

On 1 April 2022, a Second Supervisory Notice ("the SSN") was issued to Symmetric Systems Limited (FRN 834984) ("Symmetric"). Symmetric referred the matter to the Upper Tribunal on 28 April 2022. On 23 March 2022, Symmetric withdrew its application to the Upper Tribunal by consent. Symmetric and the FCA agreed that there should be no order for costs.

The Requirements imposed on Symmetric by way of the SSN were amended following the issuance of the SSN in the following ways:

- on 26 May 2022, the second sentence of Requirement 2 as set out in the SSN was deleted, leaving the first sentence of Requirement 2 in place;
- on 26 May 2022, Requirement 3 as set out in the SSN was deleted by the FCA; and
- on 13 April 2023, Requirement 6 as set out in the SSN was revoked by the FCA.

The remaining requirements detailed within the SSN remain in place.



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SECOND SUPERVISORY NOTICE

To: Symmetric Systems Limited

Reference Number: 834984

Address: 7 Bell Yard
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Date: 1 April 2022

1 ACTION

- 1.1 For the reasons given in this Notice, the Authority has decided not to rescind the Requirements set out below at paragraph 1.3 which were imposed on Symmetric Systems Limited, trading as Bank-Smart, and notified to it in the First Supervisory Notice on 30 November 2021.
- 1.2 The Authority has decided to rescind three requirements which formed Requirements 4 to 6 inclusive of the FSN issued to Symmetric on 30 November 2021. This decision was made in response to Representations received from the Firm that it would agree voluntarily to these Requirements: these three Requirements are now contained within a separate VREQ, which was signed by the Firm on 28 March 2022
- 1.3 The FSN notified Symmetric that it had decided to impose, pursuant to sections 55L(2) and (3) of the Financial Services and Markets Act 2000, the following Requirements with immediate effect.

Business requirements

- 1) In relation to the issuance of cancellation and breach of contract invoices by Symmetric to its customers:

- a) Symmetric must not issue any further cancellation or breach of contract invoices; and
 - b) Symmetric must cease pursuing any existing cancellation or breach of contract invoices through, but not limited to, any legal proceedings or debt collection processes.
 - 2) In relation to the charging of commission to customers on any PPI claims initiated after 10 July 2018, Symmetric must not collect commission from customers, or invoice customers for commission, at a rate above 20% excluding VAT. Symmetric is to comply with this requirement until the FCA is satisfied that the appropriateness of commission invoices has been reviewed by a Skilled Person and any recommended changes have been completed by Symmetric to the FCA's satisfaction.
 - 3) Symmetric will, in the event of the appointment of a Skilled Person:
 - a) Take account of the recommendations made by the Skilled Person in relation to the undertaking of remedial work of its claims management policies and procedures in relation to the issues identified in this Notice; and
 - b) Take account of the recommendations made by the Skilled Person in relation to its payment of redress for its handling of existing and new claims on and after 1 April 2019.
 - 4) By close of business on, or before, 7 December 2021, Symmetric must notify in writing all customers affected by the requirements at sub-paragraphs (1) and (2) of the effect of these requirements. The notifications must be in a form to be agreed in advance with the Authority.
 - 5) Once the notifications referred to in sub-paragraph (4) have been made, within 24 hours of those notification, Symmetric must provide to the Authority:
 - a) Copies of the template notifications sent to all recipients referred to in sub-paragraph (7).
 - b) A list of all parties to whom notifications have been sent pursuant to sub-paragraph (7).
 - c) Confirmation that, to the best of its knowledge, Symmetric has sent notifications pursuant to sub-paragraph (7) to all relevant parties.
 - 6) An employee holding a senior management role of Symmetric must send to the Authority by email by 12 noon every Friday (or the following business day should the Friday fall on a Bank Holiday), until such time as it is notified otherwise in writing by the Authority, written confirmation that Symmetric is in compliance with the Requirements.
- 1.4 The Requirements shall take immediate effect and remain in force unless and until varied or cancelled by the Authority (either on the application of Symmetric or of the Authority's own volition).

2 REASONS FOR ACTION

Summary

- 2.1 The FSN notified the Firm that the Authority had decided to impose Requirements under sections 55L(2) and (3) of the Act to impose the Requirements on Symmetric because it is failing, or is likely to fail, to satisfy the Suitability Threshold Condition (paragraph 2E of Schedule 6 to the Act). The FSN also notified the Firm that the Authority considered that the action was desirable in order to advance the Authority's operational objective of securing an appropriate degree of protection for consumers (section 1C of the Act).
- 2.2 The FSN identified that the Authority has identified serious concerns relating to Symmetric in that it appears to have breached:
- Principle 2 (skill, care and diligence) by charging customers for claims it had presented which were unsubstantiated, and in some instances where the Firm knew, or held evidence, that no PPI existed;
 - Principle 3 (management and control) by failing to organise and control its affairs responsibly, including failing to protect vulnerable customers, and failing to hold adequate records for customers; and
 - Principle 6 (customers' interests) by charging customers excessive, unfair and duplicated charges, charging customers fees in excess of the PPI cap, and charging customers for the pursuit of PPI contracts when the Firm held evidence these did not exist.
- 2.3 The FSN notified the Firm that the Authority considered that the imposition of the Requirements should take immediate effect because it has serious concerns that the Firm is breaching the FCA's Threshold Conditions, namely the Suitability Threshold Condition. The Requirements have the effect, amongst other things, of stopping the Firm from pursuing any outstanding, or issuing any new, invoices for breach of contract or cancellation to customers. In addition, the Authority considers that the imposition of these requirements is necessary and proportionate in order to advance its consumer protection objective.
- 2.4 On the basis of the facts and matters described in this Notice, having considered the Representations made by Symmetric in respect of the FSN, the Authority considers that the imposition of the Requirements continues to be necessary and appropriate. Symmetric's Representations, and the Authority's response to them, are set out in Annex 2 to this SSN.

3 DEFINITIONS

- 3.1 The definitions below are used in this Second Supervisory Notice:

"the Act" means the Financial Services and Markets Act 2000;

"the Application" means the Application for Authorisation submitted by Symmetric under section 55A of the Act for Part 4A permission to carry on the regulated activities;

"the Authority" means the Financial Conduct Authority;

"the Client Files" means the sample of 20 randomly selected client files obtained from the Firm, drawn from a population of customers who received an invoice for

either breach of contract or cancellation for the period 1 January 2021 to 8 June 2021, which were reviewed by the Authority;

“CMCOB” means the Claims Management: Conduct of Business sourcebook in the Authority’s Handbook;

“the CMO” means the Claims Management Ombudsman, part of the FOS;

“the CMR” means the body that before 1 April 2019 was known as the Claims Management Regulator, part of the Ministry of Justice;

“DISP” means Dispute Resolution: Complaints in the Authority’s Handbook;

“Final Decision” means a decision issued by the FOS in writing;

“the FOS” means the Financial Ombudsman Service;

“FSN” means the First Supervisory Notice, issued to the Firm on 30 November 2021;

“Handbook” means the Authority’s online handbook of rules and guidance (as in force from time to time);

“IVA” means Individual Voluntary Arrangement, which is a formal and legally binding agreement between an individual and their creditors that the individual will pay their debts back over a period of time;

“MI” means management information;

“PPI” means Payment Protection Insurance;

“Representations” means the representations received from the Firm in response to the FSN;

“Requirements” means the terms set out in section 1 above;

“Skilled Person” means a person appointed under section 166 of the Act, and defined under section 166(6) of the Act;

“SSN” means this Second Supervisory Notice;

“Supervision” means the Authority’s Supervision Division;

“Symmetric” or “the Firm” means Symmetric Systems Limited trading as Bank-Smart;

“Threshold Conditions” are the minimum requirements that firms need to meet in order to be authorised and to continue to carry on regulated activities as set out in Schedule 6 to the Act;

“TP” means temporary permission under Article 80 of the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018;

“Tribunal” means the Upper Tribunal (Tax and Chancery Chamber); and

“VREQ” means voluntary requirements within the meaning of s55L(5) of the Act.

