>

<sup>102</sup> E.On: "B2B Third Party Intermediary (TPI) Code of Practice", available at: <http://www.tpicodeofpractice.co.uk/the-code-of-practice/>.

<sup>103</sup> Ofgem (2015) "Information flows between suppliers and TPIs", Appendix 1.

<sup>104</sup> Competition and Markets Authority (2016) "Energy Market Investigation (Microbusinesses) Order 2016."

<sup>105</sup> Competition and Markets Authority (2016) "The Energy Market Investigation (Microbusinesses) Order 2016. Notice of intention to make an Order under section 165 of, and Schedule 10 to, the Enterprise Act 2002 and public consultation on the proposed Order." Available online at: <https://assets.publishing.service.gov.uk/media/5805e112ed915d4b7200000c/energy-market-microbusinesses-consultation-notice.pdf>

<sup>106</sup> For individual responses, see the Sub-section "Responses to provisional decision on remedies" on the webpage "Energy market investigation." Available online at:

<https://www.gov.uk/cma-cases/energy-market-investigation#formal-consultation-on-draft-energy-market-remedies-orders>

<sup>107</sup> CMA (2016) "The Energy Market Investigation (Microbusinesses) Order 2016. Explanatory note." Available online at:



information, ranging from an online quotation tool to a web page to a pdf file with prices and terms and conditions. This suggests that microbusiness customers and TPIs working for them may still face challenges in understanding and comparing the price quotes and terms.

#### Access to data on status of switches

The TPI might not have access to the customer's metering data when trying to develop a suitable price offer(s). The issue is complicated by the development of smart meters, as the TPI might need to access the customer's (historic) digital metering data to develop suitable price offers for the customer.<sup>108</sup> To improve access to customer metering data and to facilitate the switching process, Ofgem is currently developing the next-day switching model based on a centralised service company that will facilitate switching and allow TPIs access to the status of switching requests. The new arrangements are due to come into force by 2020.<sup>109</sup> Although not relating to the business market, we note that domestic price comparison websites (PCWs) have recently been granted access to the electricity and gas metering databases, ECOES and DES respectively. This followed the CMA's energy market investigation in which it identified an adverse effect on competition arising from a weak domestic customer response to the market. The CMA determined that granting PCWs access to the databases would help remedy this issue by improving access to, and the quality of, data used in the industry for switching.

### 3.6 Lessons for TPIs in the Delay Repay claims market

The development of the energy TPI market suggests some useful lessons and messages for TPIs (claims companies) active in the Delay Repay claims market.

Overall, there exist certain similarities between the retail business energy market and the Delay Repay claims market: for example, TPIs in both sectors serve business customers (with claims companies also catering to the needs of individual consumers). At the same time, there are also important differences. In particular, a significant portion of TPIs operating in the retail energy sector focus on services relating to switching which is not relevant to the services offered by Delay Repay claims companies. Furthermore, in the business retail energy market there appear to be over 200 TPIs that work with SMEs and over 150 that work with larger industrial and commercial consumers, while in the Delay Repay market there are about a dozen active claims companies.

Lessons that could be drawn from the experience of TPIs in the energy sector revolve around the provision of value added services such as advice on energy usage or power of attorney services so that TPI has full authorization to act on customer's behalf, bringing benefits to consumers, but also relate suggest lessons relating to potential problems of TPI involvement such as misrepresentation or mis-selling of products, the provision of low quality services or opaque information on the level of commissions charged. A policy that has been used to guard against these potentially harmful activities is encouraging TPIs to develop voluntary codes of conduct that set out the principles and rules TPIs active in the market would need to adhere to.

#### Power of attorney services

As highlighted in the report by DECC using power of attorney services may have additional benefits over the use of switching sites such as no commission fees charged or consumers' details being stored in a secure 'Personal Data Store' avoiding the need to enter certain information on multiple occasions. Similar

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/584899/energy-market-microbusinesses-order-explanatory-note.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/584899/energy-market-microbusinesses-order-explanatory-note.pdf).

<sup>108</sup> Ofgem (2015) "Information flows between suppliers and TPIs", Appendix 2.

<sup>109</sup> Ofgem (2018) "Switching Programme: Outline Business Case", para 8.29.

solutions<sup>110</sup> in the rail sector that automatically alerts passengers about train journeys eligible for compensation have already been developed and are offered by claims companies.

#### Advice on train journeys eligible for compensation

Similar to the energy management services offered by TPIs in the energy sector, claims compensation companies may increase consumer engagement by, for example, monitoring consumers' train journeys eligible for compensation and alert them about the possibility of submitting a group of claims once the overall amount of compensation has reached a certain threshold (within the relevant claim period). This may incentivise passengers to increase the number of claims submitted as claims statistics suggest higher claims ratios as the amount of compensation to be awarded increases.

#### Access to customer data

The energy TPI sector demonstrates that access to (historic) customer metering data is important for marketing purposes, developing a price quote and facilitating switching. Likewise, where possible<sup>111</sup>, access to passenger train journey data would help Delay Repay TPIs provide a better service to customers that might be interested in submitting a compensation claim either directly or through a claims company.

#### Selling practices

Consumer trust and the relationship of TPIs with their customers are of key value in the TPI market. This consumer trust may be weakened if some of the negative customer experiences with energy TPIs (e.g. misrepresentation or mis-selling) end up being reproduced in the Delay Repay claims market. Maintaining customer trust in the TPI industry is therefore important for the development of the TPI sector and more broadly for engagement with Delay Repay claims compensation industry.

The idea of licensing TPIs and introducing a mandatory TPI Code of Conduct has been considered in the non-domestic energy sector but abandoned, however Ofgem did publish a Confidence Code setting out certain principles for price comparison websites operating in the domestic market. This suggests that providing some sort of accreditation to claims companies might increase consumer confidence and bring direct benefits to passengers in the form of increased competition between suppliers leading to lower commissions.

Furthermore, Ofgem has enforcement powers under the BPMMRs, which raises the question of whether ORR should be granted these powers as well. However, we note that there is no public evidence that Ofgem has used these powers.

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<sup>110</sup> Provided that claims companies are able to collect and have access to the data needed to verify these claims.

<sup>111</sup> We note, however, that train operating companies may not even have this train journey data available either.

# 4 Lessons from the Non-household Water Retail Market

In this chapter we present our research into the non-household water retail market. Similarly to the TPIs operating in the business energy market, TPIs active in this sector mostly offer water management and switching advice and services. However, as in the case of the energy sector, we believe that lessons could be drawn for the Delay Repay claims market.

## 4.1 Services offered by TPIs in the water sector

TPIs active in the non-household water retail market typically offer brokerage and procurement services to customers. Some of these brokers appear to offer services only in relation to water and wastewater, while other players are already active in other markets (typically utilities) such as energy.

The range of services provided can also include 'water consultancy services', i.e. bill auditing, account handling, water efficiency, smart metering, leak detection and repair, and consulting services. The scope of services provided by one company, Waterscan, also includes the provision of water management advice in order to help customers enter the market as self-supply sellers.<sup>112</sup>

In terms of the consumers served, most brokers (whether water only or across utilities) tend to serve all consumer segments, although a small minority seem to offer services tailored to the needs of certain customers. For example, SME Broker Services states that it specialises "as a broker for business essential services, aiming to reduce the expenditure of UK Small to Medium sized Enterprises".<sup>113</sup>

Ofwat also notes that a further type of TPI that is currently not available in the retail water market is price comparison websites that would allow consumers to compare offers and switch providers, thus potentially lowering consumers' search time and associated costs.<sup>114</sup> A report by the Consumer Council for Water describing the experience of consumers in the non-household water market also highlights that the existence of price comparison websites may be key in further increasing market engagement, in particular in helping SMEs decide whether to switch suppliers.<sup>115</sup>

## 4.2 Promoting and increasing consumer engagement

Although Ofwat only introduced competition in the non-household retail market in April 2017, there are already some positive signs suggesting increases in consumer engagement due to the role and presence of TPIs, as reported by Opinion Research Services.<sup>116</sup> Its report analysed results from two different waves of interviews: the first wave gathered opinions from all types of businesses involved in the market, while the second wave focussed on customers who have switched retailers.

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<sup>112</sup> For further details, see <https://waterscan.com/>.

<sup>113</sup> Information from <https://www.smebrokerservices.co.uk/about>.

<sup>114</sup> Ofwat (2018): "Open for business: Reviewing the first year of the business retail water market".

<sup>115</sup> Consumer Council for Water (2018): "Non-Household Customers' Experiences of the Retail Water Market in England Vol 1: Report of Findings".

<sup>116</sup> ORS (2018): "Ofwat. Non-household Customer Insight Surveys. 2017/18".



Looking at the first wave of this survey, more than three quarters of respondents stated that they were aware of the existence of intermediaries, such as brokers and price comparison websites (PCWs)<sup>117</sup> that provide guidance for comparing different opportunities in the non-household water retail market. Among active customers that considered the possibility of changing their retailer or actually switched, more than a third used retailers' websites directly to gather information about alternatives, while 31 per cent stated that they used a PCW and 30 per cent of them looked for a broker. More than a fifth of these active customers contacted another retailer directly. To search for information about alternative retailers, SMEs and large customers active in the market used, with higher probability than all consumers, the Open Water website<sup>118</sup> or a consultant, while large customers also reported using a broker.

Brokers and consultants were likely to make the first move in contacting potential new customers. Indeed, of those consumers who used a broker or consultant, 82 per cent of them stated that they were first contacted by the broker or consultant and only about a fifth of them approached these TPIs themselves. Overall, the satisfaction rate from interacting with brokers or consultants was high: more than 90 per cent of respondents were very satisfied or fairly satisfied with their experience and discussions with their TPI or use of PCW, while only 1 per cent of the respondents reported not being satisfied.

Moving onto the second wave, customers that switched retailers made direct contact with another retailer in half of the cases, while more than a fifth of the switchers interviewed used a broker for this purpose. Only 6 per cent of respondents stated that they used a consultant and almost a sixth of the interviewed customers stated that they used a PCW.

Similarly to the first wave of the survey, over 80 per cent of customers who switched reported being aware of brokers and other intermediaries in the market that can assist with the switching process. Nonetheless, micro businesses that spend on average less than £1,000 a year on their water bill appear to be less likely to know about the existence of TPIs in the market.

Turning to satisfaction with TPIs, results from the second wave are almost identical to those from the first one. More than 90 per cent of switchers stated that they were very satisfied or fairly satisfied with the interaction they had with a broker or reported a positive experience of using a PCW.

### 4.3 Driving innovation in the water sector

TPIs operating in the non-household water market may offer services related to the water sector only, provide advice across a range of utilities or sectors or form partnerships with water retailers. Below we illustrate some solutions intermediaries have developed for each of these categories.

#### TPIs offering water related services only

England on Tap is a website that allows businesses to find the water supplier that most closely aligns with their needs.<sup>119</sup> Using England on Tap's website, businesses can input information about their current water and wastewater usage such as their current supplier, water and wastewater reference numbers, and whether they currently have a water meter. These details, along with information about what the business is seeking — whether to switch suppliers, increase water efficiency or establish a new water connection — allow the website to match the business with potential water suppliers. The water suppliers then directly contact the

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<sup>117</sup> We note that even though the survey reports figures on the use of PCWs these are not readily available in the non-household water retail market. It is possible that respondents may have been referring to the websites of water brokers.

<sup>118</sup> The open water website provides information about the recently opened non-household water market: for further details please see: <https://www.open-water.org.uk/>.

<sup>119</sup> Information from <https://www.englandontap.co.uk/>.

business to discuss a new water contract. England on Tap appeals to existing businesses, as well as businesses in newly-built locations without a pre-existing water connection.

