



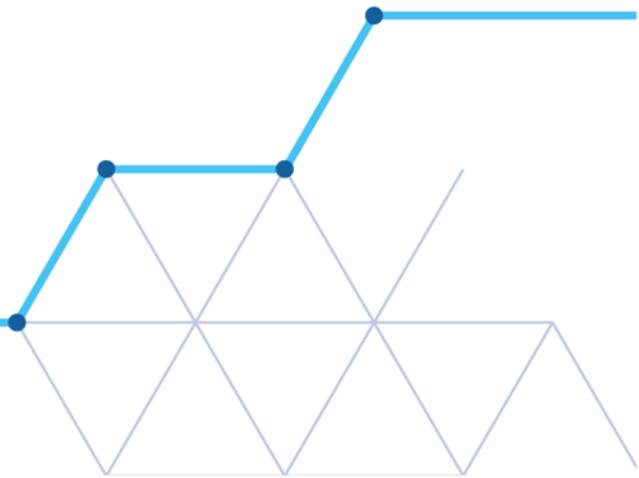
Ministry
of Justice

Claims Management Regulation – Consultation Response

Cutting the costs for consumers – Financial Claims

This response is published on 15 November 2017
In substitution of a previous version

Protecting and advancing the principles of justice





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Claims Management Regulation – Consultation Response

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Response to consultation carried out by the Ministry of Justice.

This information is also available at <https://consult.justice.gov.uk/>

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Claims Management Regulation – Consultation Response
Cutting the costs for consumers – Financial Claims

Introduction and contact details

This document¹ is the post-consultation report for the consultation paper, ‘Cutting the costs for consumers – Financial Claims’.

It will cover:

- the background to the report
- a summary of the responses to the consultation paper
- analysis and conclusions of the responses to the consultation paper
- the next steps following this report.

Further copies of this report and the consultation paper can be obtained by contacting the claims management regulation unit at the address below:

Claims Management Regulation Unit
Ministry of Justice
102 Petty France
London SW1H 9AJ

Email: claimsmanagementregulation@justice.gov.uk

This report is also available at <https://consult.justice.gov.uk/>

Alternative format versions of this publication can be requested from **claimsmanagementregulation@justice.gov.uk**.

Complaints or comments

If you have any complaints or comments about the consultation process you should contact the Ministry of Justice at the above address.

¹ This document replaces a previous version which had a typographical error on page 22 (Annex A – first bullet point).

Executive Summary

1. In the 2015 Summer Budget, the government announced the intention to cap the fees that regulated claims management companies (“CMCs”) can charge consumers for financial services claims.² The consultation paper ‘Claims Management Regulation – Consultation, Cutting the costs for consumers – Financial Claims’³ was published in February 2016. It invited comments on proposals which are set out in **Annex C**. These proposals were aimed at protecting consumers from high charges.
2. The consultation period closed on 11 April 2016 and this report summarises the responses and our conclusions. The list of respondents is set out at **Annex D**.
3. We have decided to implement the following measures by way of amendments to the Conduct of Authorised Persons Rules in relation to financial services claims only (see the Rules set out at **Annex B**):
 - A ban on any upfront fees being charged to a consumer prior to the completion of work being undertaken or the claim being concluded
 - A ban on any charges to a consumer where it is identified that the consumer does not have a relationship or relevant policy with the lender
 - CMCs will be required to ensure that all cancellation charges are reasonable and to provide consumers with an itemised bill setting out details of what the cancellation charges relate to
4. We have concluded that we cannot take forward the proposals consulted on to impose a fee cap, as summarised below, within the current legislative framework:
 - Completion fee caps for payment protection insurance (“PPI”), packaged bank accounts (“PBA”), or other financial services claims
 - An overall total cap for PPI or PBA claims
 - A maximum ‘cancellation’ fee of £300 (excl. VAT)
 - A ban on CMCs receiving or making any financial payment for referring or introducing a client to a third party in relation to PPI or PBA claims
5. We have however used the evidence from the consultation to analyse the level of fee cap we originally proposed (including restricting completion fees for bulk claims (PPI and PBA) to 15% (inc. VAT), and for all other financial services claims to a maximum of 25% (inc. VAT)). Our analysis of the available evidence suggested that CMCs would be unable to operate on the proposed charging structure, so we considered revisions to the original fee cap levels to allow for a larger margin for businesses to operate within.