4 FACTS AND MATTERS

Background

Symmetric's regulatory status and permitted regulated activities

- 4.1 The Firm is a claims management company which seeks out and administers financial services or financial product claims. The Firm is remunerated primarily through success fees, which are calculated as a percentage of redress awarded to customers in the event of a successful claim. It trades as Bank-Smart.
- 4.2 The Firm was incorporated on 10 August 1999 and has a sole director and owner. The Firm became authorised by the CMR on 30 May 2007 to provide claims management services. Prior to this the Firm's main business was IT consultancy.
- 4.3 Since 1 April 2019, the Firm has held TP to carry on claims management services under the FCA's claims management TP regime. Firms that have registered for TP are expected to comply with FCA standards. On 4 June 2019, a Dear CEO letter was issued to the claims management sector, reminding it of the Authority's expectations in relation to claims management customers. These expectations included:
 - *"You must [...] act honestly fairly and professionally (CMCOB 2.1.1) in the best interests of your customer"; and*
 - *"You must ensure that you can comply with our requirements on the steps you take before you act for a customer or submit a claim. You must not make or pursue a claim if you know or have reasonable grounds to suspect the claim does not have a good arguable base [...] (CMCOB 2.1.7R). You should take all reasonable steps to investigate the existence and merits of a potential claims before making or pursuing a claim (CMCOB 2.1.8G)";*
 - *"To meet [...] Principle 2 (Skill, care and diligence), your firm's investigations should enable it to make representations when presenting a claim which:
 - (a) *Substantiate the basis of the claim;*
 - (b) *Relate to the nature of the claim and are specific to the claim; and*
 - (c) *Are not false, misleading or an exaggeration".**

Symmetric's regulatory history

- 4.4 On 31 May 2019 the Firm submitted the Application seeking authorisation for:
 - i. Agreeing to carry on a regulated activity;
 - ii. Seeking out, referrals and identification of claims or potential claims;
 - iii. Advice, investigation or representation in relation to a financial services or financial product claim.
- 4.5 The Authority has not yet determined the Application. The Application stated a projected income of just over £1million, with 13% of that deriving from the recovery of costs where a customer cancels their claim or fails to engage in the process. Its projected customer numbers of 50,000 within 12 months of obtaining full authorisation. As of 12 February 2021, the Firm had 131,486 clients.

- 4.6 The deadline for submitting claims for mis-sold PPI was 29 August 2019. In 2019 the Firm initiated 374,393 claims, a 4776% increase from the 7,839 of 2018; 699 claims were initiated in 2020. The scale of the Firm's growth (and in particular the huge increase in claims submitted in the run up to the PPI deadline) means that any issues identified by the Authority may affect a far higher number of customers than if growth had been in line with the Firm's expectations. The Authority is concerned that this business model focusses on submitting very high volumes of PPI claims at the expense of compliance with FCA rules. The impact of such an approach is poor customer treatment and outcomes.
- 4.7 In the Application, the Firm stated its projected annual income from claims management activities to be £1,031,150, with 87% of that income arising from commission invoices, and the remaining 13% from the recovery of costs where a customer cancels their claim or fails to engage in the process. The Firm had 30,000 customers at the point it submitted the Application and projected that this would rise to 50,000 within 12 months of obtaining full authorisation. The Authority considers that the bulk of the Firm's value lies in its Current Claims Book and its Book of Unpaid Fees.
- 4.8 Since 1 April 2019, the Authority has received in excess of 100 inbound queries from the Firm's customers, many of whom expressed dissatisfaction at being pursued for payment of invoices despite their claims not having been successful. Issues identified by Supervision in its review of these complaints included:
- in a significant portion of complaints, consumer concerns around invoicing and debt collection for cancellation or breach of contract;
 - consumer concerns that the firm is acting without their consent;
 - consumer concerns around commission invoicing;
 - the inability of consumers to contact the firm; and
 - consumers having received unsolicited contact from the firm.
- 4.9 In respect of the consumer concerns around invoicing and debt collection for cancellation or breach of contract, these included:
- Invoicing customers for breach of contract fees in circumstances where it did not know if there was a PPI contract and had not ascertained that there was a good arguable case;
 - Invoicing customers where the Firm held evidence that no PPI existed;
 - Poor treatment of vulnerable customers; and
 - Excessive charges, including customers being charged multiple times for the scanning and verification of the same Letters of Authority across different claims
- 4.10 In order to understand the Firm's most recent business, the Authority requested further evidence from the Firm. This evidence shows that:
- Between 1 January 2021 and 5 July 2021, the Firm recorded 138 complaints, of which 89 were in relation to cancellation or breach of contract invoices;
 - Between 1 January 2021 and 8 June 2021, 4,891 invoices were issued against 2,553 clients with a total sum owed of £1,471,192.42. This was significantly higher than the projected income from claims management activities of £1,031,150 per year projected in the Application.
- 4.11 The Firm has raised concerns with the Authority that the complaints received by the Authority may not be representative of its customer base or a fair reflection of

the Firm's approach. In acknowledgment that the Firm had raised these concerns, and in order to understand the Firm's invoicing more comprehensively, since this was the main subject of complaints, the Authority obtained and reviewed 20 randomly selected Client Files from this subset (clients who had received an invoice for breach of contract or cancellation) from the period between January and June 2021. This period was selected as the six months immediately before the analysis was conducted and therefore most likely to be reflective of Symmetric's current and ongoing approach. Supervision used a sampling methodology to extrapolate from this the likely extent of the issues identified across the total population of breach of contract and cancellation invoices. The use of a sampling methodology, extrapolating from a smaller number of randomly selected cases to a wider population or group, is a proven approach.

4.12 The Client Files reveal apparent CMC OB rule breaches by the Firm, with at least one rule breach identified across every one of the Client Files, which give rise to serious concerns in relation to the Firm's conduct of its business and treatment of customers. These include charging customers for having pursued PPI claims when there was evidence on the customer file that no PPI existed; pursuing cases where there was no evidence or assessment of whether there was a good arguable case for PPI, and charging customers for this; where PPI claims were successful, charging customers significantly above the PPI success fee cap; and charging unfair and excessive fees to customers, including vulnerable customers. It is notable that the issues identified in the Client Files review mirror those identified within the consumer complaints about the Firm's invoicing. This reinforces the Authority's view that the breaches identified within the Client Files are systemic.

Failings and risks identified

4.13 The Authority's reviews of the Client Files demonstrates significant failings by the Firm in its handling of cancellation and breach of contract invoices between January and July 2021. The Authority conducted an initial review prior to the issuance of the FSN which identified that the Firm pursued unfair and excessive charges across all of the Client Files, in breach of the Firm's obligations as a claims management firm under CMC OB.

4.14 Since the issuance of the FSN, the Authority has undertaken a further review of the client files and updated its findings. The Authority's updated findings continue to support the Authority's initial view that there are significant failings in the Firm's handling of the cancellation and breach of contract invoices.

