

Financial Inclusion Commission
CP21/1 FCA: Restricting CMC charges for financial services and products claims
Consultation response

The Financial Inclusion Commission welcome the opportunity to contribute to the FCA consultation on rules to secure an appropriate degree of protection against excessive charges by claims management companies (CMCs).

Please note that the Financial Inclusion Commission has discussed the issues outlined in this submission with the Financial Services Consumer Panel and Financial Services Compensation Scheme.

For more information about this response please contact Liz Barclay or Professor Sharon Collard at Commission@ukfinclusion.org.uk

About the Financial Inclusion Commission

The Financial Inclusion Commission (FIC) is an independent body made up of experts from financial services, businesses, the charity sector, academia and parliamentarians from all major parties <https://www.financialinclusioncommission.org.uk/>

Our mission is to champion financial inclusion as a policy priority for public bodies, businesses and civil society, and challenge exclusion wherever it occurs. Our vision is for a financially inclusive UK where financial services are accessible, easy to use and meet people's needs over their lifetime, and where everyone has the skills and motivation to use them.

Financial exclusion remains a significant challenge for 21st century Britain which prides itself on being a global leader in financial services.

Just over a million people in the UK do not have a bank account, one in four households lack insurance protection and one in five adults would not be able to cover more than one month of living expenses if they lost their source of income.

Financial inclusion is the means by which people can make their money work well for them, enabling them to maximise opportunities, move into employment, become more self-reliant, and enhance physical and mental wellbeing. Financial inclusion contributes to greater social mobility and levelling up, a more effective welfare system and greater national resilience from economic shocks.

This means a United Kingdom in which:

- every adult is connected to the banking system, through having access to – and the ability to make full use of – a transactional account of his or her own;
- every adult has access to affordable credit from responsible lenders;
- every adult, young person and child is encouraged and enabled to save, even in small or irregular amounts, to share in the importance of a common savings culture, to help build up resilience against financial shocks and as an additional resource for retirement;
- every adult has access to the right insurance cover for his or her needs, at a fair price;

- every adult has access to objective, affordable and understandable advice on credit, debt, savings and pensions, delivered via the channel most suited to that individual;
- every adult and child receive the financial education he or she needs, starting in primary school and carrying on throughout life and into retirement;
- the overall level of pensions provision – state plus private – in the UK, does not lag behind other developed countries, especially for the low paid;
- every adult will have a clear picture of what their income in retirement is likely to be, so they can plan and get ‘no surprises’.

Introduction

The Financial Inclusion Commission welcomes the opportunity to contribute to the FCA consultation on rules to secure an appropriate degree of protection against excessive charges by claims management companies (CMCs).

CMCs play an important role in consumer redress in financial services. Around 75% of complaints received by the Financial Services Compensation Scheme (FSCS) are claims made via CMCs. Many are claimants who, if they don't find out through a CMC that they could have a claim for redress, may never become aware and therefore never receive any of the money to which they are entitled. Many are people who feel that without help they couldn't navigate the claims process. CMCs spend a significant amount of money on marketing their services and contacting potential claimants to make people aware that they may have valid claims. Without that spend many fewer people may become aware of redress schemes, the compensation scheme and their right to claim.

However we are concerned: that people are not getting value for the fees that CMCs charge them for a process that many could do themselves; that fees charged are excessive for the amount of work done by many CMCs; that the service given by some CMCs isn't worth the level of fees charged; and that it isn't in the interests of CMCs to point out to potential customers that there is no obligation to use that CMC and they could choose another CMC with lower charges, or that they could go through the process themselves.

Although the proposed measures may go some way to levelling the playing field, we remain concerned that there is an imbalance in the value provided by different CMCs and that many consumers are unaware they could conduct the process themselves. This is particularly concerning, given the research noted by the consultation paper, that more than 30% of customers with a CMC loan claim live in the most deprived areas in the UK areas (which fall into the two lowest deciles of the IMD) and about 66% of all CMC customers with a loan claim live in areas in the most deprived areas (lowest five deciles).

The FCA has powers under S404 of FSMA to establish redress schemes, which it has rarely used. Alongside the proposed CMC charge cap, we would strongly encourage the FCA to use its powers in future to ensure that consumers are automatically refunded. Firms should be incentivised to handle complaints better themselves, so that consumers can rely on the firm which provided the product/service to investigate and respond to their complaint. In the meantime, we would also like to

see more resources put into raising consumer awareness of the FSCS as the default compensation scheme, as this would render CMCs unnecessary in more cases.