² <https://www.gov.uk/government/publications/summer-budget-2015>

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

6. We calculated from the evidence that we received that the average amount charged to consumers by CMCs was approximately 28% (excluding VAT) of the final redress paid. We concluded that the maximum fee in relation to PPI claims should only be 20% (excluding VAT) and that the maximum fee for all other financial services claims should be 25% (excluding VAT). We also found that PBA claims should be grouped with other financial services claims due to additional work needed on these types of claims. These revised caps would enable consumers using CMCs to benefit from reduced fees but without there being a disproportionate impact on the CMC industry. A revised Impact Assessment on the consultation will be published separately.
7. In the March 2016 Budget the previous government announced its intention to establish a tougher regulatory regime for CMCs and work is now underway to deliver the legislative and organisational changes needed to strengthen the regulation of CMCs. The Financial Guidance and Claims Bill (“the Bill”) was introduced to Parliament following the 2017 Queen’s Speech and seeks to transfer the regulatory responsibility for CMCs to the Financial Conduct Authority (FCA). Going forward, the development of a new more robust regulatory regime through this Bill provides the opportunity to introduce the strong bespoke legislation needed to properly support a compulsory fee cap in the future. The Bill aims to ensure that the FCA has the necessary powers to cap the fees that CMCs charge consumers across all sectors, and imposes a duty on the FCA to make fee capping rules in relation to financial services claims.

Summary of responses

8. We received 136 responses to our consultation. Of these, over 50 per cent came from regulated CMCs with lenders and insurers making up the next largest proportion. Responses were also received from consumer bodies, solicitors' firms and other organisations or individuals.
9. The majority of CMCs that responded to the consultation expressed concerns about the potential impact a fee cap would have on their business. A small proportion of the CMCs that responded broadly agreed that the current charges seen across the sector appeared to be too high, and that more needed to be done to prevent consumers being charged disproportionate fees.
10. The second highest number of responses came from lenders, insurers and associated trade bodies. All respondents from this category showed broad support for the proposed package of measures. They cited a number of reasons, including the benefits consumers should derive from better protection from disproportionate charges and poor service. Some respondents in this category also outlined their view that they believe that CMCs did not add value in most instances and believed that many consumers appeared to be unaware of free alternatives.
11. A small number of responses were also received from consumers and consumer bodies, most of who broadly agreed that current fee levels appeared to be too high and should be restricted. Some suggested that the proposals may not go far enough to address the issues raised, and called for wider measures to increase consumer awareness of free alternatives. Clients of CMCs also indicated their support for our proposals following recent experiences.
12. The majority of solicitors who responded broadly supported our proposals. Some stated that some CMCs can offer a poor service to the public for high fees while others stated that limits should be applied across all regulated sectors to ensure parity. A small number of solicitors felt however that we had failed to make a compelling case for imposing any limit at all. Concerns were also raised that the proposals could reduce the number of consumers bringing claims and the level of compensation being paid out.
13. Responses were received from a range of other organisations, such as the Financial Ombudsman Service ("Financial Ombudsman"), Independent Financial Advisors ("IFAs"), and individuals with an interest in claims management matters. Around half of these respondents broadly agreed with the main proposals.

Responses to specific proposals

Ban on upfront fees

14. Most of the CMCs that responded to the consultation agreed with the proposals to ban upfront fees, stating that they did not currently charge an upfront fee and so would fully support any ban in this area. A small number of CMCs indicated that upfront fees were charged in certain circumstances.

15. The Professional Financial Claims Association (“PFCA”) explained that there were some circumstances where fees needed to be charged to cover the work involved in the claim and that it is not always possible to work on a ‘no win, no fee’ basis, on ‘non-bulk’ claims in particular. They confirmed, however, that their members are not allowed to charge a fee in advance of the service where the claims relate to PPI and suggested that the wording of their Code of Practice should be adopted as an industry standard.⁴
16. The British Bankers Association (“BBA”) supported a ban on upfront fees for any financial claim and recommended an extended ‘cooling off’ period post contract, to enhance consumer protection. Other trade bodies also welcomed the proposed ban on upfront fees as they felt that this practice was detrimental to consumers and encouraged spurious and vexatious claims.