4.15 The breaches identified by the Authority include:

- charging customers unreasonable amounts where a customer has terminated their agreement with the Firm, in breach of CMC OB 2.1.12R(4);
- pursuing claims without establishing that the claim has a good arguable base or taking steps to investigate the potential merits of the claim, in breach of CMC OB 2.1.7R(1), and charging customers fees for the pursuit of these claims;
- charging customers fees in relation to a claim in respect of PPI without establishing that there was any evidence that the relevant PPI contract existed, in breach of CMC OB 2.1.14R(2); and
- charging customers in excess of the PPI cap of 20% plus VAT.

4.16 The Authority's reviews have also uncovered instances where the Firm has failed

to appropriately protect vulnerable customers, by pursuing claims where the customer is likely to face significant charges and continuing to charge excessive fees when there is clear evidence that the customer is unable to pay the amounts invoiced, in breach of CMCOB 2.1.2R.

4.17 The Authority selected a confidence level of 95%. This means that, if 100 random samples were drawn from the same population, in 95 out of the 100 samples, the 'true' population value would lie within the upper and lower bounds given by the statistical calculation. At a 95% confidence level, a sample of 20 will (generally speaking) give upper and lower bounds of +/-22% around a pin-point estimate (where the pin-point estimate is the level of failings identified in the sample). In determining the parameters for the sampling exercise, it was necessary to make an assumption about the incidence level in the population.

4.18 In producing its methodology, the Authority has assumed an incidence level of 50% - where one does not know the incidence level in the population, assuming it to be 50% means that the resulting range (between the upper and lower bounds) will, with other conditions remaining the same, be at its largest. In order to ensure that the sampling exercise allowed for robust conclusions to be drawn from the statistical inference, for the purposes of its assessment of the Client Files the Authority elected to treat the lower bound as the 'true' level of failings in the population. This gives the benefit of any doubt to the firm (especially considering that the probability that the 'true' value lies at a particular point within the upper and lower bound is not uniform but shaped like a bell with the peak towards the centre of the range).

4.19 The concerns identified in the Client File review are summarised below. The table contains the number of files failing across the Client Files, and also the lower bound percentage failure if this is extrapolated out across the total population of those invoiced for cancellation and / or breach of contract. The Authority considers that the lower bound percentage failure, based on the use of the sampling methodology described above, allows robust conclusions to be drawn about the statistical inference from the Client Files:

Concerns Identified by Supervision	Number of Client Files with those Concerns (across 20 Client Files)	Failing level in population (lower bound percentage)
No evidence of assessment of good arguable base for claims (CMCOB 2.1.7R)	19	76%
Charging of fees where no evidence a PPI contract existed (CMCOB 2.1.14R(2))	9 (confirmed no PPI)	26%
Excessive / unreasonable charges (CMCOB 2.1.12(R)(4))	8	22%
PPI fees in excess of fee cap (s29(3) Financial Guidance and Claims Act 2018)	5	11%
Failure to protect vulnerable customers (CMCOB 2.1.2R)	5	11%

4.20 The above summary includes the following findings:

- non-compliance with CMCOB 2.1.7R in all files where new claims had been pursued in 2019;

- non-compliance with 2.1.12R for all clients who had received one or more cancellation invoices (a total of eight clients);
- Nine clients who received invoices in instances where the firm knew, or ought to have known, that PPI did not exist;
- Across the 20 client files, 17 files contained instances of fee charging without any evidence that a PPI policy existed;
- Of the six files which contained one or more PPI commission invoices, five files contained commission rates which exceed the PPI fee cap; and
- A further instance of the firm failing to identify and protect a vulnerable customer.

4.21 In all Client Files where breach of contract invoices had been issued (15 client files), the Authority found charges which it considers to be unjustified, unreasonable and/or excessive.

4.22 The Firm indicated to the Authority in June 2021 that it was putting cancellation and breach of contract invoices on hold until 1 December 2021 while the Authority conducted its review of the Client Files, although it later qualified this by stating that this would not apply where legal proceedings had commenced in relation to collection of outstanding fees. The FSN was issued prior to the expiry of this period, so the Firm has not restarted issuing these invoices due to the requirements imposed in the FSN.

Pursuit of a claim without a good arguable base (CMCOB 2.1.7R)

4.23 Claims management firms were reminded of their obligations in relation to the pursuit of claims where there is not a good arguable base in the Dear CEO letter of 4 June 2019.

4.24 Nineteen of the Client Files demonstrate no evidence of the Firm conducting an information gathering exercise in relation to potential claims in order to allow it to assess whether the claims had a good arguable base. This gives a lower bound percentage failure of 76% across the client population receiving invoices for breach of contract and cancellation. As an absolute minimum, for a PPI claim, the Authority would expect the Firm to have verified that PPI existed before deciding that continuing to pursue a claim was worthwhile and in the best interests of the customer. However, in most instances the Firm did not ask the customers nor the counterparties whether a PPI policy was ever in force. Instead, potential claims appear to have been identified by extracting a list of lending accounts from credit files supplied to the Firm by its customers in response to pre-deadline marketing information. These customers have then been charged by the Firm for the pursuit of the claims, despite the Firm having apparently acted in breach of CMCOB 2.1.7R.

4.25 The deadline for submitting claims for mis-sold PPI was 29 August 2019. The Firm initiated nearly 375,000 claims in 2019, a 4676% increase in claims submitted since the previous year. The Authority acknowledges that in the run-up to the deadline, counterparties accepted the submission of claims where there was insufficient time for the existence of PPI contracts to be checked. Given the high volume of claims submitted by the Firm in the run-up to the deadline, it appears highly likely that the Firm submitted many of these without ascertaining whether PPI contracts existed. The issue identified here by the Authority is that the Firm appears to have automatically treated claims it submitted as claims which had merit, continued to pursue them despite having no evidence of PPI, and then held customers liable for its costs.

4.26 The Firm has informed the Authority that “we do not store data for confirmation of PPI or charges as a particular field on our database, however we have used other markers [...] which indicate that of the 17,084 claims currently breached or cancelled, 10,651 currently have none of the above obvious markers for confirmation of PPI or charges although it is highly probable a large number of those do have some form of evidence within our physical client files/records”. 3,218 of these 10,651 claims were submitted shortly before the PPI deadline. It appears from this that, on the Firm’s own markers, 62% of invoices for breach of contract or cancellation relate to Client Files where it cannot readily identify PPI – and thus where customers are being charged for claims pursued without a good arguable base. This is consistent with the pattern observed in the Client File review.

4.27 Following feedback from the Authority, the Firm conducted a manual review to identify instances where customers had been charged for breach of contract or cancellations where no PPI marker existed on file. As at 23 July 2021, the Firm had reviewed 4,306 invoices (of the 6,134 it was including in its review) and waived £53,322.94 across 181 invoices, and refunded £10,651.59 as a result of its review. This outcome of this review demonstrates how widespread the issue is. Furthermore, although the Firm was alerted to the issue by the Authority in February 2021, the Client Files (which are drawn from between January and June 2021) include files where the same issues occurred, strongly suggesting that errors have continued to be perpetuated by the Firm and that it has not understood the underlying concerns and rules. The results of the Firm’s manual review further demonstrate the extent to which it has submitted claims without a good arguable base, and then charged customers for the submission of such claims.

Charges where no PPI contract: CMC OB 2.1.14R(2)

4.28 Nine Client Files contain instances where customers were charged fees for cancellation of PPI claims despite the Firm having evidence on file that no PPI existed on the accounts, or having information which would lead the Firm to reasonably conclude that PPI did not exist. This gives a lower bound percentage failure of 26% across the client population receiving invoices for breach of contract and cancellation. In two instances the invoice was later withdrawn, but the errors raise concerns in relation to the Firm’s processes followed prior to the issuance of invoices, and the potential for causing distress to customers through making such errors. Examples include:

- A charge of £345 in respect of a claim against a counterparty despite there being evidence on the file that the counterparty had stopped selling PPI before the customer opened the account with the counterparty;
- A charge of £550.20 for cancellation of three PPI claims where the Firm had evidence on file that no PPI claim existed; and
- A charge of £1,600 for breach of contract when a customer failed to provide further evidence in respect of 9 claims for which the firm held evidence that the accounts were opened after the selling of PPI had ceased.