Waterscan is a company that provides cost-minimising software and water audits, and that acts as a broker.<sup>120</sup> In addition to finding customers the best rates for their business water needs, the company can perform a water audit in order to identify potential problems with water usage, or discover if there are opportunities to reduce the business' bill or to receive refunds. Water audits also install an additional meter that sends information on water usage to Waterscan's software every 15 minutes. This provides a clear picture of water usage, and indicates how the company can reduce usage. This also provides for quick identification of leaks, which can be fixed promptly using a process that map an image of the leak before the plumber goes in to fix the issue, saving time and money. Waterscan also assists large consumers in obtaining self-supply licences so that they can buy water directly from the wholesaler at a lower price. Even after obtaining the license, Waterscan offers support for interacting with the wholesaler in the event of any issues, maintaining the license, and providing knowledge about the industry so that companies can make informed decisions.

### TPIs offering services across multiple markets

Pulse Business Water<sup>121</sup> is an example of a water broker business that provides assistance to businesses looking to minimise their water bills.<sup>122</sup> Pulse uses a team of brokers to evaluate a business's water needs to find the best quotes and legal terms, presenting the customer with the best options for a new water supplier. Additionally, Pulse Business Water offers use of their software, STARK, which gives the business a picture of how and when water is being used at their premises. The software helps companies reduce water usage, which both lowers their water bills and is beneficial for the environment. The company can also install smart meters to monitor the exact amount of water a property is using and then send that information to both the STARK software and the water supplier so that the customer is charged for exactly how much water was used, eliminating overpayment. The company also provides a service called bill validation, where it monitors a customer's water bills using data on their actual consumption in order to ensure the customer is being charged to correct amount.

Another business water broker is SME Water Services<sup>123</sup> which also provides data, finance, insurance and merchant broker services. This intermediary assists small and medium sized businesses in obtaining the best quotes for water, drawing upon its experience as a broker in other industries.

Online Direct was the UK's first business energy aggregator.<sup>124</sup> Now, besides supporting TPIs in the energy sector, the company also provides procurement assistance, support from a dedicated Water Team and specialist training on the UK water industry to brokers entering or active in the water retail market.

Energy Solutions is an electricity, gas and water broker, aiming to get the best deals for these utilities for their clients.<sup>125</sup> It analyses a business's water usage and then finds out what the business wants out of a new water contract before presenting different quotes and suppliers to the customer. Businesses that switch water suppliers using Energy Solutions receive a free bill validation service. For these companies, Energy Solutions will track and monitor the customer's bills to make sure that they are not being overcharged. Energy Solution also preforms water and wastewater audits for businesses, in order to determine where they can save money in the future, and whether they are eligible for any refunds.

Apollo Energy is a utility broker, specialising in water, energy and renewable energy.<sup>126</sup> Apollo Energy has a database of over 20 water suppliers that it can potentially pair businesses with. It audits the current usage of

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<sup>120</sup> Information from <https://waterscan.com/water-management/>.

<sup>121</sup> It also offers energy solutions for businesses through its sister company, Pulse Energy Business.

<sup>122</sup> Information from <https://pulsebusinesswater.co.uk/>.

<sup>123</sup> Information from <https://www.smebrokerservices.co.uk/water>.

<sup>124</sup> Information from <https://www.onlinedirect.co.uk/>.

<sup>125</sup> Information from <https://www.energybrokers.co.uk/water/index.htm>

<sup>126</sup> Information from <https://www.apolloenergy.co.uk/>

the company before providing alternative suppliers that could be cheaper or more beneficial for the business. When using Apollo Energy, businesses with multiple sites can compare water usage across their locations and determine a water supplier that will work for each one.

Utility Centre is another water, energy and gas utility broker.<sup>127</sup> Businesses provide water usage information to the Utility Centre, which then finds the best water suppliers and rates for the business. If the customer proceeds with a contract from one of those suppliers, the Utility Centre is remunerated by the water supplier. The company ensures a seamless transition to the new water supplier, and notifies the business when their contract is about to renew, so that they can help them to find a new contract.

#### TPIs offering services in partnership with water retailers

Water utility companies like Wave, Everflow, Waterplus, and Clear Business Water seek to establish partnerships with TPIs as an avenue to get more business. They offer a pricing portal, and some offer a designated support system to help TPIs. This takes the forms of easy to generate quotes, delivery of ongoing market research, clear pricing guidelines, and frequent delivery of payments from the water utility to the TPI.

Wave emphasises its competitive pricing and ease of use for the TPIs.<sup>128</sup> Additionally, Wave states that it has a trusted reputation. Finally, Wave promises brokers regular market updates in order to make sure that the brokers have current information, assisting them when customers have questions.

Everflow<sup>129</sup> also promotes partnerships with third parties and tries to make using its product easy for TPIs. The company designates an Account Manager and provides access to a Director for brokers, in addition to a pricing portal to generate quotes easily.

One of Waterplus's largest selling points to brokers is its experience in this market.<sup>130</sup> While the non-household water retail market may be newly opened in England, Waterplus also provides water in Scotland, where a water retail market has been operational since 2008. The company emphasises its commitment to long-term, profitable partnerships and its clear and sustainable pricing plans, making it attractive for both TPIs and consumers. It will also provide the broker with current information on the industry, in order to promote customer satisfaction and to encourage brokers to work with them. Finally, Waterplus advertises the services that it has for clients (such as water efficiency, smart metering, and leak detection and repair), so that it is easy for the TPI to make the customer aware of the benefits of purchasing water from this company.

Another water utility company, Clear Business Water, emphasises many of the same things as other utility companies that want to work with TPIs.<sup>131</sup> It informs brokers about the business water industry, and provides free marketing information so that the TPIs can promote its business. In addition to water, they deal with gas and electricity, a benefit for TPIs that provide quotes for more than just water. Clear Business Water also presents its services as easy for TPIs to use, with an upfront commission policy, an online sales portal and access for brokers to a dedicated support team.

Thames Water offers brokers the ability to order services such as instalment of digital meters, instalment of the broker's own metering equipment, and delivery of customer data on water usage directly from their website.<sup>132</sup> This allows brokers to assist their customers better, as many brokers offer to directly interface with water suppliers for their customers. Thames Water allows TPIs to install their own data meters, or to obtain data on a monthly basis from Thames Water. This is important for brokers that offer to monitor water usage in order to decrease consumption and rapidly identify leaks. The company's website also has a clear outline of its fees and rules for interacting with water brokers.

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<sup>127</sup> Information from <http://www.utilitycentre.co.uk/business-water/>

<sup>128</sup> Information from <https://www.anglianwaterbusiness.co.uk/your-sector/brokers/>

<sup>129</sup> Information from <https://www.everflowwater.com/partner-sign-up>

<sup>130</sup> Information from <https://www.water-plus.co.uk/our-services/brokers-and-consultants>

<sup>131</sup> Information from <https://clearbusiness.co.uk/water-partners/>

<sup>132</sup> Information from <https://wholesale.thameswater.co.uk/Wholesale-services/Water-services-intermediaries>

## 4.4 Concerns about TPIs in the water sector

In its review of the first year of the business retail water market, Ofwat<sup>133</sup> notes that there have been some potential concerns regarding the conduct of TPIs in the sector, although these alleged instances of misconduct have been addressed by informal methods. Ofwat has not published any further information related to these potential concerns. Data from the Consumer Council for Water<sup>134</sup> reports 7 complaints involving third party intermediaries in 2017-18.

## 4.5 Regulator's approach to TPIs in the water sector

In this section we discuss the approach that Ofwat, the water services regulator in England and Wales, has taken to TPIs' activities. We look at both rules and standards that need to be observed by TPIs and at recommended principles that may help TPIs increase consumer trust and thus market participation.

### Rules that need to be observed by TPIs

Ofwat provides a list of all relevant protection measures that are in place and which TPIs and retailers have to observe. Intermediaries have to comply with Data Protection Act 2018 and the obligations under the Business Protection from Misleading Marketing Regulations (BPMMRs) 2008. We note that these standards are enforceable by the Competition and Markets Authority (CMA).<sup>135</sup>

The Customer Protection Code of Practice states that retailers are responsible for the actions of intermediaries that act on their behalf. Ofwat can only take action against retailers in cases where there has been misconduct by such intermediaries.

If a TPI acts on behalf of a customer (e.g. a broker requesting price quotations from retailers or implementing a customer switch), the TPI is first required to obtain a "Letter of Authority" from the customer. Ofwat has published a template for Letters of Authority which lists eight different activities that the customer may authorise TPIs to perform in either an unconditional or restricted manner. These activities include:

- obtaining the customer's consumption and billing information, as well as details regarding the customer's tariffs and contracts;
- requesting and negotiating quotes from water / sewerage services providers;
- negotiating contract terms with water / sewerage services providers;
- making new agreements or amending existing arrangements for water supply / sewerage services; and
- receiving bills and making payments.<sup>136</sup>

### Recommendations for TPIs

In March 2017 Ofwat published a list of principles for voluntary industry TPI codes of conduct to be applied to the non-household water retail market.<sup>137</sup> Below we provide a list of the ten principles set out by Ofwat:

1. TPIs shall be fair, transparent and honest.
2. Communication with customers (business, charity and public sector) shall be in plain and clear language.
3. All information provided to customers by a TPI shall be reliable, accurate, complete, timely and not misleading. Such information shall be made through appropriate channels and enable customers to make informed choices.

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<sup>133</sup> Ofwat (2018): "Open for business: Reviewing the first year of the business retail water market".

<sup>134</sup> Consumer Council for Water (2018): "2017-18 Complaints and Enquiries Report | April 2017–31 March 2018".

<sup>135</sup> Ofwat (2016): "A new business retail water market from April 2017 – third party intermediaries (TPIs)".

<sup>136</sup> Ofwat (2017): "TPI letter of authority".

<sup>137</sup> Ofwat (2017): "Protecting customers in the business market – principles for voluntary TPI codes of conduct".

4. TPIs shall not offer products that are unnecessarily complex or confusing.
5. TPIs shall not sell a customer a product or service that is not fully understood by that customer, nor sell a product or service that is inappropriate for that customer's needs and circumstances.
6. TPIs shall not exaggerate the savings that could be achieved by switching, but shall be as accurate as possible.
7. TPIs shall inform any micro-business customers that they have a 14 day cooling off period.
8. TPIs shall cancel any mis-sold contract without penalties.
9. TPIs shall respond to customers in an appropriate and timely manner.
10. Customer service arrangements and processes shall be accessible to and effective for customers"<sup>138</sup>

It is worth noting that TPIs which adopt codes of practice which follow these principles do so on an entirely voluntary basis, and that these principles cannot be enforced by Ofwat or any other regulatory body.

#### Alternative dispute resolution

Alternative dispute resolution routes in the water sector for dissatisfied consumers include raising the issue with the Consumer Council for Water and referring their complaint to the Water Redress Scheme (WATRS).<sup>139</sup>

## 4.6 Lessons for TPIs in the Delay Repay claims market

Delay Repay claims companies and TPIs in the non-household water sector provide services for both smaller and larger business customers. An important difference between the two markets relates to the services TPIs offer: the activities and services of TPIs active in the non-domestic water sector typically revolve around providing information to consumers on the available products and tariffs in the market and assisting them to switch, while in the Delay Repay market intermediaries' activities focus on helping passengers to claim compensation that they are legally entitled to receive. A further difference between the water and Delay Repay claims sectors is that the non-household water market has opened in April 2017, therefore is cannot yet be considered a mature market.

Overall, the potential benefits TPIs bring to the non-household water market include high levels of satisfaction with TPIs reported by consumers who have used them and the provision of value-added services such as data management services or monitoring of consumption. As the market has opened only recently, no published information on potential problems is available, however setting out principles for voluntary codes of practice water TPIs may adopt or providing rules for letters of authority that specifies that list of activities a TPIs is authorised to perform on behalf of the consumers could be used to guard against potential problems.

#### Monitoring and data management services facilitated by technology

Some water and utility brokers offer services such as water metering or data management services where through a smart meter they collect water usage data from consumers and check that they are not overpaying their bills. Similar monitoring and data management services might also help passengers to engage with the Delay Repay market. For example, if appropriate technology can be developed, claims companies could offer to monitor the number of delays suffered by passengers signed up for their services and alert them to the compensation they could receive once a pre-set compensation threshold is reached.

#### Principles for voluntary codes of conduct

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<sup>138</sup> Ofwat (2017): "Protecting customers in the business market – principles for voluntary TPI codes of conduct".

