

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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Financial Conduct Authority
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By email: cp21-01@fca.org.uk

Dear Sir/Madam

Financial Services Consumer Panel (the Panel)'s Response to the FCA's consultation on the proposed CMC Fee Price Cap

The Panel welcomes the opportunity to respond to this consultation on restricting CMC charges for financial products and services claims. The findings of the FCA's research in this area are concerning. The vast majority of consumers pay charges exceeding the value they receive from CMCs. On average £36.5m of CMCs' financial services revenue is a result of excessive charging, accounting for 71% of total revenues on average!¹ The evidence clearly demonstrates the need for the FCA to fulfil its duty under the Financial Guidance and Claims Act 2018 by introducing rules to protect consumers, and we strongly support the introduction of a fee cap.

While we also support the requirement to disclose cost information and free options available to consumers upfront, this may not necessarily lead to a better understanding of choices and consumers acting on those choices. The FCA's findings have shown that there is an absence of shopping around and limited demand sensitivity to price in this market, in addition to a lack of awareness about protections and free redress. We are not aware that the proposed requirement has been tested on consumers to gauge whether it would lead to more direct claims but, suggest that the FCA includes this as a success measure. This would require an understanding of whether the disclosure of free options had been understood and acted on.

The Panel is concerned more generally that consumers of financial products and services are not aware that they can make complaints and claims for free, and that they might face sludge practices when doing so. The FCA's research has shown that only around 35% of UK consumers in 2017 were aware of free alternative routes to redress. We note that CMCs were involved in 35% of the Financial Ombudsman Service's casework for the period October-December 2020 and that this rises to 54% for complaints about credit products.²

We would like the FCA to monitor and compare the complaint handling of those raising a complaint via a CMC and those raising one direct. The Panel would also like to see more efforts made to raise awareness of protections and help consumers navigate the complaints system more easily so that they can receive the full amount of redress they are due, and have confidence that there will be no difference in outcome if they bring the

¹ <https://www.fca.org.uk/publication/consultation/cp21-01.pdf> pg 50

² <https://www.financial-ombudsman.org.uk/data-insight/quarterly-complaints-data>

claim themselves. Firms should be making consumers aware of their protections in the pre-purchase journey, how to bring complaints to the firm, and their right to free redress through the Financial Ombudsman Service, Financial Services Compensation Scheme and the Pensions Ombudsman. Consumers should, in the first instance, be able to rely on the firm which provided the product or service investigating and responding to their complaint in a timely manner. Firms should also be required to improve their handling of complaints and upheld claims, and data should be collected and published which also allows for industry comparisons.

We note that the most common claims are loans, packaged bank accounts, pensions and savings & investments, with the highest revenue per claim for CMCs from pension claims, which make up the largest percentage of revenue for CMCs. With a rising trend in pension complaints and claims, and the likelihood that the value of these claims will only increase, we have concerns that CMCs will increasingly target this higher yielding area where excessive charging is most likely to occur.

We welcome the plans to evaluate this intervention, but two years seems a long time to wait for an evaluation especially when consumers, and potentially the most vulnerable, could be suffering harm throughout that time. We would suggest an additional review of a sample of high-risk firms after one year to ensure that any action can be taken quickly, limiting the harm to the consumer. We would also strongly encourage the FCA to supervise CMC behaviour and business models closely, including the targeting of pension and investment claims. The FCA should intervene quickly whenever harm is found, considering its full regulatory toolkit including its powers under s404 FSMA to implement consumer redress schemes where appropriate.

Yours faithfully

Wanda Goldwag

Chair, Financial Services Consumer Panel

Consultation Questions

Q1: Do you agree with the design of the proposed cap?

In a well-functioning market, we would expect the fees charged to consumers for handling claims to reflect the cost of handling the claim. As consumers find it difficult to put a value on services they receive from CMCs, and are paying fees of more than 40% of the redress they receive, we agree that a maximum total fee should be imposed to protect consumers.

However, it is not clear that the maximum amounts for each redress band represent value for money. Under the proposed cap, the average savings & investments claim of £8,000 would generate a maximum fee of £2,240, which would fall within the £2,800 proposed maximum permitted total fee, while the average pensions claim of £27,000 would generate a fee of £5,400, which also falls within the maximum permitted fee of £7,500 for that redress band. A maximum fee of £10,000 could apply for any redress claim above £66,667. It is not clear that consumers would consider this reasonable,

particularly given that the FCA has found that the mean direct cost to manage a claim is £10 for loans, £22 for packaged bank accounts, £158 for savings & investments and £590 for pensions, compared to mean revenues for CMCs of £274, £314, £2,620 and £5,625 respectively for each category.

We understand that in designing the cap for each redress band, the FCA has considered that claims which fall in the smaller redress band tend to be loan claims, often high-cost credit, where customers may be more likely than average to be vulnerable or made vulnerable by excessive charging. We agree that strong protection is therefore required against excessive charging. However, with 9 out of 10 claims which lead to redress awards of more than £10,000 subject to excessive charges, we are also concerned about the value represented by the maximum total fees in the other redress bands.