Ban on charges where no relationship or policy is found

17. The majority of CMCs agreed that no fees should be charged where no relationship or relevant policy is found. A proportion of those that responded stated they had processes in place to filter out those clients who did not have a claim. In some instances, it was ultimately discovered that there was no relationship or policy between the consumer and a lender.
18. A minority of CMCs felt that the proposal to ban fees where no consumer relationship was found was a blanket, indiscriminate response to the issue of a small number of CMCs failing to complete adequate due diligence prior to the submission of claims. Some CMCs felt that those who comply with the current regulations have a small number of these types of case and should not be penalised for the poor practices of others.
19. Lenders generally supported this measure, holding the view that a ban would act as an incentive for CMCs to target their marketing more effectively to ensure a greater proportion of customers they recruit have a genuine potential claim. It was suggested that consumers should not be expected to contract with a CMC until a relevant policy had been established.
20. Lenders reported that in a significant proportion of complaints from CMCs in relation to PPI, no associated PPI product was identified. Concerns were also noted that an increase in CMC market share over recent years has also been matched by an increase in the poor quality of claims, including increasing rates of ‘No PPI’ and ‘No relationship with lender’ within pre-claim PPI validation processes.
21. While some lenders and insurers were able to estimate a financial figure for the savings that could be made from a reduction in speculative claims, others felt that it would be difficult to quantify a financial figure. However, it was broadly indicated that any reduction would certainly make a difference and would enable CMCs to focus on investigating genuine complaints which required detailed review.

⁴ The PFCA confirmed that its members have been working to this standard for the last three years and the following excerpt from the PFCA Code of Practice was provided:

“Clause 7.4: Members are generally permitted to charge for services in advance of them being provided but only if the Member can unequivocally demonstrate that it could not reasonably provide the service without such a fee being paid in advance. However, Members are not permitted in any instance to charge a fee in advance of the services where the claim is in respect of PPI mis-selling.”

Maximum cancellation fee of £300

22. Most CMCs agreed that there should be a cap on charging cancellation fees for contracts cancelled after the 14 day ‘cooling off’ period but that cancellations were rare. A majority of CMCs said that where a client cancels their contract after the 14-day cooling off period any cancellation costs are charged on an hourly basis, reflecting the amount of work that had been undertaken up to the point of cancellation. Hourly charges ranged from £25 to £200 per hour.
23. A large proportion of CMCs stated that cancellation fees were rarely chased or enforced in practice unless a significant amount of work had been undertaken prior to their cancellation. In addition, a small proportion of CMCs stated categorically that they did not impose cancellation charges at all, with some CMCs indicating that cancellation charges were only imposed if a consumer cancels their contract after an offer of compensation has been made.
24. Responses from consumer organisations signalled wide support for the proposed £300 cap on cancellation fees. Citizens Advice fully supported this proposal but felt it was fair for CMCs to recover costs for work already undertaken. They indicated that these charges must be proportionate to the relatively straightforward process of making PPI/PBA compensation claims in particular.
25. Citizens Advice believed that the amended rules should also require all CMCs to provide an itemised bill free of charge and that the consumer must acknowledge receipt of the document in a durable format. They stated it was vital to ensure that the firms do not always charge £300 for cancellation and that charges are proportionate.