<sup>139</sup> Ofwat: "Alternative dispute resolution routes".

An approach that may help Delay Repay claims companies to bring benefits to rail passengers would be to define a number of general principles, for example, as part of a voluntary code of conduct claims companies may choose to follow, in a similar way to the ten principles that Ofwat has defined for voluntary codes of conduct in the non-household water market. Claims companies may adopt voluntary codes of conduct (which could be based on principles or guidance provided by the ORR). Those that sign up and comply with such codes of conduct may be more trusted by consumers and have the potential to work more effectively with TOCs, as the burden on TOCs of verifying the validity of claims submitted by claims companies would be reduced if fraud checks have been carried out by TPIs adhering to industry standards.

#### Rules for letters of authority

Similarly to the principles for voluntary codes of conduct discussed above, developing rules for letters of authority that clearly set out the activities TPIs are allowed to perform on behalf of consumers could also help to guard against potential disbenefits arising from TPI activity.



# 5 Lessons from the Financial Services Sector

There is a wide range of TPIs in the financial services sector offering different services, including CMCs, financial advisors, brokers (selling products on behalf of product providers), investment platforms and price comparison websites.

Given the wide range of TPIs, we focus on CMCs and financial advisors to provide a targeted review whilst covering different business models. Due to the similarities between the activities performed by CMCs in the financial services sector and Delay Repay claims companies, we consider these to be highly relevant comparators.

## 5.1 Services offered by TPIs in the financial services sector

Whilst these intermediaries cover a range of product markets, consumers and business models, there are common services they provide, which can be summarised as:

- Facilitating market-matching — TPIs help consumers access a range of products and services by reducing search costs; and help providers (e.g. lenders, insurers or investment product providers) distribute products to a wide network of consumers. This contributes to lower transaction costs and more efficient matching of supply and demand.
- Alleviating information asymmetry — TPIs can provide additional services to help consumers better understand the products on offer and to make better purchasing/engagement decisions; and can help providers understand more about their consumers, for example by assisting in credit-risk assessments.
- Managing moral hazard — particularly in credit markets, TPIs can be better placed to monitor borrowers or collect payments on behalf of lenders.

### Claims management companies (CMCs)

CMCs assist consumers in claiming compensation from financial services providers. This is typically in the event of mis-selling on the part of the provider (e.g. a bank, credit card company, mortgage or insurance provider). The most common form of compensation currently is for payment protection insurance (PPI) mis-selling, but CMCs also make claims for mis-selling in the packaged bank account (PBA) and short-term (payday) loans markets.<sup>140</sup> CMC's services include:

- Helping customers find or fill out the paperwork necessary for checking eligibility and/or for making a claim.
- Finding out whether the customer is eligible for compensation (i.e. in the case of PPI compensation identifying whether they firstly had PPI and secondly were mis-sold).
- Lodging complaints on customers' behalf with providers.
- Managing the interactions with the providers and facilitating the payment of compensation for successful claims.

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<sup>140</sup> Ministry of Justice (2018) "Claims Management Regulation 2017/18)" [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/722649/CMR\\_Annual\\_Report\\_2017-18.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/722649/CMR_Annual_Report_2017-18.pdf)

According to the Claims Management Regulator (CMR)<sup>141</sup> there were just under 600 CMCs in the financial services sector in 2017/18, generating a revenue of just over £600 million.<sup>142</sup> The number of CMCs can fluctuate in relation to financial mis-selling events, for example an increase in market entry following a widespread event, followed by market exit or contraction as firms are driven out by competition or declining demand (e.g. if there is a deadline set by the financial regulator for compensation claims in relation to a particular mis-selling event).<sup>143</sup>

CMCs' business models typically consist of a fee based on a percentage of the amount of compensation claimed (i.e. a 'no-win, no-fee' model), and some also will levy a cancellation fee if the customer cancels the claims process. Recent regulation has restricted CMCs from charging the client where no award has been recovered<sup>144</sup> – previously some business models included an upfront 'commitment fee' which the customer would pay regardless of the outcome of the compensation investigation.

### Financial advisors

Financial advisors advise consumers on the purchase of and investment in financial products, and on which investment strategies are best suited to their needs. Products typically include retail investment products such as pension funds, ISAs and investment trusts, annuities and bonds, as well as insurance products such as life policies. Financial advisers will in many cases buy and manage the investment products on behalf of their clients, in some cases on an 'execution only' basis (i.e. without providing advice).

Financial advisers can either be "independent", in which case they must be able to cover the full range of retail investment products when advising clients; or "restricted" if they only cover certain products or certain providers. Revenue generated by independent advice far outweighs revenue generated by restricted advice, with the former making up around 80 per cent of all revenue sources.

The number of financial advice firms in the UK at the end of 2016 was just under 5,850.<sup>145</sup> This number has remained largely unchanged since 2008. At the end of 2016 there were just over 25,000 individual advisers working in financial advice firms. Including financial advisers working in other firms (i.e. with a main regulated activity other than financial advice, such as banks/building societies), the number increases to 34,600 (in 2016).<sup>146</sup> The revenue generated by financial advisers was around £4,500 million at the end of 2017.<sup>147</sup> This represents an ongoing increase in revenues since 2009 (where total revenue was around £1,700) although with some periods of higher and lower growth.

The remuneration structure among financial advisers has changed. FCA's RDR (described further in this section) now bans the payment of commissions from product providers for retail investment business, and therefore financial advisers' income from new business stems from one-off advice fees or ongoing charges.

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<sup>141</sup> The CMR regulates CMCs in England and Wales. Regulatory oversight of CMCs will pass to the Financial Conduct Authority in 2019.

<sup>142</sup> Financial services CMCs are by far the most significant group of all CMCs regulated by the CMR (which also covers CMCs in Personal Injury, Housing Disrepair, Specified Benefits, Criminal Injuries, and Employment) — they accounted for 79 per cent of the industry's turnover and 48 per cent of firms in 2017/18. See Ministry of Justice (2018) "Claims Management Regulation 2017/18"  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/722649/CMR\\_Annual\\_Report\\_2017-18.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/722649/CMR_Annual_Report_2017-18.pdf)

<sup>143</sup> For example, in its annual report the CMR considers that the increase in turnover for financial CMCs in 2017/18 is likely influenced by increased public awareness through the FCA led advertising campaign regarding the PPI deadline and "Plevin" cases (a new form of compensation available).

<sup>144</sup> See Section 5.5 below.

<sup>145</sup> FCA and HM Treasury (2017) "Financial Advice Market Review: Baseline report"  
<https://www.fca.org.uk/publication/research/famr-baseline-report.pdf>. This includes all firms that advise on retail investments, such as financial advisers, banks and building societies, investment managers etc. Financial adviser firms account for the largest share of firms (5,200).

<sup>146</sup> FCA and HM Treasury (2017) "Financial Advice Market Review: Baseline report"

<sup>147</sup> PIMFA "Industry Statistics". <https://www.pimfa.co.uk/about-us/industry-statistics/>



The majority of advisers (around 90 per cent of firms) set their charges as a proportion of the amount invested rather than as a one-off fee.<sup>148</sup>

## 5.2 Promoting and increasing consumer engagement

### Claims management companies (CMCs)

CMCs help to increase consumer engagement in the process of claiming redress for financial misconduct on the part of their providers. This includes both helping consumers secure redress — e.g. where the consumer encounters difficulties when attempting to make a claim themselves, and encouraging those consumers who might not otherwise have made a claim. The FCA published consumer survey data that showed that 67 per cent of customers who used a CMC over the last three years to make a financial services claim would not have done so without the involvement of a CMC.<sup>149</sup>

In another study investigating PPI redress, the FCA identified a number of key barriers consumers faced to claiming compensation. The most common included:

- Uncertainty about eligibility. I.e. uncertainty and confusion among consumers about what constituted eligibility to make a claim (e.g. what products were sold with PPI, what constituted ‘mis-selling, how far back they could claim for etc.). Consumers also did not remember if they even had a particular product like PPI, and thus did not know if they would be eligible for compensation.
- Perceptions about effort required. Consumers considered the effort of finding paperwork and making the claim too high compared to the amount of compensation they may receive. This was exacerbated by uncertainty of eligibility and the amount they may receive, making it more difficult for them to weigh up the effort with the reward. It was also exacerbated by an expectation that providers would be uncooperative and make the process difficult in order to deter complaints.
- Limited understanding about complaints process. Consumers did not have a clear idea of how to go about making a claim e.g. what documents were needed and whether they could complain directly.
- Stigma about complaining. Many consumers felt they would need to be ‘assertive’ when making a claim and felt uncomfortable about this.

CMCs can therefore increase consumer engagement by addressing these barriers:

- Overcome information asymmetry for the consumer by clarifying the criteria for eligibility and the process of making a claim. Reduce the opaqueness of the claims process and provide encouragement to consumers to embark on a claim.
- Save the consumer time and effort (or at least reduce the perception of the time/effort required).
- Minimise the discomfort consumers feel in engaging with the provider or being assertive (or again, reduce the perception of this discomfort).

CMCs can also create awareness around the possibility of claiming through their advertising and marketing and thus increase consumer engagement that way. They can help secure redress in complex cases (e.g. claims dating back far in time, or where providers are non-banks and thus beyond the adjudication of the Financial Ombudsman and the claim needs to be taken to court).

The FCA PPI study highlighted that CMCs appeared to benefit certain types of consumers. Consumers who felt confident they had been mis-sold PPI were more likely to complain direct to their credit provider. They also tended to have greater confidence in their financial understanding, along with greater financial capability. This was in comparison to those who complained via a CMC, who were less certain of their PPI eligibility,

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<sup>148</sup> Europe Economics “The RDR post-implementation review”, Section 5.3 <https://www.fca.org.uk/publication/research/rdr-post-implementation-review-europe-economics.pdf>

<sup>149</sup> FCA (2018) “Claims management: how we propose to regulate claims management companies” Consultation Paper June 2018.

and who appeared to have more complex financial situations (e.g. a diversity of credit products with a greater number of financial providers).<sup>150</sup>

The role of CMCs in promoting and increasing consumer engagement is a nuanced one. Some of the barriers to engagement experienced by consumers are based on perceptions rather than reality (for example, going through a CMC for a PPI claim may take longer than going direct, and the level of redress is not likely to be higher).<sup>151</sup> Nevertheless, if CMCs reduce these perceived barriers and encourage consumers to claim who otherwise would not then they still have a positive role in consumer engagement. However, there is evidence that it is the CMCs themselves that can create these perceptions — for example, for consumers sampled in the FCA study, CMC advertising and communications were seen to reinforce the perception that complaining directly to providers is difficult, making it less appealing to more introverted and unconfident individuals and encouraging these to use CMCs.<sup>152</sup> Further, the FCA study also found that CMCs in fact deterred many potential future complainants from pursuing complaints “because they (inadvertently) encouraged a belief that PPI redress-seeking was a ‘scam’ through their persistent phone calls and encouragement to complain.”<sup>153</sup> We discuss further the concerns about CMCs misleading consumers in the subsequent sections.

### Financial advisers

Financial advisers can help consumers engage in financial investment products in a number of ways:

- Overcome perceived risks in investing and information asymmetries by helping consumers to identify the best types of products for their needs and financial situations, including product information.
- Provide consumers with a range of products from different providers, reducing the time and cost to the consumer of undertaking this search themselves.
- Undertake the actual investment for the consumer, further reducing the time costs and providing assurance that the investment would be done properly.
- In addition, some retail investment products are only available to financial advisors to invest in, and thus they would increase market access for consumers who make use of their services.

The extent to which financial advisers help to promote and increase engagement in retail investment is arguably fairly limited. The FCA’s Financial Lives data shows that six per cent of UK adults (or 3.2 million people) received financial advice on investments in the last 12 months.<sup>154</sup> However, the data show that 25 per cent of all adults did not receive financial advice but might have a need for it.<sup>155</sup> There is therefore a sizeable number of adults who *could* benefit from advice but whom financial advisers are not serving.