Unreasonable charges upon cancellation: CMC OB 2.1.12R(4)

4.29 Under CMC OB 2.1.12R(4), where a customer terminates an agreement (after the initial 14-day cancellation period) the firm must not charge the customer an amount in excess of what is reasonable in the circumstances and reflects the work

undertaken by the firm.

4.30 Eight of the Client Files contain invoices for cancellation of the claims, and in all eight the Authority identified instances of unreasonable and/or excessive sums being charged. This gives a lower bound percentage failure of 22% across the client population receiving invoices for breach of contract and cancellation. These include three examples of excessive charges for cancellation of the claims where there is no evidence that the Firm undertook any work in relation to the claims or informed the companies about the claims.

4.31 Examples of excessive charges include the following:

- Charging £90 per claim for the uploading and verification of a single Letter of Authority containing multiple claims. This has resulted in charges of £810 in respect of one customer who signed an LoA containing nine claims, and £3,600 for another who signed two LoAs containing 40 claims;
- £90 cancellation fee per claim when no evidence the Firm did any work on the claims;
- Customer charged £118.75 plus VAT where the PPI claim appears not to have been made in time for the deadline; and
- Charge of £1620 for cancellation of 18 default charges claims where there is no evidence the Firm pursued these claims or gathered any evidence to investigate the potential merits of the claims.

Unreasonable charging for breach of contract

4.32 In matters relating to breach of contract, the Firm is entitled to recover its reasonable costs, but is not entitled to recovery of damages that could have been reasonably mitigated. In all 15 Client Files which contained breach of contract invoices, examples of unreasonable sums were identified. Examples include:

- Charges for the same letter being duplicated across all claims. One customer, who received four reminder letters between March 2020 and January 2021, was charged £240 plus VAT for those letters, as each claim incurred a fee of £12 each time the letter was sent. This pattern was seen for all clients who had outstanding information on more than one claim;
- One customer incurred additional costs of £150 plus VAT for the issuance of the breach of contract invoice itself;
- Costs of £168 being added to a customer's breach of contract invoice, when the Firm ought to have known that the claim was without merit; and
- One customer who was charged £71.25 plus VAT for the Firm's costs in sending her the settlement cheque for the upheld Plevin aspect of the claim. She was ultimately charged a total of £474.30 for failing to agree to refer the unsuccessful mis-sale aspect of the claim to FOS.

Charges in excess of the PPI Fee Cap

4.33 Under section 29(3) of the Financial Guidance and Claims Act 2018, the fee cap applicable to regulated claims management activity in connection with a PPI claim is 20% of the amount recovered, exclusive of VAT. The PPI fee cap came into force

on 10 July 2018, was not retrospective, and applies to all agreements that were entered into on or after 10 July 2018.

4.34 The Firm has sought to rely upon pre-July 2018 contracts with a number of clients within the Client Files in order to seek to justify fees in excess of the PPI fee cap. However, the Authority considers that in relation to two categories of customers, the Firm's reliance upon these contracts is unreasonable and that Symmetric has systematically breached the PPI fee cap in relation to them:

Ex-CMC Clients acquired by Symmetric

- Seven customers in the sample had contracts with an ex-CMC (all of which had been signed with the ex-CMC before July 2018). Their contracts were assigned to the Firm in March 2019 and not novated. The Authority therefore considers, while the Firm might have acquired the rights to collect fees for any work earned by the ex-CMC, it did not acquire the ability to submit new claims on behalf of those customers. The Firm did not have its own separate contracts with these customers. The contracts with the ex-CMC detailed a rate of 39% commission payable on successful claims. For the two clients in the Client File sample who held contracts with the ex-CMC, Symmetric charged a rate of 32% plus VAT on the redress payments; and
- In the absence of a new contract with the seven ex-CMC clients, the Authority accepts that the date of agreement between Symmetric and the clients to be the date the customers signed new letters of authority to undertake new claims, all of which post-date the 20% fee cap legislation. As such the Authority does not consider that the Firm is entitled to charge these customers commission in excess of the 20% fee cap.

Prior contracts

- Eight customers in the sample had previously engaged the Firm's services in relation to claims, although only seven of them pursued new claims in 2019, signing new letters of authority. The Authority considers that two of those customers would have reasonably understood their original contracts to be terminated (due to a lapse of seven years and nine years respectively since those customers had last engaged with Symmetric); one customer's original contract was for the pursual of unfair charges claims only; for three customers, the Firm did not supply a copy of the original contract.

4.35 While the Authority accepts that there may be instances of certain customers being reasonably regarded as existing customers, it does not automatically follow that every individual who had used Symmetric's services in the past would remain in an everlasting contract with the Firm: such instances need to be assessed on an individual basis. However, the Authority does not accept Symmetric's view that any previous customer would remain an existing customer to whom the fee cap would not apply.

4.36 In five instances, the Firm charged customers an amount in excess of the PPI fee cap, at between 25 and 32% plus VAT. This gives a lower bound percentage failure of 11% across the client population receiving invoices for breach of contract and cancellation. In addition to the instances identified in the Client Files, the Firm's complaints register (which covers the period 1 January 2021 to 5 July 2021) includes three complaints categorised as "Fees in excess of claim management cap". None of these complaints were upheld, and for all three the resolution is

detailed as "*Explained contract*". The Authority only identified one instance in the Client Files of the PPI fee cap being complied with.

4.37 The Firm has received two legally binding Final Decisions on its charging of commission in excess of the PPI fee cap, on 22 February 2021 and 23 September 2021. These related to the Firm using pre-July 2018 contracts with customers to seek to justify charging fees in excess of the fee cap for claims initiated after the fee cap was introduced. FOS determined in both cases that this was not appropriate. The Authority would have expected the Firm to have given appropriate weight to these decisions, reviewing its fee charging, and amended it to comply with the fee cap in situations where the PPI claim was made from July 2018 onwards. In its letter of 1 April 2021, when asked about the reasons why the Firm might provide redress to a customer, the Firm said "*we may decide to provide a refund if we believe that we are likely to be instructed by the FOS to pay compensation to a client... We do not believe that we should automatically uphold the client's complaint in these situations*". The Authority considers that by failing to take account of the relevant rules and guidance in DISP 1.3, the Firm is continuing to knowingly charge fees which breach the Financial Guidance and Claims Act 2018 and failing to take the necessary remedial action in respect of those customers who have already paid too much to the Firm.

Vulnerable Customers

4.38A vulnerable customer is someone who, due to their personal circumstances, is especially susceptible to harm, particularly when a firm is not acting with appropriate levels of care. Examples of vulnerability can include physical or mental disabilities or ill-health, over-indebtedness, inadequate income, low emotional resilience, and low knowledge or confidence in managing finances.

4.39A claims management firm must establish and implement clear, effective and appropriate policies and procedures to identify and protect vulnerable customers, and where a customer is vulnerable the firm is expected to take additional steps to ensure that the customer understands the agreement (CMCOB 4.3.3G).

4.40The Authority considers that five of the Client Files relate to customers who, in its view, ought to have been treated as vulnerable customers. This gives a lower bound percentage failure of 11% across the client population receiving invoices for breach of contract and cancellation.