15% completion fee and £300 maximum overall charge for PPI and PBA claims (and alternative figures)

CMCs

26. Most of the CMCs that responded stated that the main proposed fee percentage caps of 15% (including VAT) and £300 for PPI and PBA claims were too low and would force them to leave the market. They believed it could mean that the level of service provided would fall considerably – or be withdrawn completely – as they could not conduct the same level of business activity or recover costs incurred to pursue claims. To support this assertion some CMCs provided accounting evidence to highlight the potential drop in turnover and profit, based on existing case levels, with the proposed caps retrospectively applied.
27. In addition, some responses raised concerns that; if the financial claims market were to become smaller as a result of the proposed fee caps, it may lead to consumer detriment as many consumers may not bring claims at all through lack of awareness and reduced choice.
28. The PFCA raised concerns about the ability of CMCs to reclaim costs under the proposed caps. It was asserted that a fee cap of 15% including VAT would amount to 12.5% plus VAT, which would effectively make the cap lower in practice, as the VAT would go to HM Treasury.
29. It was suggested that in setting any fee cap consideration should be given to the overall operational costs of a CMC and not just the costs in relation to handling specific claims. It followed that the cap of £300 per consumer, per lender in no way reflected the actual cost of processing many claims, not least because it did not allow for marketing costs.
30. Some respondents explained that the average offer value for PBA claims was considerably less than those of PPI claims. They suggested that the combined effect of the success rate, average fee level and higher costs associated with PBA claims significantly increased the costs base for these claims.

31. The majority of CMCs that responded to the consultation did not agree with the proposed alternative level of fee of 10% (including VAT) and £200 for PPI and PBA claims. Most CMCs stated that they could not operate under such low caps and that this could reduce the choice for consumers, causing many claims not to be made at all.
32. Concerns were raised by some respondents that if either the main or alternative proposed cap were implemented, it would lead to respectable and ethical CMCs being driven out of the market and a reduction in the options available to consumers for bringing a claim. The PFCA indicated that its members agreed that the proposed caps would force them to end their involvement with any bulk claims and that this would be tantamount to destroying the responsible end of the industry.
33. The PFCA went on to state that they felt the proposals were also compounded by the intention for the cap to be applied on the basis of a single lender, rather than a single case. They pointed out that pursuing multiple claims with the same lender does not diminish the amount of work required and that each claim must have its own paperwork. The PFCA believed that it would become disproportionately costly to pursue multiple claims against one lender, when the total award would be less than £2,000.
34. Additionally, some respondents raised concerns that it would not be possible to introduce a fee cap through the Conduct of Authorised Persons Rules 2014, as it could be argued that it falls outside the scope of the rules in relation to the professional conduct of authorised persons. It is therefore questionable whether the relevant legislation authorises the introduction of such a cap.

Lenders

35. The vast majority of respondents from across the banking industry felt that the proposed caps of 15% was an appropriate way to ensure that consumers receive more compensation and protect them from disproportionate charges. It was accepted that CMCs have a role to play, and that the best firms offer a useful service to some consumers.
36. The BBA indicated that they would support a pragmatic level of caps – along the lines of the proposed caps. It should be based on what is viable, and to avoid any unintended detrimental consequences to consumers. The BBA believed that a fee cap for PPI and PBA claims would ensure that consumers that use CMCs receive a greater percentage of the amount they are due, as well as creating a space for CMCs to compete based on the quality of the service they provide.
37. The BBA also suggested that further consideration should be given to applying any fee cap retrospectively. The BBA explained that this would have particular relevance to undisclosed commission complaints which were likely to be straightforward and that a substantial proportion of future PPI complaints may not be caught by the new rules.
38. In order for the proposed fee limits to have the intended effect, the BBA suggested that the wording of any new rules should; make clear that any change in the scope of services, or an agreement based on the letter of authority, would trigger the fee cap. Alternatively, the new rules should include a specific provision that requires new contracts to be drawn up when undisclosed commission complaints are not in the scope of any original contract.
39. A small proportion of the responses from lenders to the consultation supported an alternative, lower 10% cap on fees for PPI and PBA claims.

Consumer groups/others

40. Citizens Advice welcomed the proposed caps stating that CMCs taking large fees out of consumer's compensation has been a persistent problem faced by their clients. They believe that the amount taken by CMCs is disproportionate in many cases, particularly considering the limited work required and the fact consumers can make these sorts of claims directly free of charge. Citizens Advice highlighted the need to cap the final fees for claims amounting to under £2,000.
41. Other consumer groups agreed with the principle of imposing a cap but stated that a fee cap of 20% (inc. VAT) would allow for more competition within the market and would allow CMCs to offer a good service at a reasonable price.
42. Some insurers and trade bodies felt that a charge of 15% (inc. VAT) in respect of compensation awarded for claims worth less than £2,000 was too high and that any cap should not be in excess of 10%. The preference for the proposal to cap fees at 10% was due to the simplicity of these claims and the very little work needed beyond purely an administrative role.