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<sup>150</sup> FCA (2015) “Understanding PPI redress from a consumer perspective”

<https://www.fca.org.uk/publication/consultation/understanding-ppi-redress-consumer-perspective.pdf>

<sup>151</sup> Evidence from the Financial Ombudsman Service (FOS) presented to the review shows that CMCs do not in practice achieve higher value redress settlements than consumers complaining directly. See UK Parliament Impact Assessment on the transfer of regulation of CMCs to the FCA <https://www.parliament.uk/documents/impact-assessments/IA17-005A.pdf>

<sup>152</sup> FCA (2015) “Understanding PPI redress from a consumer perspective”

<https://www.fca.org.uk/publication/consultation/understanding-ppi-redress-consumer-perspective.pdf>

<sup>153</sup> FCA (2015) “Understanding PPI redress from a consumer perspective”

<https://www.fca.org.uk/publication/consultation/understanding-ppi-redress-consumer-perspective.pdf>

<sup>154</sup> FCA and HM Treasury (2017) “Financial Advice Market Review: Baseline report”

<https://www.fca.org.uk/publication/research/famr-baseline-report.pdf>.

<sup>155</sup> These are people who have at least £10,000 in savings and/or investments, or at least £10,000 in a defined contribution (DC) pension and are planning to retire or access a DC pension in the next two years.

These consumers may be engaging in the retail investment market in other ways, for example using guidance and factual information provided by, for example, the government, rather than financial advisers.<sup>156</sup> Research shows a steady growth in investment channels other than financial advisers.<sup>157</sup>

Consumers may also be missing out on advice (i.e. not receiving it where they would benefit from doing so). The FCA research suggests this proportion is low – of those consumers who may benefit from advice but who were not receiving it, only 9 per cent were concerned they would not be able to afford to pay the adviser’s charges, and only 0.5 per cent said they were unable to find an adviser willing or able to offer them advice.

## 5.3 Driving innovation in the financial services sector

### Claims management companies

CMCs do not appear to be a large source of innovation in the financial services sector. CMCs use a range of means to engaging with consumers and making claims, for example radio, paper and online advertising; paper and digital means of transferring documents, and paper, telephone, text or online communication.

Elements of CMCs’ business models most likely to be associated with innovation are the online submission and tracking tools offered to customers. For example, some CMCs have an online checklist for consumers to fill out to help them identify if they are eligible for a claim. Others have an online tracking tool so that consumers can monitor the progress of their claim. (One CMC advertises its online tracker as a way of ensuring that the consumer never needs to speak to anyone, leveraging off some consumers’ reluctance to engage personally with the claims process).<sup>158</sup> Some CMCs use digital working as a way of reducing costs and remaining competitive — e.g. using only online methods of communicating with clients to save on staff and overhead costs, and engaging electronically with banks which also reduces paperwork and staff costs.

### Financial advisers

A key trend in financial advisers’ business models is a move towards platforms, which advisers use on behalf of their clients to search for and manage their investments. Platforms enable advisers to select retail investment products from a range of providers or gain direct access to the stock market via online portals. Reduced search costs and the ability to track investments for all clients in one place means that the use of platforms will increase the efficiency of firms and reduce costs. The growth in intermediated sales through platforms has been significant (according to one source annual intermediated platform sales grew from £4.9 billion in 2010 to £6.2 billion in 2014).<sup>159</sup> This strong trend is likely to be driven by a range of factors such as supply-side improvements in technology and a general business need to improve profitability.

The innovation in the use of platforms is extending from B2B platforms to D2C platforms, which consumers access themselves without an advisor. This innovation is increasing consumers’ engagement in the retail

<sup>156</sup> For example, around a quarter of consumers who had not received advice had used guidance or information to help with similar financial decisions. FCA and HM Treasury (2017) “Financial Advice Market Review: Baseline report” <https://www.fca.org.uk/publication/research/famr-baseline-report.pdf>.

<sup>157</sup> Europe Economics “The RDR post-implementation review”, Section 5.2 <https://www.fca.org.uk/publication/research/rdr-post-implementation-review-europe-economics.pdf>

<sup>158</sup> Reclaim PPI - [https://www.reclaimppi.co.uk/sign-up/?trafficSource=Google%20Search&gclid=EAlaQobChMIIsL85XN4AIVypPtCh0IPAMVEAAYAiAAEgLNvfD\\_BwE](https://www.reclaimppi.co.uk/sign-up/?trafficSource=Google%20Search&gclid=EAlaQobChMIIsL85XN4AIVypPtCh0IPAMVEAAYAiAAEgLNvfD_BwE)

<sup>159</sup> Touchstone (2014), “FCA pre and post RDR data requirements” cited in Europe Economics “The RDR post-implementation review”, <https://www.fca.org.uk/publication/research/rdr-post-implementation-review-europe-economics.pdf>

investment market. D2C platforms are becoming an increasingly important way for consumers to access retail investment products.<sup>160</sup>

Another area of innovation is the provision of automated online advice. This is advice provided to consumers typically for less complex investment needs, and has developed as a means of reducing the cost of providing advice (and providing so called “mass market” advice). The FCA’s Financial Lives Survey shows that 3 per cent of consumers using advice had received automated online advice (although the data do not show whether this was from independent advisers or product providers). The FCA notes that this low figure is to be expected given the embryonic nature of the market.<sup>161</sup>

## 5.4 Concerns about TPIs in the financial services sector

### Claims management companies

There have been widespread concerns about CMCs among government and regulators, and a number of reports and other sources of evidence have highlighted harm to customers in the CMC sector. These include the Brady Review commissioned by the Ministry of Justice and HM Treasury,<sup>162</sup> the FCA’s Financial Lives data,<sup>163</sup> and reports published by the CMR and the Legal Ombudsman (LeO).

The FCA consolidated the key forms of harm in the sector in its consultation paper on regulation CMCs, following from the decision to transfer the regulation from the CMR to the FCA in August 2019:<sup>164</sup>

Customers may experience financial loss due to lack of clarity about how much they will pay and the services they will receive.

The Brady Review found that customers may not always understand the service they will receive from CMCs, the costs of the service, or the availability of alternative services, which are often free. In such circumstances, customers may end up paying more than they would have done, had they had more details. For example, in the case of PPI claims, there are free resources to help consumers identify whether they are eligible to make a claim, and to inform them about how to go about making a claim and what paperwork is needed.<sup>165</sup> In addition, providers themselves may have readily available tools to assist consumers in making claims.

Poor service (e.g. poor communication on claim status).

Customers may also experience a poor level of service such as unexpected delays in compensation pay-outs or resolution of claims. The LeO complaints data suggest that excessive costs and delays or failures to progress a claim were the two areas which were the subject of the most complaints in 2016/17.<sup>166</sup> Whilst these data apply to all CMCs regulated by the CMR (and not just those in the financial services sector), the findings apply across the board.

Evidence of spurious or fraudulent claims.

The FCA cites evidence that some CMCs have encouraged customers to make spurious or fraudulent claims. Around 20 per cent of the Insurance Fraud Bureau’s (IFB) intelligence reports (over 450 reports) were linked

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<sup>160</sup> Platform UK Adviser Platform Guide, Figure 10 (March 2017), cited in FCA “Investment Platform Market Study terms of reference”.

<sup>161</sup> FCA and HM Treasury (2017) “Financial Advice Market Review: Baseline report” <https://www.fca.org.uk/publication/research/famr-baseline-report.pdf>.

<sup>162</sup> Brady (2016) “Independent review of claims management regulation”, HM Treasury and MoJ.

<sup>163</sup> As quoted in FCA (2018) “Claims management: how we propose to regulate claims management companies” CPI8/15.

<sup>164</sup> FCA (2018) “Claims management: how we propose to regulate claims management companies” CPI8/15.

<sup>165</sup> For example, the Money Savings Expert has a free ‘Resolver’ tool.

<sup>166</sup> [www.legalombudsman.org.uk/raising-standards/data-and-decisions-cmcs/](http://www.legalombudsman.org.uk/raising-standards/data-and-decisions-cmcs/)

to at least one CMC between 2014 and 2016,<sup>167</sup> and nearly 50 per cent of IFB live operations in 2015 featured a CMC.<sup>168</sup> (These statistics apply to all CMCs currently under CMR regulation and not just those involved in financial services.) CMCs that encourage customers to make spurious or inappropriate claims like these harm the industry's reputation and thus deter consumers from making complaints.

The FCA found that CMC firms can inadvertently encourage a belief among consumers that PPI redress-seeking is a 'scam' through their persistent phone calls and encouragement to complain. Similarly, people can be put off making a claim as they do not wish to be associated with the tainted sector or be considered 'litigious' by making what could be a spurious claim.<sup>169</sup>

In the financial claims sector, the main evidence arises from complaints about PPI and packaged bank accounts, where a substantial portion of complaints are submitted where the consumer never had the product in the first place. As reported by the UK Parliament in its Impact Assessment, this places an unnecessary additional burden on banks, with costs ultimately passed on to consumers and wider society, and also clogs up complaint handling processes, delaying the many legitimate complaints. Large volumes of such complaints are passed to the Financial Ombudsman Service (FOS), which results in further costs to financial services firms (which are charged a fixed fee for each case regardless of its merit) and FOS is burdened with illegitimate claims, delaying genuine claims for redress.<sup>170</sup>

Customers may buy inappropriate services, and nuisance can be caused to wider society, by poor conduct such as aggressive or misleading marketing or sales tactics (e.g. unsolicited calls and texts).

The Brady Review found examples of misleading or aggressive marketing, including misrepresentation of the service offered to customers, such as advertising focusing on enhancements to the value of compensation claims rather than benefits relating to convenience or saving time. This can result in customers purchasing services which are not appropriate to their needs.

CMCs make and send a high number of calls and texts to customers. The FCA's Financial Lives survey found that 69 per cent of the UK adult population (or around 36 million people) have between them in the last 12 months received approximately 2.7 billion unsolicited calls, texts or emails from CMCs offering to help them make a claim, for example about a recent accident or mis-sold payment protection insurance (PPI). This equates to around 50 calls/texts per year for each adult in the UK.<sup>171</sup> While CMCs can legitimately make contact with customers with appropriate consent, the FCA notes that there is evidence to suggest many customers consider these calls a nuisance. They can cause stress and inconvenience, particularly to the elderly and vulnerable.

Customers may suffer financial loss or delays to their claim due to disorderly wind down.

When CMCs exit the market in a disorderly way this can result in harm to the customer. For example, if the customer is not kept informed about the status of their claim while the CMC is leaving the market, this may lead to delays or financial loss as claims are 'timed out'. Further, if the CMC holds client money, this may be lost if the CMC does not have the appropriate systems and controls in place to ensure this money is held separately from its own money. Market exit is particularly relevant in the CMC sector as companies may enter and exit frequently in response to significant claim events (such as the PPI scandal), or as a result of having their licence revoked by the regulator for misconduct.

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<sup>167</sup> Cited in FCA Consultation Paper CP18/15: [www.insurancefraudbureau.org/media-centre/news/2016/ifb-welcomes-recommendations-into-regulation-of-claimsmanagement-Companies](http://www.insurancefraudbureau.org/media-centre/news/2016/ifb-welcomes-recommendations-into-regulation-of-claimsmanagement-Companies)

<sup>168</sup> Cited in FCA Consultation Paper CP18/15: [www.abi.org.uk/globalassets/blogs/regulation20of20cmcs.pdf](http://www.abi.org.uk/globalassets/blogs/regulation20of20cmcs.pdf)

<sup>169</sup> FCA (2015) "Understanding PPI redress from a consumer perspective" <https://www.fca.org.uk/publication/consultation/understanding-ppi-redress-consumer-perspective.pdf>

<sup>170</sup> See UK Parliament Impact Assessment on the transfer of regulation of CMCs to the FCA <https://www.parliament.uk/documents/impact-assessments/IA17-005A.pdf>

<sup>171</sup> FCA (2018) "Claims management: how we propose to regulate claims management companies" CP18/15.