4.41While it is unclear whether the Firm identified these customers as vulnerable, the Authority considers that the evidence on their files shows that the Firm's actions in relation to these customers fell far short of the standards expected of a regulated firm.

- The Firm failed to investigate further three instances where customers were in IVAs (which would indicate potential vulnerability due to financial hardship);
- No evidence that the Firm had taken one customer's vulnerability into account when invoicing him, when the Firm had substantial evidence of the vulnerability and the customer indicated he had no recollection of the transactions, believed his contract with the Firm had been terminated;

- One customer charged almost £4,500 in cancellation fees when she had made multiple references to being disabled and stressed in correspondence, had significant creditors, and was in an active IVA at the point when the claims were initiated. The Firm's cancellation fees worsened her financial situation considerably. The Firm's response to her complaint letter was to halve her fees and allow her to pay at the rate of £5 per month, which would result in it taking her almost 40 years to pay her debt; and
- One customer outlined various physical ailments to the Firm and indicated that he was struggling and only received Employment Support Allowance. His credit file shows financial hardship. The Firm proceeded with his claims knowing that due to fees, the customer's debt was likely to significantly increase. He currently owes the Firm £2,767.29 and is paying this back at £20 per month, which will take 11 ½ years for him to repay.

4.42 The actions taken by the Firm in relation to the vulnerable customers strongly suggest that the Firm is not dealing with them appropriately. The Firm informed Supervision in July 2021 that it had 303 clients marked "*with either a VP [vulnerable person] or a Vulnerable Person alert. However, this number is not exhaustive*". The Firm's acknowledgement that the number identified is not exhaustive suggests that the Firm has no clear method for recording or monitoring vulnerable customers, and is unsure of its vulnerable customer population, presenting a high risk of consumer detriment. The Authority is also concerned that this number identified by the Firm appears exceptionally low, given that 20% of the Client Files related to vulnerable customers.

4.43 The Firm's internal review of invoices had, by 23 July 2021, identified 198 vulnerable customers across the 4,306 invoices reviewed at that time (4.5%). Although this percentage remains very low, if applied across the customer population it would mean that approximately 6,500 of the Firm's customers are likely to be vulnerable: far higher than the 303 originally identified by the Firm. Based upon this, and the Client File review, the Authority considers that the Firm is failing to identify and treat vulnerable customers appropriately.

Management Information, Customer Records and Regulatory Compliance

4.44 The Client Files were disorganised, with no clear system in place for organisation. They contain no evidence that the Firm has conducted any quality assurance across them. In addition, further information provided by the Firm has revealed key failures in the management information held in relation to its customers. In particular:

- The Firm's admission that "*10,651 currently have none of the above obvious markers for confirmation of PPI or charges although it is highly probable a large number of those do have some form of evidence within our physical client files/records*" demonstrating a clear failure to record key information adequately;
- The pursuit of claims (and charging customers for these) where evidence was held by the Firm that no PPI existed, demonstrating that record keeping failures were a cause of the Firm taking actions which were to the detriment of consumers; and
- Duplicate charging of consumers, leading to excessive charges; and

- A failure to act appropriately to protect vulnerable customers, resulting in consumer harm.

4.45 The Authority considers that the Firm's poor record-keeping and MI appears to have hampered the Firm's abilities to meet its regulatory obligations of the protect customers and treat them fairly, and which has hindered the Firm in meeting its regulatory Supervision's assessment of the Firm's regulatory compliance in relation to customer treatment.

4.46 On 22 October 2021, the Firm sent Supervision a letter stating that it has "*sought to strengthen and align around principles 6, 7, 9 and 11*" and was making amendments to processes "*to exhibit how we are treating customers fairly and working with their interests at heart*". In particular, the Firm indicated that by 15 November 2021, it would implement processes including:

- The withdrawal of all outstanding cancellation invoices where a formal complaint has not been made to the lender/business;
- The introduction of a cap of £40 plus VAT for individual chargeable tasks on cost-based invoicing and a review of all other costs;
- A client cap of £2,500 plus VAT on breach of contract and cancellation invoices, with a cap of £400 plus VAT for each individual claim; and
- A review of all costs and recalculation of all outstanding breach of contract and cancellation invoices, writing to every affected customer confirming the results of the review, and reporting the results to the FCA.

4.47 The Authority does not consider that these proposals sufficiently mitigate the risk of consumer harm, in particular:

- While the fee caps will have a positive impact, they do not address the root cause of the problem;
- The fee caps on individual tasks will have limited impact since few tasks costs currently exceed £40 plus VAT;
- The review of costs and recalculation does not appear to envisage any payment of redress where appropriate; and
- They do not address the underlying root cause of the failings or risk of harm to consumers and provide no reassurance that the Firm understands or accepts the failings identified.

4.48 The Authority considers that the proposed changes outlined to Supervision by the Firm do not address its underlying concerns that the Firm is not applying or seeking to apply the rules in CMC0B. The Authority considers that even if the proposed changes were applied by the Firm, it would be continuing to be breaching threshold conditions since the changes would not resolve the concerns about the Firm's ability to organise and control its business responsibly and effectively, or to act with due skill, care and diligence.

4.49 The Firm provided a proposed draft VREQ to the Authority on 11 February 2022. The Authority considers that the Requirements proposed within the draft VREQ by the Firm, particularly in relation to its proposed approach to the issuance of invoices for breach of contract and cancellation, demonstrate a lack of understanding by the Firm as to the concerns identified by the Authority and the potential risk of harm to customers caused by the Firm. The Authority's assessment of these proposed Requirements is set out in more detail within Annex 2 below.

5 CONCLUSION

- 5.1 The regulatory provisions relevant to this Second Supervisory Notice are set out in Annex 1.

Analysis of failings and risks

- 5.2 Taking the above matters together, the Authority considers that the Firm has breached CMCOB 2, and Principles 2, 3 and 6 in that the Firm has failed to ensure that its affairs are conducted in an appropriate manner having regard in particular to its customers namely by:
- Pursuing groundless PPI claims and charging unfair and excessive invoices to customer based upon these, charging fees above the PPI cap, and failing to act in compliance with its obligations as a claims management company under CMCOB;
 - Failing to act with due skill, care and diligence, in breach of Principle 2, in particular through the pursuit of PPI without good arguable grounds and the charging of customers for this;
 - Failing to manage its business in a such a way as to ensure that its affairs will be conducted in a sound and prudent manner, in breach of Principle 3, in particular by failing to have an appropriate system of control in place to comply with the standards required of claims management companies under CMCOB, and by failing to have adequate consumer records which have resulted in unfair and excessive charges to customers; and
 - Failing to treat customers fairly through the charging of excessive and unfair invoices, and through its treatment of vulnerable customers, in breach of Principle 6.

Failure to satisfy the Threshold Condition

- 5.3 Based on the facts and matters relied on, the Authority has serious concerns about Symmetric's compliance with the Threshold Conditions, in that Symmetric is failing, or is likely to fail, to satisfy the Suitability Threshold Condition (paragraph 2E of Schedule 6 to the Act).
- 5.4 The Threshold Conditions are minimum requirements that firms need to meet in order to be authorised and to continue carrying on regulated activities. The Authority considers that Symmetric is failing, or is likely to fail, to satisfy those minimum requirements. In particular:
- The Firm appears not to be conducting its affairs in an appropriate manner and does not appear to have regard to the interests of consumers, as is evident from the Firm's conduct of customer claims handling and invoicing, and breaches of Principles 2, 3 and 6 (COND 2.5.1A(1)(c));
 - The Firm's consumer records and management information, and in particular its identification of vulnerable customers, and breaches of Principle 3 and CMCOB 2.1.2R, suggest that those that manage the Firm's affairs may not have adequate skills and experience to act with probity (COND 2.5.1A(1)(e)); and
 - The Firm's business appears not to be being managed in such a way as to ensure that its affairs will be conducted in a sound and prudent

manner, as is evident from its breaches of Principles 2 and 3 (COND 2.5.1A(1)(f)).

