

UK Finance response to FCA CP21/1: Restricting CMC charges for financial services and product claims

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Sent to: cp21-01@fca.org.uk

UK Finance is the collective voice for the banking and finance industry.

Representing more than 250 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation.

Executive Summary

The banking and finance industry is supportive of greater protection for consumers and the FCA's proposals offer protection against excessive Claims Management Company (CMC) charges whilst enhancing the disclosure of information to help consumers make informed decisions about whether to use a CMC.

The proposals outlined by the Financial Conduct Authority would considerably improve consumer outcomes and the market environment. It will ensure that the charges consumers pay are relative to the service that is offered, and the benefit received. It will also ensure full disclosure that alternative and free routes are available through the firm and the Ombudsman.

Industry is supportive of a cap to the fees that can be charged for CMC activities as it is financed from the customer's own compensation. Therefore, the more that a CMC charges a consumer, the more compensation they obtain at the detriment of the consumer. The clarification for consumers that there is a free and easily accessible complaints process, which includes an appeal process to an independent Ombudsman who do not charge, is important and allows consumers to make an informed decision based on their individual needs.

UK Finance and Industry are committed to continue engagement with the Financial Conduct Authority to ensure good outcomes for consumers and protect consumers from harm. We have based our response on the question set outlined in the Consultation Paper, although we do not have specific comment on questions 9, 10, 11 and 13.

Detailed Comments

1. Do you agree with the design of the proposed cap?

Overall, Industry is supportive of the proposed cap, but not at 30% as it provides CMCs a significant margin for profit which would be disproportionate for consumers. The maximum percentage for the cap should be measured at 25%. This would be higher than the cap implemented for charges relating to PPI (20%). Additionally, it was evident during PPI that

consumers were unaware that an investigation could have been undertaken by the Lender which would not incur a charge.

We believe that a lower fee cap could deliver a more efficient solution than the FCA's current proposals as:

- CMCs are benefitting from a **significant gap** in customer engagement and awareness of the value CMCs provide, allowing them to charge excessive redress fees;
- In May 2018 legislation was passed that prohibited fees of more than 20% being charged for PPI claims. Despite this there was an **overall rise of 58% in complaints about insurance** (with PPI making up 81% of these claims). Hence the 20% cap did not dissuade CMCs from managing vast quantities of PPI complaints;
- There has been evidence of significant marketing activity from CMCs, including use of lead generators and cold calling. If a cap was put in place, most CMCs would **focus on reducing marketing costs**, rather than reducing service / exiting the market.

The use of a CMC fee of up to 30% including VAT of the redress could increase a customer's vulnerability. The CMC is financed from the consumer's compensation, so an increase in the fee charged means that CMCs obtain more of the consumer's compensation. Raising customer awareness that there is a free, accessible complaints and redress journey will help consumers to make an informed decision.

The FCA's tiered approach towards the cap is overall supported by Industry. The tiers proposed are higher than the fee cap introduced for PPI and the proposal should be considered against the individual circumstances of each complaint such as its complexity compared to other complaints. The FCA should be aware of the Industry's support to the changes proposed including the amendments to isolated pre-contractual disclosure. Further consideration of the timeline for implementation and the inflight contracts to ensure that consumers have sufficient protection is required

We acknowledge that there are risks of unintended consequences to introducing a lower cap or flat cap which will need to be considered in the round. Example of these unintended consequences include:

- CMCs could apply greater focus to larger complaints,
- migration from a 'no-win-no-fee' model,
- incentivise actions to circumvent FCA regulation.

2. Do you agree with the scope of the proposed cap and do you agree with the 3-month implementation period for our proposed enhanced disclosure requirements?