Although we welcome proposals to evaluate this intervention, two years seems a long time to wait when consumers, and potentially the most vulnerable, could be suffering harm throughout that time. We encourage the FCA to supervise CMC behaviour and business models closely, intervening quickly wherever necessary.

Do you agree with the design of the proposed cap?

The Commission agrees that currently some CMCs charge excessive fees, with some charging up to 50%. In some instances this will cost the customer £10,000's of lost compensation for something they could do themselves, and may not be recoverable funds e.g. pensions. Therefore, we are pleased that the FCA is consulting on a fee cap to limit these excessive fees. We agree with the proposed cap, although we feel this is still too high for: those claiming small amounts; those with protected characteristics who will continue to have no choice but to use CMCs to make claims; and those who have no chance to earn back their losses and re-establish their earlier financial position. However we accept that if good CMC firms are priced out of the market, resulting in reduced competition, it's possible that many of these people will not be reached by marketing and will remain unaware that they may have any claim, whether or not they can undertake the claims journey for free, and will therefore receive no redress at all.

We understand that good CMCs are customer advocates and help customers identify potentially successful claims where they have had their claim refused by the company against which they are claiming. CMCs have the knowledge to challenge refusal of claims where individuals may feel there is no point in taking the claim any further. They also provide value through reducing time and effort spent by customers. For example, some even help customers search for the documentation they need by visiting their homes and identifying documents that the individual may not recognise as significant or related to the claim. In these cases, good companies adding significant value may be worth the high fees.

However, some CMCs don't provide value for the high fees that the cap will still allow. Some customers are very surprised at the end of the process to find how much they are paying. For many expressing fees in percentages means they are unable to calculate how much they would be likely to pay before signing a contract and are shocked by the amount they pay at the end of the process. Fees must be transparent and accessible, including presenting them in pounds and pence and giving easy to understand worked examples.

In addition, poor practices mean that some CMCs chase the market causing extra distress. Although many CMCs triage cases well, some put in lots of claims without checking, often using template claims and don't provide specific customer information making it difficult to uphold those claims while customers making claims themselves would be able to provide the necessary information. Statistics from the Financial Ombudsman (FOS) covering the period April 2018 to February 2021 showed that overall only 27% of claims brought by CMCs went the way of the claimant compared to 35% of those brought directly. Yet, these rates differ dramatically depending on the products and in

some cases claims brought by CMCs for products such as instalment loans and payday loans have a higher success rate than those brought directly.¹ Nevertheless, the difference between CMCs is vast and while the proposals for caps on fees may result in value for some consumers who are lucky enough to stumble on a good CMC, they won't represent value for many others.

Furthermore, there is a concern that CMCs will increasingly target higher yielding areas where excessive charging is most likely to occur, such as pension claims.

Do you agree with the scope of the proposed cap?

Yes

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?

Yes

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

Although we appreciate the need for necessary time to implement the cap, we are concerned that this three-month delay would allow for significant consumer harm during that period, especially given 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 feel that the FCA should ensure that CMCs are not exploiting this period to charge excessively.

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

Yes

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

We agree that requiring further disclosures may improve customer awareness of the cost of using a CMC. However, further disclosure by itself is not enough to ensure that the disclosures are effective and improve consumers' understanding of the value on offer.

We feel that close monitoring of how CMC cost disclosures are set out in style, colour, separation, font, situated on the page etc will all be important as far as the effectiveness of the disclosures are concerned. From work conducted by the LSB we feel it is important to ensure that, however disclosures are presented in the customer journey, for example digitally, in writing or verbally, they are effective and tailored for the relevant customer base. It is also crucial that, where necessary, friction is added to ensure the customer has had time to consider and understand the disclosure. The content of disclosures must also be expressed in a way that customers will easily understand.