Q2: Do you agree with the scope of the proposed cap?

Yes.

Q3: 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?

It seems reasonable to adopt the same interest rate as that used in the redress system to put things right for consumers who are reimbursed for a financial loss. We would also emphasise that there should be close supervision and prompt enforcement action against those that breach the rules, with consumers contacted proactively, where it emerges that their agreements are not in compliance with the rules.

Q4: Do you agree with a 3-month implementation period for the cap?

We agree with the FCA's view that altering paperwork and contracts and obtaining legal advice should be a simple task. CMCs have also been aware for some time of the prospect of a fee cap, with the 2016 Ministry of Justice consultation³ proposing a 15% fee cap and an overall total charge cap of £300 for PPI or PBA claims of £2,000 or less.

Since the FCA's analysis suggests excessive charging of about £36.5m per year when measured against the value that accrues to individual CMC customers, we are concerned that a 3-month delay in implementing the proposals would allow for significant consumer harm to continue over that period, with the additional risk of CMCs rushing to bill consumers during the implementation period. We would expect the FCA to ensure that CMCs are not exploiting this period to charge excessively.

Q5: Do you agree that applying the proposed cap to pre-existing contracts provides an appropriate degree of protection for consumers against excessive charges?

Yes.

Q6: Do you agree that requiring the proposed further disclosures will improve consumer awareness of the cost of using a CMC?

We agree that consumers should be provided with an accurate indication of the likely fee before entering into an agreement. However, it would be useful to know whether the

³ https://consult.justice.gov.uk/digital-communications/cutting-costs-for-consumers-financial-claims/supporting_documents/Consultation%20%20CMR%20%20Cutting%20the%20costs%20for%20consumers%20%20Financial%20Claims%20%2015%20Feb%202016.pdf

proposed illustrative fee calculation has been tested with consumers and whether it can be demonstrated that the proposal improves consumer awareness of costs.

Even if consumers are made aware of the cost, it is not clear that this will improve their understanding of the value that the CMC is offering, particularly given the lack of awareness of the free options available, and the knowledge that consumers do not shop around and compare fees. The Panel would also like to see more effort from industry and the regulatory family, including the Money and Pensions Service, to raise awareness of protections. This would help consumers navigate the complaints system more easily, so that they can receive the full amount of redress they are due.

Q7: 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 effectiveness of this proposal should be tested to establish how the presentation of the statement and choice of wording affects consumer awareness of the option to claim without a CMC. The FCA would need to monitor how the proposed requirement is implemented to understand whether it improves awareness. Ultimately, this should result in more direct claims made by consumers and this should be included as a measure of success for the intervention and measured/monitored by the FCA.

We are concerned that protections and the route to redress are confusing for consumers, who appear to be unfamiliar with the ombudsman (the FOS and the Pensions Ombudsman) with a poor understanding of the Financial Services Compensation Scheme. Even when consumers do understand the level of protections afforded to them, they may be discouraged from seeking redress due to a lack of clarity around the processes involved or due to sludge practices. We would welcome better labelling of products to improve understanding of protections and signposting for consumers to get free redress. Given the consumer inertia suggested in the FCA's findings, it may be beneficial to apply behavioural insights to the design of disclosure measures and measures to encourage consumers to claim directly.

Firms should also be incentivised to better handle complaints themselves. Data collected and published by the FCA should be presented in a way that demonstrates whether firms are improving their complaints handling and, should allow for industry comparisons.

Q8: Do you agree with the 3-month implementation period for our proposed enhanced disclosure requirements?

We do not consider that a 3-month implementation period to disclose information is necessary. CMCs are already required under existing disclosure rules in CMCOB 4.2. to include a statement that customers can present claims themselves for free.

Q9: Do you agree with the proposed minor amendments to CMCOB and PERG?

Yes.

Q10: Do you agree with the proposed updates to CONRED to bring the relevant provisions in line with the Financial Services and Markets Act 2000 (Claims Management Activity) Order?

Yes.

Q11: Do you agree with the proposal to modify the rule, which clarifies the obligation for CMCs to also ask customers about historic bankruptcies, IVAs, debt relief orders or similar arrangements?

Yes.

Q12: 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.

Q13: Do you agree with our estimate of the costs and benefits of our proposed interventions?

When articulating the harm, the FCA considers the costs to consumers of using a CMC against the value saved in terms of time and effort and the increased confidence from using a CMC. However, if consumers were more aware of the free options available to them, and that making a claim directly was likely to be more straightforward than they expect, the value they might place on services they receive from CMCs may be lower.

In terms of the benefits of the attestation, presenting of information on alternative free options may influence the effectiveness of the proposal, but the FCA has not provided any evidence of any consumer testing on whether or how engagement would be improved. Were the disclosure interventions to be effective, we would expect the level of direct claims to increase which would result in additional savings for consumers. However, these effects have not been quantified in the analysis.

Q14: Do you agree with our assessment of the impacts of our proposals on the

As mentioned in response to Q7, the FCA should test the effectiveness of its disclosure proposals, including for protected groups.