Further clarification is required to ensure customers are aware of the charging strategy across several CMCs throughout the consumer journey. Without this, CMCs will be able to charge consumers separately and therefore up to the threshold or beyond the proposed cap to fees. Additionally, further consideration should be given to how customers and CMCs can ascertain the amount they have charged to ensure the total fee is lower than the maximum amount for a single claim. The proposed three-month implementation of the cap is supported by Industry as this is the same implementation period when the PPI cap was introduced. Therefore, this has proven to be an effective timeframe to successfully implement a cap.

There is support that customers should have access to an effective complaints and redress process. Industry does recognise that CMCs provide value as they save customers time and contribute as a check and balance on Industry. However, consumers should pay fees that reflect the value of the service they receive as the consultation notes. The proposed fee cap would help ensure that this outcome is achieved and provide protection against excessive fees.

3. Do you agree that agreements which breach the cap should be unenforceable to the extent of the breach and that simple interest at 8% should apply?

The Consultation Paper requires further clarity as to how any breach to the cap would be enforced and which body has regulatory authority to implement any obligatory penalty. Additionally, further consideration should be given to cases where the consequences to a breach of the cap puts customers into a vulnerable situation.

4. Do you agree that applying the proposed cap to pre-existing contracts provides an appropriate degree of protection for consumers against excessive charges?

Industry is supportive of applying the proposed cap to pre-existing contracts which would provide an appropriate degree of protection for consumers against excessive charges.

5. Do you agree that requiring the proposed further disclosures will improve consumer awareness of the cost of using a CMC?

The requirement of further disclosures to improve consumer awareness of the cost of using a CMC is a positive step. However, it is not clear if this will enable consumers to make better, informed decisions about whether or not to use a CMC. Further consideration should be given to additional methods, such as an external campaign, to inform customers about alternative options and improve consumer awareness of the cost of using a CMC. The lack of customer awareness and information is outlined in the FCA's sample which showed 43% of complainants who used CMCs were unaware that they could directly claim to the provider free of charge.

Additionally, 57% did not know that they could make a claim to the Financial Ombudsman Service and that most consumers are not aware that use of a CMC does not improve the likelihood of a complaint being upheld. The FCA also found that consumers lacked information about the services CMCs offer, often over-valued the services they provide and misjudged the options available to them when making a claim. More than half of consumers have been contacted by their CMCs, as opposed to consumers initiating contact, with 81% of consumers had not considered using any other CMC than the one they had signed up to.

The FCA should adopt additional methods including:

- the retention of illustrations
- the use of a calculator to ascertain the exact amount a consumer would be charged and the total redress the customer would obtain afterwards
- Raise awareness that by contacting the Lender directly, the consumer will not incur charge for a claim
- Provision of a list comparing CMC charges to help customers make informed decisions as to whether they would use a CMC and specifically which one they would use.

- Introduce a requirement for CMCs to disclose data on customer satisfaction and the number and nature of the complaints they have received.

There is potential to utilise digital comparison tools or for service ratings to be applied to CMCs to assist consumers when choosing a CMC. The FCA should also consider implementing a 'stop point' for consumers prior to entering contractual engagement with a CMC, in order to allow consumers to decide if they wish to use an alternative provider. Additionally, Fee illustrations should be provided in pound sterling, not just as an indicative percentage of redress. This would ensure customers understand the cost of raising a complaint through a CMC. The proposed rule changes may need to be tightened to ensure that this can occur.

6. Do you agree that isolating the statement about claiming direct, and requiring a separate declaration from the consumer will help to improve customer awareness of the option to claim without a CMC?

The isolation of the statement regarding claiming direct and requiring a separate declaration from the consumer to help improve consumer awareness of the option to claim without a CMC should be discussed with the consumer during the pre-contractual discussion. The FCA should provide CMCs with the wording that is included at the start of the contract and which the consumer has to sign to acknowledge their understanding that they can claim directly with the Lender free of charge and that by choosing to use a CMC, they will incur a fee. In addition, this will aid the Financial Ombudsman Service when adjudicating cases that relate to CMC fees.