¹ <https://debtcamel.co.uk/claims-companies-ombudsman/>

For instance, there is anecdotal evidence over many years that consumers do not understand APRs and many think that the higher the percentage figure, the better the deal. We must require disclosures that are presented in the most comprehensible way possible for the greatest possible number of consumers, in order to be effective. Consumer behaviour is another significant factor in the effectiveness of disclosures. The Open Banking Implementation Entity (OBIE) has looked at consumer behaviour in respect of responding to warnings and found that in certain circumstances individuals seem to get used to the warnings and begin ignoring them.² It is likely to be important to keep monitoring the effectiveness of warnings, disclosures or statements to avoid them becoming ineffective.

Alongside this, more effort from the industry is needed to improve consumer understanding of protections and the options on offer. Firms should be required to make consumers aware pre-purchase of their protections and their right to free redress through the FSCS among others.

We are also concerned about the capacity of CMCs to identify vulnerable consumers who may need additional help to understand the costs. There is a big discrepancy between the number of CMC customers identified as vulnerable and the number of customers claiming directly to the FSCS identified as vulnerable. It is crucial that all CMCs fully understand and operationalise what the FCA means by 'customers in vulnerable situations' and that they meet the FCA's expectations about the fair treatment of vulnerable customers as set out in its finalised guidance.³ The onus is on FCA supervisors to ensure this happens.

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?

Currently, it's unclear whether all CMCs make customers aware of their rights to use organisations like FOS and FSCS free of charge. The large volumes of claims and ratios of CMC-led complaints would suggest there is still more that needs to be done. Furthermore, some CMCs not only don't make customers aware of their rights but also mislead customers into using their services by providing misleading advice, not advising them on the best path to resolve their financial issues and not managing their expectations. As noted in the consultation paper, results from an FCA consumer survey found that 43% of respondents did not know they could have claimed directly, while 57% did not know they could have used the ombudsman service or FSCS. Furthermore, 81% of 'consumers surveyed did not consider using any other CMC than the one they signed up with, with more than half having been contacted by their CMCs rather than initiating contact themselves'.⁴

We agree that this **may** help to improve customer awareness of the option to claim without a CMC. We refer to the point above about the effectiveness of the statements and urge that the effectiveness should be tested to understand how the presentation of these statements impacts consumer awareness of the option to claim without a CMC.

² The Behaviouralist, (March 2021). *Using Behavioural Insights and Experimentation to Prevent App Fraud*. Prepared for the OBIE.

³ <https://www.fca.org.uk/publications/finalised-guidance/guidance-firms-fair-treatment-vulnerable-customers>

⁴ <https://www.fca.org.uk/publication/consultation/cp21-01.pdf>

Furthermore, the FCA should monitor how this requirement is implemented to understand whether it improves awareness and by extension if this leads to more direct claims by consumers. In particular, there needs to be ongoing monitoring of the wording of these statements and declarations to avoid firms using off-putting language and phrases, making the process feel too difficult to contemplate doing without the help of a CMC, suggesting other expensive alternatives to CMCs such as solicitors, using colours, fonts, styles etc that lead the customer to feel intimidated by going it alone. Simply signing a declaration is no guarantee that the customer has read and understood what they are signing, or that they have been given time to read the declaration and ask questions before signing, or have not been put under duress to sign the declaration.

Consumers should have the right to opt out of the process at any point at which they feel they have signed a declaration that they haven't understood or been given time to read and understand, and are not being well supported by the CMC, are having to do all the work themselves, could make the claims journey without the CMC, and have the assurance that they won't be hindered by the CMC in cancelling the contract.

Over the last year, an increasing proportion of claims that FSCS sees are being represented by solicitors – who aren't regulated by the FCA. This simply transfers the problem to the SRA, rather than dealing with the issues at hand. Therefore, we believe that CMCs which have partnership agreements with firms of solicitors must not be allowed to suggest partner solicitors as an alternative to using a CMC, if the consumer doesn't want to go it alone. Again we are concerned about the capacity of CMCs to identify vulnerable consumers who may need additional help to understand the process of claiming without the help of a CMC.

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

Yes

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

Yes

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

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

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 but we feel this should be an obligation on the CMC rather than an expectation.

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

The cost benefit analysis seems comprehensive. However, without doing our own cost benefit analysis from scratch it is impossible to agree or disagree with the conclusions.

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

We believe there are a number of groups which should be considered including people for whom English is not the first language; people with neuro-diversity; people with various health and mental wellbeing conditions such as anxiety which is more prevalent in the Covid-19 period. The FCA should test the effectiveness of its disclosure proposals, including for protected groups.