25% completion fee for all other financial services claims

43. Overall, there was support for the proposed cap of 25% (including VAT) for all other financial claims were supportive. Several CMCs believed that the proposed cap was reasonable and a fair reflection of work that needs to be carried out. However, there were some CMCs that were less supportive. They explained that Investments, Pensions and Endowment claims are, in their view, much more complex than PPI and PBA claims as they required more in-depth fact finding and skilled workers which pushes fees up.
44. Citizens Advice supported a cap of 25% as they felt it seemed reasonable and would reflect the difference in complexity of other financial claims compared to PPI and PBA claims. It was accepted by most lenders, insurers and trade bodies that CMCs have a role to play, and that the best firms offer a useful service to some consumers. However, most consumers can achieve the same results by claiming directly with lenders without incurring fees of 30% or more that are commonplace when using a CMC.
45. Some respondents suggested they were doubtful that a cap of 25% would be fair and proportionate in the majority of cases, given the limited work undertaken by CMCs across the board. To mitigate this, it was suggested that CMCs should be required to explain to customers up-front how a fee has been calculated so that customers can make an informed decision as to whether the service on offer provides value for money or if, for instance, their interests would be better served by obtaining expert legal advice.

Ban on payments for referring or introducing clients to a third party

46. Concerns were raised by some CMCs as to the applicability of the proposal to ban receiving or making payment for referring or introducing a consumer to a third party. Questions were raised over what and to whom this proposal would apply.
47. The PFCA felt that if CMCs were not allowed to charge when they referred a client to a different CMC it would be the consumer who lost out. Other respondents suggested that a complete ban on introducer fees would have the unintended consequence of preventing legitimate referrals of clients that need specialist help.

Response and conclusions

48. We have carefully considered all the responses to *'Claims Management Regulation – Consultation, Cutting the costs for consumers – Financial Claims'* to inform our final policy decisions about the measures which will be introduced. The proposals consulted on were aimed at improving industry conditions for both consumers and wider businesses, protecting consumers from high charges and reducing the level of speculative claims lodged with lenders and the Financial Ombudsman.
49. We need to ensure a balance is struck between protecting consumers – some of whom might be vulnerable – and recognising the service a good CMC can provide. We recognise that CMCs bring awareness to consumers that may not fully understand their position, the options available to them or the fact that they may have a financial service claim in the first place. As such, it is important that those that choose to use CMCs do not suffer detriment as a result.
50. Lenders have a responsibility to continue to make the claims process as simple as possible for consumers, whilst also playing a part in improving consumer awareness and maintaining any direct claim mechanisms as necessary. By working proactively to raise consumer awareness lenders can help their customers to make informed decisions when it comes to how they submit their claim through the claims process.
51. Free and established processes that are already in place for consumers to make claims, coupled with increased consumer awareness initiatives, will be vital to ensure the best outcomes for consumers that do not wish to use CMCs to pursue claims. Some consumers will choose to use CMCs for as long as it is possible to make a claim and CMCs are able to offer that service. However, using a CMC should not put consumers at a significant disadvantage in terms of the way their claim is handled, or the final compensation received. Consumers should be free to utilise the services of a responsible and efficient CMC should they wish to do so, but this should be at a reasonable cost and after that CMC has established the consumer is fully aware of their options and provided any related charges transparently.
52. We have considered concerns raised by some respondents that there may be consumer detriment if the financial claims market retracts, particularly considering the FCA's introduction of a deadline for PPI complaints of 29 August 2019. We have considered whether a smaller financial claims market would lead to consumer detriment, as consumers may not bring PPI complaints due to lack of awareness, but believe that any impact is likely to be mitigated by the proposed FCA-led communications campaign which was launched in August 2017.
53. We have considered the submissions raising concerns about the adequacy of the current legislative framework to introduce a compulsory fee cap. Taking into account these submissions, and on reflection, we have concluded that these current powers are insufficient to proceed with introducing the proposed compulsory fee cap through the Conduct of Authorised Persons Rules, as we originally proposed.