The Authority's operational objectives

- 5.5 The Authority's operational objective of consumer protection requires the Authority to ensure an appropriate degree of protection for consumers (section 1C(1)).
- 5.6 The Authority has concluded, in light of the matters set out above, that it is appropriate to exercise its own-initiative power under sections 55L(2) and (3) of the Act by imposing the Requirements on Symmetric.
- 5.7 The Authority considers that the Requirements are a proportionate means to address the current and immediate risks and are desirable in order to advance the Authority's operational objective of consumer protection.

Timing and duration of the Requirements

- 5.8 It is necessary to impose the Requirements on an urgent basis given the seriousness of the risks in accordance with EG 8.3.3(1) which provides that the Authority may impose a requirement so that it takes effect immediately where there is information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests.
- 5.9 The Authority considers that it is necessary for the Requirements to remain in place until such time as the Authority is satisfied that they can be lifted.

6 PROCEDURAL MATTERS

- 6.1 This Second Supervisory Notice is given under sections 55Y(7)(b) and 55Y(8)(c), and in accordance with section 55Y(9) of the Act, and is being served on Symmetric at its principal place of business as last notified to the Authority.

Decision-maker

- 6.2 The decision which gave rise to the obligation to give this Second Supervisory Notice was made under Executive Procedures.
- 6.3 The following statutory rights are important.

Representations

- 6.4 Annex 2 contains a brief summary of the key representations made by the Firm and how they have been dealt with. In making the decision which gave rise to the obligation to give this Notice, the Authority has taken account of all Representations made by Symmetric.

The Tribunal

- 6.5 Symmetric has the right to refer the matter to which this Second Supervisory Notice relates to the Tribunal. The Tax and Chancery Chamber is the part of the Tribunal which, amongst other things, hears references arising from decisions of the Authority. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, Symmetric has 28 days from the date on which this Second Supervisory Notice is given to it to refer the matter to the Tribunal.
- 6.6 A reference to the Tribunal can be made by way of a reference notice (Form FTC3)

signed by or on behalf of the Firm and filed with a copy of this Second Supervisory Notice. The Tribunal's contact details are: The Upper Tribunal, Tax and Chancery Chamber, 5th Floor, Rolls Building, Fetter Lane, London EC4A 1NL (telephone: 020 7612 9730; email: uttc@hmcts.gsi.gov.uk).

- 6.7 Further information on the Tribunal, including guidance and the relevant forms to complete, can be found on the HM Courts and Tribunal Service website: <http://www.justice.gov.uk/froms/hmcts/tax-and-chancery-upper-tribunal>
- 6.8 Symmetric should note that a copy of the reference notice (Form FTC3) must also be sent to the Authority at the same time as a reference is filed with the Tribunal.

Confidentiality and publicity

- 6.9 Symmetric should note that this Second Supervisory Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining legal advice on its contents).
- 6.10 Symmetric should note that section 391(5) of the Act requires the Authority, when this Second Supervisory Notice takes effect, to publish such information about the matter to which the notice relates as it considers appropriate.

Authority contacts

- 6.11 Any questions regarding the procedures of the Executive Decision Maker should be directed to the Decision Making Secretariat by email: SPCDecisionMakingSecretariat@fca.org.uk

Decision made under Executive Procedures

Annex 1

RELEVANT STATUTORY PROVISIONS

1. The Authority's operational objectives established in section 1B of the Act include securing an appropriate degree of protection for consumers (section IC).
2. Section 55L of the Act allows the Authority to impose a new requirement on an authorised person if it appears to the Authority that the authorised person is failing, or likely to fail to satisfy the Threshold Conditions (section 55L(2)(a)), or it is desirable to exercise the power in order to advance one or more of the Authority's operational objectives (section 55L(2)(c)). This power is referred to as the Authority's own-initiative requirement power.
3. Section 55N of the Act allows a requirement to be imposed under section 55L of the Act so as to require the person concerned to take specified action (section 55N(1)(a)), or to refrain from taking specified action (section 55N(1)(b)). Section 55N(2) provides that a requirement may extend to activities which are not regulated activities.
4. Section 55P of the Act allows a requirement to be imposed under section 55L of the Act. Pursuant to section 55P(4)(a) of the Act, an assets requirement means a requirement prohibiting the disposal of, or other dealing with, any of the subject's assets (whether in the United Kingdom or elsewhere) or restricting such disposals or dealings. If the Authority gives notice of such a requirement to any institution with whom the subject has an account, the notice has the effects, for that institution, set out in section 55P(6) of the Act.
5. Section 55Y(3) of the Act allows a requirement imposed under the own-initiative requirement power to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is exercising its own-initiative power, reasonably considers that it is necessary for the requirement to take effect immediately (or on that date). Section 55Y(4) of the Act provides that if the Authority proposes to vary a Part4A permission, or to impose or vary a requirement, or varies a Part4A permission or varies a requirement, with immediate effect, it must give the authorised person written notice. Section 55Y(5) of the Act states that the notice must (a) give details of the variation of the permission or the requirement or its variation; (b) state the Authority's reasons for the variation of the permission or the imposition or variation of the requirement; (c) inform the authorised person that it may make representations to the regulator within such period as may be specified in the notice...; (d) inform the authorised person of when the variation of the permission or the imposition or variation of the requirement takes effect; and (e) inform the authorised person of its rights to refer the matter to the Tribunal. Section 55Y(7)(b) states that if, having considered any representations made by the authorised person, the regulator decides, if the permission has been varied or the requirement imposed or varied, not to rescind the variation of permission or the imposition or variation of the requirement, it must give the authorised person written notice. Section 55Y(9) states that a notice given under subsection (7) must inform the authorised person of their right to refer the matter to the Tribunal.
6. Section 391 of the Act provides that:

“[...]”

- (5) When a supervisory notice takes effect, the Authority must publish such information about the matter to which the notice relates as it considers appropriate.
 - (6) But the Authority may not publish information under this section if in its opinion, publication of the information would, be unfair to the person with respect to whom the action was taken or proposed to be taken [or] prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
 - (7) Information is to be published under this section in such manner as the Authority considers appropriate.”
7. The Threshold Conditions represent the minimum standards which a firm is required to satisfy, and continue to satisfy, in order to be given and to retain a Part 4A permission. They are set out in Part 1 B of Schedule 6 to the Act.

RELEVANT REGULATORY PROVISIONS

The Principles for Businesses

8. The Principles for Businesses (PRIN) are a general statement of the fundamental obligations of firms under the regulatory system. PRIN 1.1.2R provides that they derive their authority from the Authority’s rule-making powers as set out in the Act and reflect the statutory objectives. The Principles are set out at PRIN 2.1.1, and those which are of particular relevance to this Notice are:

Principle 2 (Skill, care and diligence) provides that a firm must conduct its business with due skill, care and diligence.

Principle 3 (Management and control) provides that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

Principle 6 (Customers’ interests) provides that a firm must pay due regard to the interests of its customers and treat them fairly.