## Financial advisors

### Misaligned and distorted incentives

Before the RDR, it was common for financial intermediaries to be paid commission by product providers for the sale of their products. These had the potential to distort the incentives of intermediaries to promote products that earn high commissions rather than those that are best suited to the customer.<sup>172</sup> For example, research found that after the ban on commissions from the RDR, the sale of high-commission investment products dramatically dropped, and the sale of other products increased, clearly indicating that commissions were driving the sale of these products rather than consumer need.

Whilst commissions paid to financial advisers for the sale of retail investment products have been banned through the RDR regulations, other TPIs such as insurance brokers can still receive commissions, and this remains a key issue in any intermediary market.

TPIs can also be tied to certain providers (either single- or multi-tied) whereby they explicitly promote the products of only a sub-set of the market. The extent to which consumers are able to understand the implications of a tied or restricted intermediary may be limited. Even after the RDR's regulations around the disclosure of independent/restricted status, the FCA found that a significant proportion of consumers still did not fully understand the difference between restricted and independent advice.<sup>173</sup>

### Miscommunication of information

Information about advisers' charging structures can be opaque and confusing, undermining consumers' ability to compare advisers as well as end product providers, and to shop around. The more complex the payment structures, the less able consumers are to assess exactly what they are paying for (i.e. between the adviser's services and the end product). This would especially be an issue when advisers provide a 'one-stop' service with a bundled price for simplicity. This affects consumers' ability to compare the costs of advisers separately from the costs of the end products.

## 5.5 Regulators' approach to TPIs in the financial services sector

### Claims management companies

Regulation of CMCs has evolved significantly over the years in response to the various problems around misconduct and poor practices. CMCs in England and Wales are currently regulated by the Claims Management Regulation (CMR) Unit within the Ministry of Justice. However, in April 2019 the regulation of CMCs will transfer to the FCA, and will be extended to CMCs in Scotland.<sup>174</sup> This transfer of regulatory oversight is the result of the government's increasing concern about misconduct in the CMC market, and the recommendations of the Brady Review it commissioned to examine the nature and extent of the problems in the CMC market and make recommendations to improve the way it was regulated.

Under the existing regulatory regime, CMCs are required to apply for authorisation (a licence) to provide services, and trading without a licence or exemption is an offence.<sup>175</sup> CMCs are required to adhere to the Conduct of Authorised Person Rules, which require companies (among other things) to:

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<sup>172</sup> The Retail Distribution Review implemented by the FCA in 2006 banned such commissions to financial advisers, and found evidence that sales of high-commission products subsequently declined. See the post-implementation report here: <https://www.fca.org.uk/news/news-stories/post-implementation-review-retail-distribution-review>

<sup>173</sup> FCA, "Supervising retail investment advice: how firms are implementing the RDR", July 2013 and FCA "Retail investment advice: Adviser charging and services", December 2014.

<sup>174</sup> Through Part 2 of the Financial Claims and Guidance Act 2018.

<sup>175</sup> People providing assistance for making a claim on a voluntary basis are exempted from the need to be authorised. Any person who is already regulated including legal practitioners and not for profit organisations such as Citizens Advice are also exempted and do not need to be authorised.

- give consumers clear information about the options available for pursuing their claim (including self-help and the relevant ombudsman) and the costs of doing so;
- not use high-pressure selling tactics, not make cold-calls for claims that are going to be referred to a solicitor, not make hidden charges, and not use misleading marketing;
- have a complaints handling procedure, and if a consumer is not satisfied with a CMC's response they can follow this up with the Legal Ombudsman.

### *Reforms to date*

There have been a number of key reforms to the regulation of CMCs in response to the problems identified in the market, some specifically in the financial services sector:

- October 2014: Conduct Rules for CMCs strengthened further to help tackle abuses in the financial claims sector. Key changes were made around ensuring claims are properly substantiated before being pursued and any data received through telemarketing is legally obtained.
- In 2018 the CMR revised the conduct rules to ban up-front fees in PPI cases, prohibit charges on unsuccessful PPI cases and introduced a requirement to provide an itemised bill where an agreement has been cancelled and the CMC issues an invoice.
- An interim cap on fees payable on PPI cases of 20 per cent exclusive of VAT was introduced in July 2018 through the Financial Guidance and Claims Act 2018. CMCs were also restricted from charging the client where no award has been recovered.

### *FCA Regulation*

From April 2019 all CMCs regulated by the CMR will be regulated by the FCA. Many of the FCA's rules will be very similar to the CMR's, but there will be some broad additions. Specifically, the FCA will have the power to cap CMC fees more broadly across sectors and claim types (compared to the current interim cap on fees only related to PPI claims).

Financial services CMCs will be subject to the various Handbooks and Codes of the FCA, as well as a specific CMC Handbook. The FCA will have wide-ranging powers to tackle breaches of its rules and other legal requirements by individual CMCs. These include:

- withdrawing a firm's authorisation;
- suspending firms from undertaking regulated activities;
- fining firms who breach our rules;
- applying to the Court for injunctions and restitution orders; and
- bringing criminal prosecutions where appropriate, for example in relation to the carrying on of unauthorised business.<sup>176</sup>

### **Financial advisors**

Financial advisors are regulated by the Financial Conduct Authority (FCA). They are obliged to follow:

- A range of guidelines and regulations applicable to all regulated firms.<sup>177</sup>
- Other regulations applicable to certain activities which intermediaries (and other firms) engage in, such as rules around holding client money, anti-money laundering, anti-market abuse, remuneration and training and supervision of employees.
- Specific regulations applicable only to each intermediary type, which have been developed to address specific problems and issues identified in the UK sector, and/or in response to EU Directives on that market sector.

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<sup>176</sup> FCA (2018) "Claims management: how we propose to regulate claims management companies" CPI8/15.

<sup>177</sup> These are listed on the FCA's website for each firm type and include regulations on authorisation and regulatory reporting, approved persons and individual accountability regimes. See <https://www.fca.org.uk/firms>



A specific set of regulations for financial advisers were developed as part of the Retail Distribution Review (the RDR). The RDR was launched by the Financial Services Authority (FSA) in 2006 to investigate how investment products were distributed to retail consumers in the UK. It identified a number of long-running problems that impact the quality of advice and consumer outcomes, as well as confidence and trust, in the UK investment market. In 2012, following the review, the FSA implemented provisions to improve the clarity with which advisory firms describe their services to consumers; address the potential for adviser remuneration to distort consumer outcomes; and improve the professional standards of advisers. The regulations cover the following:

- A higher minimum level of qualification, along with requirements for continuing professional development and adherence to ethical standards.
- Mandatory disclosure requirements on the type of service (independent / restricted), along with the requirement for independent advisers to cover the full range of retail investment products.
- Commissions to advisers were banned and advisers were required to develop, communicate and agree with the consumer their own charges for advice.

In addition to the RDR, financial advisers also need to abide by regulations for retail investment advice firms under the EU Directive MiFID II,<sup>178</sup> which came into force in January 2018.

## 5.6 Lessons for TPIs in the Delay Repay claims market

### Comparison with TPIs in the financial services market

- CMCs in the financial services sector provide similar services to TPIs in the Delay Repay claims market, in terms of contacting consumers to make a claim, lodging complaints and managing the process.
- There are fewer similarities with financial advisers, although both financial advisers and TPIs in the Delay Repay claims market help overcome information asymmetries with consumers.
- Information asymmetries are likely to be greater in the financial services market given the complexity of financial products and services. Barriers to consumer engagement may therefore be different — e.g. in the Delay Repay claims market the greatest barrier is likely to be one of time and effort of making a complaint, whereas in the financial services claims market additional barriers such as uncertainty about eligibility and confusion over the complaints process may be more significant.
- The likelihood for spurious claims may also be greater in the financial services claims market given these uncertainties – consumers may be encouraged to make complaints because they are not sure of whether they are eligible. The potentially large returns for consumers and CMCs may also drive a higher level of spurious or fraudulent claims.

### Potential regulatory lessons

- TPIs in the financial services sector appear to be a genuinely effective means of engaging consumers, even though at the extreme this may be only a perceived need (i.e. consumers thinking they need a TPI to help them claim redress for mis-selling even though they could do it on their own). Thus even if rail customers can claim delay compensation themselves, TPIs may overcome perceived burdens of time/cost.
- An authorisation / licensing regime could be effective in holding TPIs in the Delay Repay claims market to account. The regulator (which could be ORR but does not have to be) would have the powers to issue warnings and revoke licences if companies engage in misconduct.
- Information requirements could be placed on TPIs in the rail sector, for example highlighting to consumers the fact that they can claim compensation directly from the TOCs, or other free alternatives.
- Again, depending on the need, restrictions could be placed on TPIs in the rail sector in terms of contacting consumers and soliciting business (e.g. nuisance calls and texts).

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<sup>178</sup> Markets in Financial Instruments Directive

### Negative lessons – things to be aware of

- Ensure that rail TPIs do not confuse the reclaim process and thus artificially increase the perceived need among consumers for TPIs. Similarly, ensure that rail TPIs do not undermine consumer trust in the reclaim process and lead to decreasing engagement by consumers.
- Fees may reduce the incentive of people to use a CMC in the Delay Repay scenario, given the small amounts involved. Depending on the evidence, fee caps could be an effective means of reducing consumer exploitation and encouraging engagement.

























this will be dependent upon the business and revenue model of the specific TPI. In cases where claims companies charge a fixed fee for their services (sometimes irrespective of the outcome of the claim), a passenger would not obtain any net financial benefit until this fixed fee is recovered (for example if a TPI charges £10 each month for its services, then the passenger will not obtain any financial benefit from using the service unless at least £10 is awarded to him in compensation each month). When fees are charged on a per claim basis, the compensation received in each case would be lower than it would otherwise have been by the proportion TPIs take from the amount awarded. In a small minority cases, TPIs may also offer their services free of charge to customers, in which case the financial benefit obtained may not be affected by mechanisms other than from an increased claims success rate.

As with costs, TPIs could increase consumer engagement with the Delay Repay market by altering perceptions of the benefits of making claims, even if the actual benefits are unchanged. For example, consider consumers that have not claimed for delays in the past because they have assumed that the compensation available or the chance of success is lower than it actually is. In such cases, the provision by TPIs of correct information on potential compensation payments and claim success rates could increase engagement with the market. There are also potential spin-off benefits associated with TPI activities, in that some passengers may become aware of Delay Repay schemes through TPI advertising, but may then submit claims directly to TOCs without involving any TPI.

### 7.1.3 Overcoming behavioural biases

In addition to affecting the costs and benefits to consumers of submitting compensation claims (or affecting perceptions of those costs and benefits), TPIs may also help increase market participation by helping consumers to overcome any unhelpful behavioural biases they face in the decision-making process. In the following discussion, we consider some of the ways in which these biases might be mitigated or overcome with the help of TPIs.

The default bias, where consumers tend to stick with the default option without fully considering the costs and benefits associated with alternative options, implies that claims may not be submitted as passengers stick with the default of no claim being made. One way in which TPIs could help customers overcome this bias is travel management companies offering claims compensation as an integral part of their services to consumers thus making claiming the default.

Loss aversion involves individuals attaching greater weight to any losses they may suffer from a decision relative to a reference point than to the potential gains arising from the same decision. TPIs could be helpful by changing the reference level, for example by convincing passengers (e.g. through advertising) that trains should run delay-free, such that any delay would be perceived by them as a loss in welfare relative to a reference level. TPIs could also play a role in consumers overcoming biases stemming from procrastination (or time inconsistent preferences more generally) through ensuring a timely submission of claims on behalf of passengers.<sup>195</sup>

Furthermore, cognitive errors in decision-making may also be overcome through the use of TPIs. Perceptions of the claims success rate could be affected by framing, e.g. through advertising which focuses on the percentage of claims which are successful rather than the percentage which are not. Passengers' availability bias that influences the perceived probability of a successful claim could also be used by TPIs. In this case, news stories about delays and successful subsequent claims could increase salience and positively affect passengers' willingness to participate in the claims process. Similarly, potential decision-making errors arising from limited foresight could also be mitigated by claims companies. Through developing expertise in the claim process, TPIs are much less likely to suffer from limited foresight and as such are far better placed to evaluate

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<sup>195</sup> Nonetheless, we do note that any potential consumer detriment may still be present from time inconsistent preferences or procrastination at the initial stage where passengers need to contact TPIs.



and take into account all possible consequences of claiming than individual passengers. Therefore, TPIs could increase engagement by incurring the initial fixed costs and then assisting consumers with individual claims.