Recommended fee cap – revised assessment

54. We received many detailed responses from CMCs and others including accounting data, statistical information and evidence in response to the specific questions set out in the consultation. This information has assisted us in gaining a better understanding of the differing business models employed in the financial services sector, and provided a clearer idea of how different types of CMCs incur and recoup their costs under various models.
55. We have considered the evidence provided during the consultation process, including turnover, breakeven points and reasonable profits. Subsequently, we identified that the proposal to restrict completion fees for PPI and PBA claims to 15% (inc. VAT) and to 25% (inc. VAT) for all other financial claims would not be financially viable for many businesses. This was not the aim of the proposals and we recognise the case for a revised level of fee cap to ensure that those CMC's that observe best practice within the industry would not be prevented from offering a service to those consumers who wish to use them.
56. We recognise the importance of accounting for associated business costs as well as the specific costs CMCs incur when pursuing claims. Some CMCs invest heavily in marketing to reach consumers with potential claims and these costs, as well as the costs associated with progressing claims, would need to continue to be recoverable by CMCs. Similarly, many CMCs have placed a high level of investment in their compliance and processing functions to maintain – and in many cases, improve regulatory compliance, particularly amongst the larger CMCs that deal with vast numbers of consumers, across different types of financial services claims. This helps CMCs to provide a service that is suitable to the needs of consumers, and should be maintained as far as possible going forward.
57. While we are unable to introduce a cap on the fees CMCs charge through the current legislative framework, we have undertaken analysis and considered what a reasonable cap could be. Based on responses to the consultation, and had the power been available to us, we would have proposed to increase the headline fee cap for PPI and make both caps exclusive of VAT.
58. We calculated from the evidence we received that the average amount charged to consumers by CMCs was approximately 28% (plus VAT) of the final redress paid. After reassessment, we have concluded that a more proportionate maximum fee cap would be needed to strike an appropriate balance between consumers wishing to use CMCs services and efficient CMCs being able to provide them. We concluded that this revised cap would be set at 20% (excluding VAT) for PPI claims and 25% (excluding VAT) for all other financial services claims (including PBA).
59. We also reconsidered the impact of our proposals to include VAT in any cap and concluded that any fee caps should be considered in terms exclusive of VAT. The inclusion of VAT would have had a net terms impact of imposing a 12.5% cap.
60. We proposed that the same fee restrictions should apply to both PBA and PPI claims. However, analysis of the evidence received also suggests that, while all types of financial services claim can vary in terms of complexity, PPI claims are more likely to be straightforward, whereas PBA claims may be more complex, as packaged accounts may have a range of benefits attached. In PBA claims the suitability and eligibility requirements may vary between different benefits, requiring more thorough and detailed investigations to ascertain the basis for the complaint and consider whether the product was appropriate in the light of the consumer's unique circumstances. Therefore, had we taken this measure

forward, our preference would have been to group this product with all other financial claims, and provide a separate stand-alone cap for PPI claims.