The Threshold Conditions

9. The section of the Handbook entitled ‘Threshold Conditions’ (COND) gives guidance on the Threshold Conditions. COND 1.2.3G provides that the Authority may exercise its own-initiative powers under either section 55J or section 55L of the Act if, among other things, a firm is failing to satisfy any of the Threshold Conditions or is likely to do so.
10. COND 2.5.4G states that when assessing whether a firm will satisfy, and continue to satisfy, the Suitability Threshold Condition, examples of the kind of general considerations to which the Authority may have regard include, but are not limited to, whether the firm: (a) conducts, or will conduct, its business with integrity and in compliance with proper standards; (b) has, or will have, a competent and prudent management; and (c) can demonstrate that it conducts, or will conduct, its affairs with the exercise of due skill, care and diligence.
11. COND 2.5.1A states that A must be a fit and proper person having regard to all the circumstances including (c) the need to ensure that A’s affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and

the integrity of the UK financial system; (e) whether those who manage A's affairs have adequate skills and experience and act with probity; and (f) whether A's business is being, or is to be, managed in such a way as to ensure that its affairs will be conducted in a sound and prudent manner.

Claims Management: Conduct of Business sourcebook

12. The section of the Handbook entitled 'Claims Management: Conduct of Business sourcebook' (CMCOB) set out rules and guidance relating to regulated claims management activities.
13. CMCOB 2.1.2R states that a firm must establish and implement clear, effective and appropriate policies and procedures to identify and protect vulnerable customers;
14. CMCOB 2.1.7R states that a firm must not make or pursue a claim on behalf of a customer, or advise a customer to make or pursue a claim, if the firm knows or has reasonable grounds to suspect that the claim:
 - (1) Does not have a good arguable base;
 - (2) Is fraudulent; or
 - (3) Is frivolous or vexatious.
15. CMCOB 2.1.12R(4) states that where a customer terminates an agreement as in (2)(b) [the firm must permit the customer to terminate the agreement at any time after a period of 14 days, beginning on the day that the agreement is entered into], the firm must not charge the customer an amount in excess of what is reasonable in the circumstances and reflects the work undertaken by the firm.
16. CMCOB 2.1.14R(2) states a firm must not charge a fee to a customer in relation to claim in respect of a payment protection contract if there was no such contract between the customer and the person whom it was alleged was the counterparty to the contract.

The Enforcement Guide

17. The Authority's approach in relation to its enforcement powers is set out in Chapter 8 of the Enforcement Guide (EG), certain provisions of which are summarised below.
18. EG 8.1.1 reflects the provisions of section 55L of the Act by stating that the Authority may use its own-initiative power to impose requirements on an authorised person where, amongst other factors, the person is failing or is likely to fail to satisfy the threshold conditions for which the Authority is responsible (EG 8.1.1(1)), or it is desirable to exercise the power in order to advance one or more of its operational objectives (EG 8.1.1(3)).
19. EG 8.2.1 states that when the Authority considers how it should deal with a concern about a firm, it will have regard to its statutory objectives and the range of regulatory tools that are available to it. It will also have regard to the principle that a restriction imposed on a firm should be proportionate to the objectives the Authority is seeking to achieve (EG 8.2.1(2)).
20. EG 8.2.3 states that in the course of its supervision and monitoring of a firm or as part of an enforcement action, the Authority may make it clear that it expects the firm to take certain steps to meet regulatory requirements. In the vast majority of cases the Authority will seek to agree with a firm those steps the firm must take to address the Authority's concerns. However, where the Authority considers it

appropriate to do so, it will exercise its formal powers under section 55L of the Act to impose a requirement to ensure such requirements are met. This may include where, amongst other factors, the Authority has serious concerns about a firm, or about the way its business is being or has been conducted (EG 8.2.3(1)), or is concerned that the consequences of a firm not taking the desired steps may be serious (EG 8.2.3(2)).

21. EG 8.3.1 states that the Authority may impose a requirement so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the requirement to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its own-initiative powers.
22. EG 8.3.2 states that the Authority will consider exercising its own-initiative power as a matter of urgency where: 1) the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately; and 2) circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the firm in order to ensure the firm addresses these concerns.
23. EG 8.3.3 states that it is not possible to provide an exhaustive list of the situations that will give rise to such serious concerns, but they are likely to include one or more of four listed characteristics, these include: 1) information indicating significant loss, risk of loss or other adverse effects for consumers, where action is necessary to protect their interests; 4) circumstances suggesting a serious problem within a firm or with a firm's controllers that calls into question the firm's ability to continue to meet the threshold conditions.
24. EG 8.3.4 states that the Authority will consider the full circumstances of each case when it decides whether an imposition of a requirement is appropriate and sets out a non-exhaustive list of factors the Authority may consider, these include: the extent of any loss, or risk of loss, or other adverse effect on consumers; the seriousness of any suspected breach of the requirements of the legislation or the rules and the steps that need to be taken to correct that breach (EG 8.3.4(1)) and the extent to which customer assets appear to be at risk (EG 8.3.4(2); seriousness of breaches (EG 8.3.4(4))).
25. EG 8.3.4(9) includes the impact that use of the Authority's own-initiative powers will have on the firm's business and on its customers. The Authority will need to be satisfied that the impact of any use of the own-initiative power is likely to be proportionate to the concerns being addressed, in the context of the overall aim of achieving its statutory objectives.

Annex 2

REPRESENTATIONS

1. Symmetric's Representations (in italics) and the Authority's conclusions in respect of them are set out below.

Proportionality

2. *Symmetric submits that the issuance of the FSN was "disproportionate and unsupported by a detailed analysis of the facts and statistics in respect of the business's operation".*

3. *Symmetric notes that 100 queries represents 0.025 of its total client base. Symmetric considers that the FCA's Client File sample was not random, but targeted, and that "the findings and statistical extrapolations are skewed by a biased subset and at odds with Symmetric's overall compliance and customer satisfaction. The conclusions of the analysis are unreliable and should not have been relied upon for the purposes of the review".*
4. In respect of the queries the Authority received and the Client File sampling, the Authority refers to paragraphs 4.8 to 4.11 of the SSN. The Client Files were randomly selected from the subset described at paragraph 4.11 of the SSN. The Authority considers that its focus on cancellation and breach of contract invoices was appropriate. It also considers that drawing a statistical inference across the entire population of customers who received one or more invoices for cancellation or breach of contract, based on the analysis of the Client Files, is appropriate. The Authority has purposely used the lower bound figure as the basis for its conclusions since this favours the Firm. It agrees that no inference can be drawn in relation to customers who have not received a breach of contract or cancellation invoice.
5. *Symmetric states that it scrutinised each claim in compliance with the regulatory requirements in the run-up to the PPI deadline, and was reasonable in submitting claims to prevent consumers being time-barred. Symmetric submits that the submission of claims was in the best interests of consumers as required by CMCOB 2.1.1, and in compliance with CMCOB 2.1.7R and CMCOB 2.1.8G.*
6. The Authority agrees that counterparties accepted submissions of claims in the run-up to the PPI deadline where there was insufficient time for the existence of PPI claims to be checked. The Authority considers that the Firm has misunderstood the point made within the FSN: the issue here, is that the Firm went on to charge customers where the submission did not yield a potential claim, putting the Firm in breach of CMCOB 2.1.7R, since in these instances the Firm was *charging* the customer for pursuit of a claim where it knew or suspected that the claim had no good arguable base. As is set out at paragraph 4.22 of the SSN, it is of particular concern that from the Firm's own markers 62% of invoices for breach of contract or cancellation relate to Client Files where the Firm cannot readily identify PPI. The Firm asserts that in some instances the marker may not be there but evidence would then be found within the papers of the Client File; this is undermined by the Authority's assessment of the Client Files, where this evidence was not routinely found.
7. The Authority considers that while it may be correct that it was in the best interests of customers for their claims to be submitted immediately prior to the deadline (where there were grounds to issue these claims), it cannot have been in best interests of customers for them to be *charged* for the pursuit of unmeritorious claims by Symmetric.