The table below summarises how TPIs could help to address the behavioural biases identified in the previous section that reduce engagement with Delay Repay.

**How TPIs might help to overcome behavioural biases that reduce engagement with Delay Repay**

<b>Behavioural bias</b>	<b>How this bias may reduce consumer engagement</b>	<b>How TPIs might help to overcome this bias</b>
<b>Default bias</b>	The default is not to claim	Travel management companies might offer claims for compensation as an integral part of their services to business customers, making it the default
<b>Time variant preferences</b>	Passengers procrastinate submission of claims until it is too late because deadline has passed	TPIs ensure timely submission of claims
<b>Loss aversion</b>	Higher claim rate in periods where delays increase above reference level, due to weight passengers place on loss of welfare compared with reference level	TPIs could change passengers' reference level for example through advertising
<b>Availability bias</b>	News stories about delays may increase salience and increase the number of claims submitted	Focusing on successful claims TPIs could further increase salience
<b>Limited foresight</b>	Limited foresight could keep passengers from taking into account the potential for repeated delays over the longer term and thus they may not invest in the initial fixed costs	Through developing an expertise in the claim process, TPIs can better evaluate and take into account all possible consequences of claiming

**7.1.4 Claims companies operating on behalf of TOCs**

The mechanisms through which claims companies affect consumers' costs and benefits from claiming compensation may also depend on whether the TPI in question has been contracted by the consumers themselves or if it acts on behalf of the train operating companies (TOCs). We consider two hypothetical possibilities for TPIs operating on behalf of TOCs:

- Claims companies that are appointed as agents of the TOCs to process compensation claims, but which have little or no incentive to increase consumer engagement.
- Claims companies that are contracted by the TOCs but which operate at arm's length and have contractual incentives to recruit claims. (It is plausible to argue that a TOC might engage a claims company on this basis to improve the TOC's public image and to increase consumer satisfaction, with the aim of increasing the TOC's chance of winning the franchise again when it comes up for renewal.)

In the case of claims companies contracted by TOCs but operating at arm's length, these TPIs may also help consumers engage in the market by reducing their fixed or variable costs as well as increasing the financial benefits

Furthermore, these TPIs may have additional incentives to recruit and process claims since by acting as an agent of TOCs, they could also play a role in increasing TOCs credibility and commitment to ensuring that passengers receive the compensation they are entitled to get. In turn, such commitments and steps could boost TOCs reputation among consumers and could positively affect other outcomes including franchise renewal processes or ticket price decisions.

### 7.1.5 Role of innovation and digitalisation in increasing consumer engagement

A further mechanism through which TPIs could help increase consumer engagement relates to driving innovation in the sector. Claims companies in the Delay Repay market have been particularly active in developing solutions that make it easier, quicker and more efficient for consumers to submit claims through making use of technology and increased digitalisation. The innovative solutions and developments offered by particular claims companies will be further discussed in section [7.4](#).

The role of innovation by TPIs have also been studied by the UK Competition and Markets Authority (CMA), with a recent market studies which assessed the role of TPIs in the retail banking market and another recent market study which looked at digital comparison tools. In the following discussion, we briefly summarise the lessons from these studies and consider their relevance for innovation in the Delay Repay market.

In the context of the retail banking review, the CMA highlighted that while consumer engagement in both the personal current account and the business current account market is low, it has substantially increased in recent years due to advances in online and mobile banking. The CMA's findings have emphasised the role digitalisation has played in bringing down search and switching costs for consumers in digital markets and consequently, how they have enabled and helped consumers to increase their market engagement.

The CMA's conclusions have been similar regarding the use of Digital Comparison Tools (DCTs). The CMA emphasised DCTs' role in increasing the information that is easily and readily available to consumers (thus reducing their search costs) and in making the comparison between various suppliers less time consuming, thus helping consumers to find better deals (by reducing their switching costs). We note that digitalisation in the Delay Repay market may also improve consumer outcomes by reducing the search costs consumers face regarding the claims submission process.

A more detailed summary of the studies is provided in the Appendix.

## 7.2 Impact on consumers of engaging with Delay Repay through TPIs

Claim companies could play a positive role in the Delay Repay market through increasing consumer engagement and improving consumer outcomes by ensuring that passengers receive the compensation that they are entitled to. These positive impacts could be further magnified through increased innovation. Innovative solutions could include developing customer-facing applications for smartphones, integrating this app with other functions of smartphones, using social media, bundling claims compensation services with more general travel management activities or with relaxation services to help passengers manage the psychological impact of delays. Below we discuss some of the mechanisms through which innovation by TPIs could affect consumer engagement.

### 7.2.1 Digital solutions

Claims companies could develop smartphone apps for consumers that make it easier and quicker for them to claim compensation and that bring down the costs involved, thereby potentially increasing engagement. Another possibility is to integrate this app with other smartphone features such as train tickets stored on the phone, so that the app can automatically work out details about the delay. In developing these solutions, a crucial aspect is TPIs having wholesale access to systems that combine data on actual train delays, claim submissions and passenger information to prevent and filter fraudulent claims.

Consumer engagement may also be increased by TPIs offering passengers the chance to submit an immediate claim for compensation while still on the train experiencing the delay. In making this option available to consumers, technology is likely to play an important role. Furthermore, solutions facilitated by technology and innovation are also present in other sectors. For example, claims companies in the aviation sector have

developed apps for consumers to ease the claims submission process or water brokers like Waterscan are providing cost-minimising software and water audits to its clients.

### 7.2.2 Bundling claims compensation with other services

TPIs could offer bundles to consumers where other travel management services (such as train journey reservations or even travel services across sectors) are offered in a package which also includes management of compensation claims. By automatically bundling compensation processing services with, for example, ticket purchases, TPIs could improve consumer outcomes by changing the default of not claiming. Another possibility would be to offer relaxation services for passengers frustrated by the delays they have experienced and could include services such as soothing music or guidance on deep breathing exercises. These bundles could also help remove the default bias of not claiming or increase engagement by offering an ancillary service that consumers value.

### 7.2.3 Social media

TPIs could use advertising on social media (or strategies to encourage people voluntarily to share information on social media) to raise awareness of Delay Repay services and to provide information on how they can help passengers to make online claims. This could reduce consumers' search costs and thereby increase engagement with Delay Repay schemes.

## 7.3 Possible adverse impacts from TPI activities

Besides the benefits claims companies may bring to passengers in the form of increasing market engagement, TPIs' activities could in theory also lead to detrimental consumer outcomes. (It should be noted that the discussion that follows is based on theoretical analysis of the possible effects that TPIs could have, and is not based on any actual evidence of harm from any of the TPIs currently operating in the market.)

The potential practices discussed below may exploit consumers' inherent biases in decision-making or involve misinforming and misleading passengers about the costs (and benefits) of the claim process. Particular concerns arise regarding fraudulent claims, whether known to the consumer or not. Moreover, careful consideration should also be given to vulnerable consumers who may not be able to mitigate these adverse impacts from TPI activities.

### 7.3.1 Exploiting consumer biases

Considering the behavioural biases studied in the previous chapter, theoretically claims companies could exploit these cognitive errors to prompt passengers to submit claims even when this makes them worse-off by implying losses for them in net terms. For example, projection bias could lead to consumers overestimate future claims to be made which could then be further used by TPIs to encourage claiming, even though this might imply greater costs for passengers than any subsequent benefit due to the lower than expected number of delays. Similarly, irrational herding, for example increasing awareness through word-of-mouth or social media, might also be used by claims companies to increase the number of claims, even though this may not be welfare-enhancing for all consumers.

Other biases such as choice overload might also lead to adverse impacts. For example, consumers may face "too many" claims companies operating in the Delay Repay market, which could render them unable to make a choice between the available alternatives. Moreover, even if a choice could be made, this may be inferior to the optimal choice and thus would not maximise consumer welfare given the range of options available.

Another possibility is that TPIs may also resort to exploiting and working up consumer anger to increase engagement, for example by encouraging passengers to express their anger or frustration regarding their delay, prompting them to invest more time and effort into obtaining information and working their way through the compensation process. While this may lead to passengers obtaining more financial compensation, they may end up worse off given the detriment of the anger they have been encouraged to feel by the TPI.

### 7.3.2 Opaque information

In theory, TPIs might also trick consumers into claiming compensation by giving misleading (or in some cases factually incorrect) information about the claims success rate,<sup>196</sup> the amount of hassle involved in the process if claiming directly from a TOC or the charges to be paid to TPIs. For example, by exaggerating the amount of hassle required to submit a claim directly to a TOC, consumers will be more likely to use a TPI, when submitting a claim directly to the TOC instead could make them better-off. Opaque information about the charges payable to TPIs could lead to similar detrimental consumer outcomes as consumers may not realise the full cost associated with asking a claims company to act on their behalf until much later in the claim process, and thus could end up paying for a service they might not have needed or which they might not have wanted had they understood the cost involved.

Issues regarding opaque or unclear information provided to consumers has been noted by the FCA in the claims management sector where consumers may not always fully be aware of the service they receive from the intermediary, the costs involved or other alternative claims routes available.

### 7.3.3 Distorting market outcomes

Involving a TPI in the process in cases where a compensation claim would have been submitted by the passenger anyway could, theoretically, lead to a reduction in consumer welfare, as in this case the TPI would take a cut from the benefit available to the consumer without increasing the consumer's engagement levels.<sup>197</sup>

Another potential source of consumer detriment associated with TPIs might be the charging of excessive fees relative to the service provided. In a competitive market setting excessive fees would not be possible, as the fees would be driven down by effective competition. However, there could in theory be situations where competition between TPIs may not be effective. For example, if a claims company were to enjoy an exclusive relationship with a TOC, then they might be able to charge fees above the competitive level.

Potential reduction in consumer welfare has also been noted by the Which? consumers group in relation to aviation TPIs and advise consumers that they can be up to £216 better off when submitting their own claim.<sup>198</sup>

### 7.3.4 Fraudulent claims

A natural concern for TOCs in relation to TPIs operating in the market is the submission of fraudulent claims. This could involve claims companies accidentally or knowingly submitting claims that are based on or contain false information about the delayed journey or the claimant. We note that in theory TPIs, especially those operating under certain business and revenue models such as charging a fee 'per claim' submitted or requiring consumers to pay a charge irrespective of the outcome of the claim, have greater incentives to inflate the number of claims submitted and hence to include fraudulent claims. In turn, this could lead to TOCs refusing to accept compensation claims from any TPI (potentially causing detriment to consumers with legitimate

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<sup>196</sup> We note that TPIs would have an incentive to exaggerate about the success rate only if they operate under a 'fixed fee' revenue model as in other cases they would not experience an increase in their revenue (since the success rate hasn't changed) but handling more claims could imply increased costs for them.

<sup>197</sup> In economic terms this implies a deadweight loss.

<sup>198</sup> Which (2017): "Make your own flight delay compensation claim and save up to £216".

claims). It might also lead to consumers building up a general distrust towards rail compensation TPIs and even claims companies offering high-quality services might not be able to attract consumers and operate in the market.<sup>199</sup> The mechanisms to mitigate such adverse outcomes could include TPIs developing a reputation for submitting only high-quality claims (for example, this could include some sort of certification from external bodies or other industry participants confirming that the TPI's practices adhere to certain standards) or TOCs disallowing certain claims companies suspected of fraudulent claims from future claims submissions.

Spurious and fraudulent claims are a long-standing concern expressed by the FCA in relation to CMCs encouraging the submission of such claims.

### 7.3.5 Vulnerable consumers

Vulnerable consumers groups (such as consumers with learning difficulties or low educational attainment) may be exposed to false claims in their name, which in extreme cases may also involve identity theft.

## 7.4 Current innovation by Delay Repay claims companies

Our research on innovation by claims companies in the Delay Repay market suggest that digitalisation and the development of technology-driven solution could have an impact on consumers' ability and willingness to engage more effectively with the market. Below we discuss some of the web-based and smartphone applications currently offered by claims companies.