7. Do you agree with the proposal which places an expectation on CMCs to tell their customers when they are undertaking 'unregulated' claims management activities for which customers cannot expect access to any statutory ombudsman or statutory compensation scheme?

Yes, our members support this proposal. Industry would support a standard aligned process for CMCs to follow to disclose charged fees information to avoid confusion among consumers. The lack of standardisation and the different methods used by CMCs currently to disclose fee information can deter consumers from taking an informed decision.

Contrary to the assumption from CMC providers and trade representatives that the proposals outlined in the Consultation paper may result in the cessation of operation for the majority of CMCs and as a consequence that customers may not submit any complaints, it is important to note that CMCs do not increase the likelihood of complaints being upheld and the complaints procedures held across Industry are not streamlined nor standardised. The proposals ensure that the risk of excessive fees to CMCs being paid by customers is reduced.

As the FCA has shown, the current model of redress does lead to some consumers paying fees more than the cost and value of the service they are provided. Additionally, in the event a consumer is in debt, but has a legitimate complaint and is awarded redress, they are unable to afford to pay the CMCs fees as the redress is used to prioritise debt repayment. Therefore, in some cases the consumer does not accept the redress. A potential alternative to the current model that the FCA may wish to consider would be the requirement for firms to outline their fees up front

to customers. This would be based on a fixed rate or calculated on the number of hours worked. This would ensure transparency and encourage customers to search for the best deal.

Whilst we note the FCA's reluctance to restrict charging models we would note that, a fixed charge or an hourly rate model which is disclosed upfront, whilst based on a 'no-win-no-fee' basis, could be more effective in reducing consumer harm. Such a model could address the issue of pricing and demand-side intervention as customers can assess the fee and decide whether they wish to choose an alternative. This may facilitate the removal of the cap as customers are unlikely to agree to a £5,000 fee to process a claim.

8. Do you agree with our assessment of the impacts of our proposals on the protected groups? Are there any others we should consider?

With regards to the FCA's assessment of the impact of the proposals on the protected groups, Industry does not agree, and further consideration should be given to the impact of the FCA's proposals on Duty of Care. The FCA may consult on a Duty of Care and legal right to claim against breaches. This has the potential to significantly increase CMC activity. It is therefore important to ensure that the rules on CMC fees take into account related regulatory initiatives such as the forthcoming Duty of Care proposals when finalising the rules.

Further alignment within Solicitors Regulation Authority rules is required to prevent CMCs restricting to operate as legal practitioners if the fee cap is not aligned. Additionally, whilst the FCA has proposed amendments to disclosure e.g. ensuring confirmation from the consumer that alternative routes to redress are available, it may not be enough to initiate significant change. The regulator should consider the launch of an external awareness campaign to inform customers that they can complain to their bank directly, without charge.

Further considerations

Fee distribution

In the event that a consumer has received multiple services from a single firm or from multiple firms in relation to the management of a single claim, the FCA states that it is the responsibility of the CMC to understand any fees that have been incurred and ensure that the total fees incurred by the consumer do not exceed the cap. This practice should be closely monitored by the FCA to prevent CMCs adding unnecessary complexities to the complaints process, in order to circumvent the proposed fee cap.

CMC Conduct

The regulatory standards that ordinary providers are bound to, should also be applied to CMCs given that they are authorised firms. The FCA should require CMCs to outline how they ensure customers receive fair value for the services offer and the price which it costs. This may mitigate the risk of CMCs charging customers at the limit of the fee cap. Additionally, CMCs should be required to test and audit their services to ensure understanding within their customer base. Customers are often unaware that they can submit a claim through the Financial Ombudsman Service or directly. Therefore, CMCs should be responsible for monitoring this and improving their

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disclosure process. If a customer proceeds with complaints that is later found to be void, the FCA should investigate any practices that may have led to the customer continuing this process.

If you have any questions relating to this response, please contact fiona.turner@ukfinance.org.uk in the first instance.

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