The Book of unpaid fees and the claims book

8. *The FSN included an asset requirement and a requirement for the Firm to retain certain documentation set out in the FSN. Following receipt of Representations from Symmetric, and discussions between Symmetric and the Authority, Symmetric signed a VREQ on 28 March 2022 in respect of the VREQ. The Authority notes Symmetric's willingness to sign the asset and document retention requirements VREQ, and no asset or document retention requirements are now sought within an OIREQ by the Authority.*

Skilled Person Review

9. *Symmetric contends that "the imposition of the s166 requirement is tainted by illegality as a consequence of the FCA's failure to provide adequate reasons and justifications". This comment relates to Requirement 3. Symmetric argues that a Skilled Person review would be expensive and disproportionate, and that it is unreasonable for the Authority to impose it.*
10. The Authority considers that Symmetric has misunderstood Requirement 3: Requirement 3 does not impose a Skilled Person (s166) on Symmetric, it requires the Firm to take certain steps in the event that a Skilled Person is appointed. If a Skilled Person is appointed by the FCA, this appointment would be made under section 166 of the Act rather than via the Requirements, and reasons for the appointment would be set out to the Firm at that point. Requirement 3 does not carry any effect in the event that a Skilled Person is not appointed under s166 of the Act. The Authority considers that the Requirement is appropriate and proportionate to address consumer detriment.

Client Files

11. *Symmetric argues that the Authority has failed to conduct an accurate assessment of the Client Files, and produces a spreadsheet summarising its position. The Firm states that its charges were reasonable and not excessive. On a re-review of the evidence, the Authority acknowledges that one claim in one Client File (of the twenty Client Files) was erroneously marked as there being no evidence of PPI, whereas in fact the Counterparty rejected the claim; the Authority still considers that the Firm breached CMCOB 2.1.7R in respect of this customer and its overall assessment that the Firm has breached CMCOB in relation to this Client File as a whole remains the same.*
12. The Authority's further review of the Client Files has not otherwise removed or reduced its findings in relation to its overall assessment of each of the Client Files. The further review has led the Authority, for clarity, to separate out its findings in respect of cancellation and breach of contract invoices. However, this review, and the evidence provided by the Firm does not change the Authority's view that the Firm's charges, in the instances as outlined in the SSN, were excessive.

Breach of contract

13. *Symmetric will only issue breach of contract invoices where the customer has failed to comply with their contractual obligations. Symmetric accepts that there have been "isolated cases" where clients have been incorrectly invoiced for breach of contract but states that steps have been taken to prevent any repeat and that these are "statistically irrelevant".*
14. The Authority's concern here is not with the existence of Symmetric's conditional fee arrangements, but with the way in which Symmetric has pursued customers for excessive fees for alleged breach of contract of these. In respect of customers who did not provide information to Symmetric, the Firm has issued breach of contract invoices in instances where it has not assessed whether a valid claim exists and has presumed claims have merit unless proven otherwise. This has led to consumers being charged for failing to provide information to the Firm in circumstances where evidence should not have been being sought from consumers.

15. Symmetric has conceded that invoices were issued “*in error*” on seven of the 20 Client Files. The Authority calculates that using the lower bound percentage methodology as set out at paragraph 4.17 of the SSN, this would give an overall failing level of 18%, which is significant, rather than “*statistically irrelevant*” as Symmetric claims.

Vulnerable Customers

16. *The Firm states that vulnerable customers should not be denied access to CMC services as this would limit the options for redress for vulnerable people improperly sold PPI. Symmetric states that if the Authority’s position is that there can be contractual enforceability of contracts in those circumstances, it would be unlawful regulatory policy and / or unreasonable.*
17. The Authority does not suggest that potentially vulnerable customers should be denied access to the services provided by CMCs. However, Symmetric should not provide services to vulnerable customers if it is not treating customers appropriately. Symmetric’s representations have not addressed the Authority’s concerns. The Authority notes that Symmetric has concurred with its assessment of which Client Files relate to vulnerable customers. However, it has not provided evidence to support any contention that it has acted appropriately towards these (or other) vulnerable customers.
18. *Within the draft VREQ provided by the Firm, Symmetric said that they would implement a new vulnerable customer policy, review the back book for vulnerability and regularly report the number of vulnerable customers to the Authority.*
19. The new vulnerable customers policy is a positive action by the firm. However, the Authority considers that there are likely to be many vulnerable customers who currently owe money to the Firm who may have been incorrectly treated by the Firm as not vulnerable, and who should not in fact owe money to the Firm. The new policy does not tackle this. The Firm offered in its proposed VREQ to remediate where it has failed to identify and treat customers appropriately. However, the Authority considers that this is something that the Firm should be doing in the ordinary course of business, and remains concerned about whether the Firm is able to correctly identify and handle vulnerable customers.

The Requirements

20. *In addition to the submissions outlined above, Symmetric submits that:*
 - a. *the Requirements are a disproportionate interference in the Firm’s right of recovery; and*
 - b. *the 20% fee cap is relevant only for contracts entered into after 10 July 2018, and that the application of the fee cap is determined solely by the date of the contract between the parties.*
21. The Authority considers that the Requirements are proportionate and supported by the evidence. The Firm’s Representations have not alleviated the Authority’s concerns or successfully challenged the evidence.
22. The cancellation and breach of contract invoices contain failings and rule breaches across all 20 files, and there is a serious risk of loss and harm to consumers. The Authority agrees that the PPI fee cap is not retrospective. However, the concern is that the Firm has sought to rely upon old contracts with consumers in order to charge fees over 20% for new PPI claims, in circumstances where the Authority considers

that it is not reasonable for the Firm to rely upon the old contracts. The Client Files also include an example where there is evidence that the Firm increased its commission rate from 20% to 25% in January 2021, knowingly breaching the fee cap. The Authority considers that all the Requirements are appropriate and necessary to protect consumers.

The VREQ

23. *Symmetric argues that the issues that have arisen could have been dealt with on a voluntary basis and that the Authority had been irrational, or taken account of irrelevant considerations in proceeding with an OIREQ.*
24. *On 24 January 2022, after the period for Representations had expired, the Firm informed the Authority that it was "open to the suggestion of entering into constructive discussions with the FCA in order to explore the possibility of agreeing mutually acceptable terms for a VREQ". The Authority asked the Firm to set out its proposed VREQ terms and decided to consider these as part of the Firm's Representations.*
25. *On 11 February 2022, the Firm put forward its proposed VREQ terms. The proposed terms included that the Firm would be prevented from issuing cancellation or breach of contract invoices (or collect existing invoices) if it has no evidence of PPI, no letter before action has been issued to the lender, or the invoice is more than six years old and no payments have been made towards it in six years. The VREQ would permit Symmetric to continue to charge in excess of the 20% PPI fee cap in circumstances where it already does. The Firm agrees to the asset requirement.*
26. The Authority considers that the proposed VREQ does not prevent the consumer harm it has identified. The Firm's proposed terms mean that it would continue to charge customers excessive and unreasonable sums, and continue to charge some customers PPI commission of up to 39%. The Authority accepts the Firm's request for an asset and document retention requirements VREQ: the Firm signed this on 28 March 2022.
27. The Authority notes that some proposed requirements from the Firm are for actions that the Firm should be taking anyway: for example, the Firm ought to refund any duplicated fees charged as a matter of course; the Firm should not be issuing invoices where there is no evidence of PPI, since this is basic compliance with CMCOB 2.1.14R(2). The Firm's proposed VREQ is not adequate to address the Authority's concerns, and the Authority considers that the OIREQ remains appropriate.