An example of a web-based solution is Reclaim, a website launched in 2018, which submits delay repay claims for the London Underground and Overground, the DLR and TfL Rail.<sup>200</sup> This platform connects to the passenger's TfL account to monitor delays encountered, tracking the passenger's Oyster card or contactless payment, and automatically submits claims for the passenger. The compensation is then deposited directly into the TfL account when a claim is successful, with the app not deducting any service charges or fees. While currently just accessible as a website, the company has plans to launch a downloadable app soon to make the platform more accessible.

A further example is Railrepay, an online app launched in July 2017, which allows season ticket holders to store a picture of their ticket on the app.<sup>201</sup> When the passenger is faced with a delay, the app automatically submits a claim for delay repay to the train operator. The app also allows non-season ticket holders to submit claims through the app to the train operators as well as save regular journeys for faster validation and submission of claims. The app will deposit the compensation into bank accounts, PayPal and crypto-currency wallets once a claim is successful. Although the app is free to use, if the claim is less than £5, there will be a small fee for transferring it out of the app until the balance of the app has built up to £5.

Resolver is another online tool that offers assistance to consumers with complaints and claims across a variety of sectors, including a travel complaint and a train compensation tool that promises to get things sorted for consumers "just a few clicks away".<sup>202</sup> They provide a direct link to submitting claims to 34 train operators. The website has templates and previously successful examples of communication (letters, claims) in order to ensure that the customer's claim is accepted.

Most other companies active in the Delay Repay market appear to offer smartphone-based solutions for consumers.

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<sup>199</sup> This phenomenon is often referred to as the 'lemons problem' in economics, where low-quality essentially drives good-quality out of the market and leads to a market breakdown.

<sup>200</sup> Information taken from the Reclaim website, <https://www.reclaim.co.uk/>

<sup>201</sup> Information taken from the Railrepay website, <https://www.railrepay.com/>

<sup>202</sup> Information taken from the Resolver website, <https://www.resolver.co.uk/>



A recent example is of innovation relating to claim compensation is Railguard, a train delay compensation platform launched in 2018. This platform was launched in response to the gap in the delay repay market identified by a start-up in relation to the high number of unidentified (and thus unclaimed) delay claims. The application works with all UK train companies and offers delay repay assistance service for consumers affected by delays, cancellations or overcrowded trains. Once the app has been downloaded and journey details have been entered, it automatically calculates the compensation the consumer is entitled to. Furthermore, it offers to submit the claim to the relevant TOC and when compensation is awarded, Railguard transfers the amount to the consumer (minus a 20 per cent processing fee).<sup>203</sup> Since its launch it has partnered with intermediaries active in the travel sector – including Capita Travel and Events, a travel management company (TMC), and Amber Road, a travel partnership company – that make the app available to their consumers and in exchange give Railguard access to their system to monitor delays. Railguard then compares this booking information against the National Rail database and analyses whether there would be any eligible journeys for compensation. In this case, the 20 per cent processing fee charged is shared between the TMC and Railguard. In an interview given last year, Railguard’s managing director Matt Freckelton stated that Railguard’s aim was to partner with 20 of the top 50 TMCs<sup>204</sup> by the end of 2018.<sup>205</sup>

Delay Repay Sniper, a product developed by Travel Compensation Services Ltd. offers a one-click compensation claim facility to consumers for a fixed monthly fee (after an initial 30-day free trial period).<sup>206</sup> Delay Repay Sniper sends daily emails to subscribed consumers “containing all the information needed to claim for compensation”. Users can input their start and end stations, and the app’s nightly email will contain information on all of the delayed trains affecting those stations. The app offers two levels of subscriptions, at the full subscription price the app will submit claims on behalf of the user once notified which train they travelled on, and at the lower price they provide a link directly to the relevant TOC for the customer to submit a claim. The app monitors all National Rail trains for delays and potential compensation. It also conducts validity checks before a claim is submitted in order to increase its success rate.

An app launched in April of 2016 is Railbuddy, which notifies users of real time estimates and information concerning delays, tracks and potential claim amounts for direct routes.<sup>207</sup> The app also notifies users when they are eligible for claims and saves their information, making submitting a claim form through the app simple for supported train operators. The free version of the app offers services such as eligibility alerts, real-time train delay alerts or live Delay Repay estimate and also offers a ‘Railbuddy Pro’ account for £0.49 a month offering full access to features that include automatic claim form filling.

A different app, Trains from Hell, also allows customers to upload pictures of season tickets for the app to monitor for delays. Once a delay has occurred, the customer can submit a claim through the app directly to the train operator, utilizing the saved information and picture of the ticket, removing the need to print off a form and mail it in with a ticket attached.

A similar, now defunct app, TrainTricks, released in April of 2016, allows passengers to upload pictures of their tickets in order to submit claims directly to major train operators.<sup>208</sup> This app also saved tickets and information, making the claims process simpler. Through this app, passenger had the option to receive compensation or to donate it to a charity of their choice.

Furthermore, TPIs operating on behalf of TOCs also have apps for various services, and consequently certain TOCs such as Southern and South Western Railways allow Delay Repay claims for journeys on their trains to be submitted directly through the TOC’s app. Passengers can submit a photo of the ticket along with

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<sup>203</sup> Information taken from <https://railguard.co.uk/>.

<sup>204</sup> As named in travel publication Buying Business Travel.

<sup>205</sup> Buying Business Travel (2018): “Interview: Matt Freckelton, Railguard”

<sup>206</sup> Information taken from <https://www.delayrepaysniper.com/>

<sup>207</sup> Information taken from the Railbuddy website <http://railbuddy.co.uk/>

<sup>208</sup> Evening Standard (2016): “Student launches app to claim compensation for delayed rail passengers”.

personal information in order to receive compensation in the form of vouchers, credit to their PayPal account, or payments made directly into their bank accounts.

## 8 Conclusions

In the following we set out some tentative conclusions on the roles TPI play in the Delay Repay marking taking into account the three key elements of our research:

- research into lessons that can be learnt from other regulated sectors;
- theoretical analysis of the drivers of consumer engagement; and
- an assessment of how TPIs could increase consumer engagement.

Our research into lessons that could be learnt from TPI activities in other sectors has focused on four regulated sectors: aviation, business retail energy, non-household water retail and financial services (including both CMCs and financial advisers). Of these sectors, we consider claims companies active in the aviation sector and CMCs in the financial services sector to be the most relevant comparators for our study as TPIs in these sectors also perform activities related to assisting customers in claiming compensation.

Overall, lessons from these sectors suggest that TPIs can bring various benefits to consumers in these markets, including giving rise to innovation (through the use of technology or artificial intelligence), providing value-added services such as monitoring water consumption or advice on energy usage, overcoming information asymmetry by clarifying eligibility criteria and the claims process to customers and providing information or assisting customers with more complex or initially refused claims.

However, our research has also identified a number of potential problems relating to TPI activity in these sectors. A common potential disbenefit is the opaqueness around the information TPIs provide to consumers in relation to the fees charged for their activities. Other concerns include mis-representation or mis-selling of products by TPIs, the provision of low quality services, aggressive or misleading marketing and sales practice or, in extreme cases, TPIs encouraging customers to make spurious or fraudulent claims.

Our research also considered the policies regulators in other sectors have used to mitigate these potential disbenefits. These include use of voluntary codes of conduct by TPIs present in both the energy and water sectors, the provision of rules for letters of authority clearly setting out the activities TPIs are authorised to perform on behalf of consumers (by Ofwat, the water services regulator) or more interventionist measures such as caps on the fees charged by CMCs in the financial services sector or requiring CMCs to apply for authorisation before they can provide services.

The table below summarises these key lessons that can be learnt from each of these four sectors in terms of the benefits of TPI activity, potential problems arising from TPI activity, and regulatory actions that can be taken to mitigate problems. The final column of the table highlights key differences between the sector and the Delay Repay claims market, which need to be borne in mind when transferring lessons from these sectors to Delay Repay claims companies.



**Summary of key lessons from other sectors**

Sector	Lessons relating to...			Limitations of comparison with rail
	Benefits of TPI involvement	Potential problems with TPI involvement	What regulator can do to mitigate potential problems	
<b>Aviation</b>	<p>Use of technology and artificial intelligence</p> <p>Information on options where claim is rejected</p> <p>Partnerships with card providers to increase engagement</p> <p>Offering (financial) incentives to consumers who are already active to recruit others</p>	<p>Information on commissions is opaque</p> <p>Passengers who would claim anyway might be better off without a TPI</p>	<p>Apply a charge to airlines that are not part of an alternative dispute resolution body for each complaint that is handled by the authority</p>	<p>Airlines do not have to pay compensation if delay or cancellation was due to extraordinary circumstances</p> <p>Information on passengers affected by delays is readily available for airlines but not for train operating companies (TOCs)</p> <p>Level of compensation available is usually higher in the aviation sector</p>
<b>Energy</b>	<p>Increased customer engagement with the market</p> <p>Provision of value added services such as advice on energy usage</p> <p>Power of attorney services so that TPI has full authorization to act on customer's behalf</p>	<p>Selling practices may include misrepresentation or mis-selling of products by TPIs</p> <p>Risk of low quality service by TPIs (e.g. failure to obtain best quote)</p> <p>Information on commissions is opaque</p>	<p>Voluntary Code of Conduct for TPIs active in the market</p>	<p>Energy TPIs mainly assist consumers with switching</p> <p>The number of active TPIs is significantly higher in the business energy sector</p>
<b>Water</b>	<p>High levels of satisfaction with TPIs reported by customers which have used them</p> <p>Provision of value-added services e.g. monitoring of consumption and data management</p>	<p>[No published information on problems]</p>	<p>Principles for voluntary TPI codes of practice</p> <p>'Letter of Authority' listing the activities that a customer authorises a TPI to perform on its behalf</p>	<p>Water TPIs mainly assist consumers with switching</p> <p>The non-household water retail market only opened in April 2017, so it is not a mature market</p>

Sector	Lessons relating to...			Limitations of comparison with rail
	Benefits of TPI involvement	Potential problems with TPI involvement	What regulator can do to mitigate potential problems	
<b>Financial Services (CMCs and financial advisers)</b>		Information on commissions is opaque		
		Poor level of service		
	Overcome information asymmetry by clarifying eligibility criteria and claim process	Financial loss to consumers due to lack of clarity on the cost and level of service by CMC	Requirement for CMCs to apply for authorisation to provide services	Information asymmetries are likely to be bigger in the financial services sector given the complexity of the products  Likelihood of spurious claims may also be greater in the financial services sector
	Minimise discomfort felt by consumers in engaging with providers or being assertive	CMCs may encourage consumers to make spurious or fraudulent claims	Rules that regulate CMC activity e.g. restrictions on marketing practices, requirement to highlight alternative options for making claims	
Help secure redress in more complex cases	Aggressive or misleading marketing or sales practice	Cap on CMC fees		
	Consumers may suffer financial loss or delay in CMCs exit and enter the market frequently			

Our theoretical analysis of the drivers of consumer engagement suggests that TPIs can play an important role in engaging consumers with the market both in terms of raising awareness about the available compensation schemes and in assisting consumers with claim submissions. Insights from mainstream economics predict that the various costs (such as the fixed cost of finding information about eligibility and the claim submission process, and the further costs per claim of making a submission) and the expected benefits (such as the financial reward received in case of a successful claim or any psychological benefit derived from it) will influence the decision as to whether to claim compensation.

Our analysis further explored some of the behavioural biases stemming from non-standard preferences or cognitive errors in decision-making that may promote or hinder passenger participation in the Delay Repay market. This could include biases that work against increasing consumer engagement, such as the default bias whereby consumers tend to stick with the default option, which is not to make a claim in this case. Other biases such as the availability bias, when consumers' perceived probabilities of a certain event (e.g. train delays) are influenced by the extent to which they are able to recall similar events, could lead to consumers overestimating the frequency with which certain events occur (e.g. they overestimate the frequency of train delays due to being more frequently featured on news) and in turn increase the number of claims submitted. The net effect of these behavioural biases for individual consumers and passengers in general cannot be determined.

In light of our analytical framework described above, claims companies active in the Delay Repay market could increase engagement levels in a variety of ways. These mechanisms include:

- potentially reducing the costs consumers face, including reducing the initial fixed costs of finding out about the available schemes and eligibility criteria and the per claim costs of making each claim;
- increasing the available financial benefits from compensation by increasing the success rate; or
- helping consumers overcome their behavioural biases that hold them back from claiming compensation when it would be rational for them to do so (at least in terms of the net benefit available).

Furthermore, digitalisation also appears to play a significant and increasing role in improving consumer outcomes, as evidenced by research undertaken by the CMA. Our research suggests that offering innovative solutions making use of improvements in technology (e.g. web-based solutions or consumer-facing apps) is increasing offered by claims companies.

Nonetheless, our study has also identified a number of potential adverse impacts that may arise from TPIs' activities. These often relate to opaqueness around the fees charged by TPIs, instances where information may be misrepresented, or fraudulent claims where – whether knowingly or not – untrue claims are submitted on behalf of passengers.

Taken as a whole our analysis therefore suggests that while TPIs have the potential to bring significant value to the Delay Repay market by helping consumers engage and claim compensation, in particular through the use of technology-driven innovation. At the same time, there are possible negative effects that may need to be guarded against, such as misinformation or opaque information (e.g. about the fees charged), exploitation of customers' behavioural biases, and the submission of fraudulent claims. Our research into four regulated sectors have also explored various policy options (such as setting out rules for letters of authority or encouraging voluntary codes of conduct) that could be used to mitigate the potential negative effects of TPI involvement. Nonetheless, the ORR would need to carry out impact assessment work to determine the potential effects of any such policy for the Delay Repay claims market.

# Appendix 1: Summary of CMA studies

## CMA (2016): Retail banking review

The CMA Retail banking market investigation analyses the supply of services concerning personal current accounts (PCAs) and business current accounts (BCAs) available to small and medium-sized enterprises (SMEs). This study was carried out at a time of unusual circumstances, with the regulatory and banking environment changing immensely after the financial crisis starting in 2007/2008. These types of banking accounts are important to consumers, with 97 per cent of adults in the UK having a PCA in 2014. Additionally, there has been a recent rise in the number of SMEs, and in 2014 they accounted for 99.9 per cent of UK business. The Consumer Market Authority (CMA) investigated possible weak customer response, barriers to entry and expansion and the effect of different levels of concentration because despite many reviews of the UK banking system, the CMA still had concerns that retail banking was not working well for the customers.

Banks offer a range of PCAs, but they all allow for making or receiving payments without cash, storing money and allowing for short term loans. Some PCAs have no fee if there is enough in the account, but also no interest is received. Other newer and growing types include “reward” accounts, with a yearly fee that is typically smaller than the benefits from the account. Other less popular options include packaged accounts, which are coupled with travel, car or phone insurance for an additional price. Overall, the banks make the most profit off of fees, whether from interest on loans or overdraft charges, with some consumer are unaware they are being charged. The markets for PCAs are highly concentrated, with the four largest banks in Great Britain accounting for over 70per cent of the market share. These large banks offer some of the cheapest options for consumers; however the vast majority of their customers are on their far more expensive PCA plans. As a result, the customers with PCAs from smaller, emerging banks pay less on average.

Customer engagement in the PCA market is low, customers tend to stay with one PCA or provider for years, and 75 per cent of them never even searched for other options within the year of the study. This is detrimental to consumers, as long-term customers of one provider tend to pay the most, and 90 per cent of customers would benefit financially from switching, especially overdraft users. Those who did search or switch providers tended to be wealthier, more educated, have more confidence in using the internet, and already have money in PCAs from multiple providers. Additionally, there is no end date or renewal on a PCA, so consumers don’t have reminders to periodically consider if they want to continue with their current PCA. While consumer engagement is still low, it has increased in recent years due to online and mobile banking. With the ease of interacting directly with a PCA, people have become more involved. Adding to the low consumer engagement is the perception that there are no real benefits to switching providers. PCAs are a low-cost product, and consumers may not justify the hassle of searching and switching accounts for the small fee they are being charged. In order to do a true cost comparison, consumers need to know detailed information about their own account, eligibility for a new account, overdraft charges and rewards or benefits. This leads to minimal differentiation between banks in the consumer’s mind and becomes a significant barrier to switching accounts, or even searching for other options.

The other aspect of this study involved business current accounts for small to medium-sized enterprises. These BCAs are essential for SMEs, they can help manage cash flow, and provide short term loans or help with longer-term financing projects. While there are fewer types of accounts for businesses than personal use, the large banks still dominate the market, with a small number of up and coming options trying to break through. Within the SME category there is a wide disparity, from charities and clubs that often have free

accounts with banks, to companies that make over 5 million pounds per year and may have access to a personalized advisor at the bank.

Consumer engagement for BCAs is low, similar to PCA engagement. A major aspect of this is when a start-up SME is looking for a BCA, most go straight to the provider of the owner's PCA, a third don't even search for better option somewhere else first. Additionally, many banks will give start-up or small SMEs a free period, from 12 to 24 months. However, at the end of the free period, most SMEs do not even search for other, potentially cheaper BCAs. While most were happy with their BCA, even the SMEs that were dissatisfied did not search for other options, as switching appears to them as a large 'hassle' not worth the time and effort to search for and find a new BCA. Part of this lack of engagement comes from the perception that staying loyal to one bank and one BCA is beneficial in the long run, and that the differences between banks are small, so the potential gains from switching accounts is also low. There are also no effective price comparison tools for these firms to compare different accounts at various banks. However, this study found that in Great Britain, SMEs could save on average 82 pounds a year by switching to a more optimal BCA for their individual business. Similar to individual consumers, it is quite difficult for firms to compare BCAs to determine the optimal choice. The account opening and switching process can also be lengthy and difficult, discouraging firms from switching BCAs. There is also the fear that switching may disrupt any payments, and the firm won't be able to access all of its historical data and information. If the SME has any current or wants future lending from the bank they are leaving, there is also a fear that leaving the bank would decrease access to those funds. When obtaining funding, it is a simpler process for the SME to go to their current bank, which has all of the important information, than compiling it all and submitting it to various new banks. This increased time and effort required to search for better deals discourages SMEs from pursuing different banks than they already bank with.

Generally, banks do not have increased incentives to promote customer engagement, as there is such a low probability of firms to switch, either to leave the bank, or to get a BCA offered by the bank. As a result, they do not need aggressive advertising to compete for potential business. The large banks that dominate the BCA market also have advantages to retaining customers. Customers are more likely to be working with the same bank that they hold personal money in, and big banks dominate the PCA market as well. Additionally, there are increased capital requirements, banks must hold more capital and not loan it all out. This creates a high entry barrier for starting banks, as they cannot give as many loans, or make as much money.

The CMA has come up with a list of remedies, to increase consumer engagement, and make it easier for personal and business customers to compare prices and service quality, which the CMA believes will encourage the development of new banking services, and be beneficial for the consumer. Some of these measures are aimed at increasing transparency of bank prices, loan rates, and rewards in order to reduce the hold banks currently have on both the PCA and BCA markets. The CMA also wants to promote consumer awareness and confidence when it comes to these accounts, and to send notices that they should reevaluate their accounts, as well as overdraft alerts, to promote switching, and competition in the PCA and BCA market. They have also come up with suggestions on how to make it easier for SMEs to switch accounts, from obtaining a copy of transaction histories from the bank, to promoting holding accounts at multiple banks in order to increase competition and promote SMEs to search for, and switch to more optimal accounts.

## CMA (2017): Digital Comparison Tools study

The CMA "Digital Comparison Tools" study published in September 2017 looks at digital comparison tools, or DCTs. These are defined in the study as "digital intermediary services used by the consumers to compare and potentially to switch or purchase products or services from a range of businesses." Overall, these DCTs are used by an increasing number of people who have positive experiences using them. However, it is essential that DCTs are reliable and trustworthy; otherwise there is no benefit to consumers. In September 2016, the

UK Regulators Network feared that there were agreements to limit competition between DCTs to drive prices higher, decreasing competition due to the most favoured nation clause and concerns over how these DCTs were handling user's data. These concerns involved suppliers offering preferential rates to one DCT over another, or involved customer's largest concern with DCTs, what happens to their personal data. Due to these concerns, the UK regulators recommended that the Competition and Markets Authority investigate. In particular, the regulators were fearful of hollowing out, in which due to the intense emphasis on low prices between DCTs, there might be a reduction in product quality. With the prompting of the UK regulators, the CMA launched a study into DCTs later in September 2016. A year later, the CMA has formed recommendations for steps that the DCTs, regulators and the government can take to ensure continued consumer protections and benefits, as well as four high-level principles for the DCTs to follow. The goal is to "ensure DCTs compete effectively and treat people fairly". This study focused on utilities, travel, and financial services, however DCTs generally cover a broader range of industries.

There are many benefits to DCTs, including saving consumers time and money through decreased search, switching or transaction costs. Since many of the options a consumer may have been considering are all laid out together on one webpage, it makes assessing and choosing the optimal supplier much easier and less time consuming. They also give users the ability to better negotiate, either with their existing supplier, or a new one. With this increased information at their disposal, consumers can demand better deals. They also increase competition and allow the consumer to make informed choices. With DCTs, there is increased competition not only between the individual suppliers, but also among the DCTs themselves. There is strong pressure to decrease prices, in order to attract customers, something even more important when customers can see all of the competition on a single page. This leads to consumers have higher price sensitivity when looking at suppliers on a DCT opposed to their individual pages. This carries over to benefit consumers who aren't even using DCT pages, as suppliers become more likely to offer the same low price on the DCT site and their own personal site. So other customers are benefiting, even if they don't even use the DCT site to compare prices and options.

Smaller firms can also more easily enter the marketplace with a DCT, as they are relatively low cost channels for suppliers to access new customers. This lowering of a barrier to enter a market also increases competition, giving the consumer lower prices and more choices with more suppliers' part of a DCT. DCTs also help customers with mobility or mental health conditions. Before, they might not have been able to speak on the phone or in person with all the different suppliers. But now, these customers can also go online and choose the best supplier for them though one or many DCTs.

Consumer engagement concerning DCTs is high, as the webpages themselves have made significant investments in advertising the benefits of shopping around and the potential gains from switching providers, as well as providing rewards programs. Many have incentives to target customers, as they typically get paid for each customer, they can convince to leave their old provider for a new one. Most DCTs charge the suppliers a fee, not the consumer, which encourages others to use their price comparison. Even once a consumer has what they perceive is a good deal, they will continue to check DCTs just in case a better one pops up. This repetition of checking one, or many DCT sites, has led to a growing number of consumers benefiting from competitive deals through DCTs, because they check the pages so frequently. Since consumers trust the sites, which are simple to use and require minimal effort, many are satisfied with the experience of using DCTs and come back to that type of comparison for another provider. Frequenters of multiple DCT sites, not loyal to one particular site, are the largest driver of competition, as when they request quotes, for instance insurance, they force the individual DCTs to compete and one to come out with the lowest prices, even lower than if they were just looking at the various sites and prices. However, putting in the amount of information it takes to receive a personalized quote is a hassle, so they are more likely to only use one DCT site for a product like that. Customers are less likely to engage with multiple DCTs if there is significantly more effort required, they will use just one or two DCTs.

It is important for consumers to trust DCTs; otherwise they will not continue to return to the sites. For this reason, many DCTs use a third-party provider to indicate to the customer if they are eligible or products such as credit cards or insurance that the site is comparing. Otherwise, the customer might feel resentment towards the DCT that their application was not accepted, and not return to the site in the future. This trust of the DCTs is strong in consumers' minds, as they often describe these sites as being unbiased, aggregate collections of these various suppliers. Even when there are sponsored or promoted options on the site, consumers still thought they could ignore those results being pushed at them. This trust in the established DCTs promotes consumer engagement, discouraging customers from using supplier's direct sites or other new, entering the market DCTs.