61. Evidence suggests that a fee limit applied across multiple claims with a single lender may be problematic. Our initial proposals included a maximum overall total charge cap of £300 (inc. VAT) for one or more PPI or PBA claims with a lender, where the total net value of all relevant claims total more than £2,000. Following consultation, we understand that lenders will typically treat each claim individually, meaning that multiple claims from a single consumer can be concluded at different times.
62. Were a fee limit to apply to all products with a lender this could cause difficulties for CMCs when attempting to calculate fees. As such, we would have proposed to apply the PPI cap to each individual product claimed against, rather than across a group of claims with a single lender. This follows from our better understanding of CMC costs and the appropriate treatment of VAT.
63. There is also a risk that the cost of pursuing different claims may vary and that a CMC may not recover all of its costs – this may affect the choices a business makes about what claims it progresses on a cost basis alone. This could mean that claims are not referred to the Financial Ombudsman, which has the potential to cause consumer detriment, and this is not our intention. Following consideration of the evidence received during the consultation process, this proposal will not be taken forward.
64. We have reflected on the scope of services offered by financial services CMCs and how the specific needs of consumers can vary. We note that there may be instances where consumers are referred on to another business that has expertise in a specific type of product or service, which is more appropriate for their needs. In addition, we understand that CMCs may obtain verified 'opt-in' data from referral businesses that may place consumers with a CMC that is appropriate for their needs, to maintain the efficiency of the client acquisition process.
65. Consumers (in relation to financial services claims) may also be referred on to other service providers such as debt management companies or solicitors (for example, where litigation is taken forward against a defendant business). If CMCs are not able to refer or purchase verified consumer data for a fee in relation to financial services claims it may prevent consumers from being placed with the most appropriate representative.
66. We proposed a ban on receiving or making any financial payment for referring or introducing a client to a third party. However, we concluded that such a proposal would prevent CMCs referring clients to specialist CMCs or solicitors to the detriment of clients. Additionally, much of the industry relies upon making these referrals or operates for the sole purpose of generating leads to then sell on. The intention of the proposed measure was not to prevent CMCs referring clients, where necessary, and as such we have decided not to take this proposal forward.
67. In response to the consultation there was broad support for a ban on charging consumer's cancellation fees. However, as with the main fee capping proposals, we are unable to introduce this proposal through the current legislative framework. We considered this proposal further and concluded that an itemised bill should be provided to consumers where a contract is cancelled. This would help to ensure proportionate charges and transparency for consumers as some CMCs indicated that cancellation fees were charged on an hourly basis, based on work completed, and that these fees were wide ranging from £25 to £200 per hour.

68. We also consulted on a ban on charging fees to a consumer where no relationship or relevant policy with the lender is found. This proposal was widely supported and responses to the consultation suggested that many operating, especially in the PPI sector, offer their services on a “no win, no fee” basis. We do not believe that the effect of introducing this measure would be significant on the industry and it now forms part of the final package of measures.

Economic evidence

69. We received data during the consultation process on the unit costs of pursuing a PPI claim to CMCs and our findings suggest an median cost of around £280 per claim. Based on an average redress for a PPI claim of £1,880, our analysis suggests a cap of around 15% (inc. VAT) would lead to a contraction of the industry. As we have stated previously, it is not our intention or aim to push CMCs out of the PPI market.
70. Considering the evidence available to us, a 15% cap (excl. VAT) would mean that the market would be able to break-even (i.e. the average cost per claim equals the average revenue per claim). As such, we looked at what percentage fee cap would allow for a viable market, and businesses to operate profitably, without excessive charges for consumers. We concluded that the revised maximum fee of 20% (excl. VAT) would allow a profit per claim of around £96, or in the region of 26% which we believe would be considered reasonable.
71. While PPI claims are generally, relatively straightforward to administer, analysis of the evidence received suggests that PBA claims have the potential to be more complex, and therefore need more work to administer. As such, PBA claims would be subject to the same cap as recommended for all other financial claims, rather than the same cap recommended for PPI claims. This is because of the number of additional services or benefits that can be attached to an account (such as travel insurance, breakdown cover and other benefits). To that end, claims may need more thorough and detailed investigations to ascertain the basis of any initial sale and whether any individual, additional services paid for are appropriate in the light of a consumer’s circumstances.
72. The revised maximum fee for all other claims (including PBA) is 25% (excl. VAT) as we believe this reflects the fair level of work required to pursue these types of claims. In addition, 25% (excl. VAT) is around the industry average for these types of claims, so this will minimise the impact on CMCs operating in these sectors. We hope this will encourage CMCs to adopt this cap as part of their efforts to increase transparency and introduce reasonable fee limits for consumers.
73. Capping cancellation fees at £300 where a contract is cancelled outside of the 14-day ‘cooling off’ period would likely create a cost to CMCs who currently charge more than £300. However, we believe the impact on CMCs would be small if the legislative framework allowed us to take this proposal forward under the current regulatory regime. A large proportion of respondents stated that they did not charge a cancellation fee, and that cancellations were rare.
74. Banning any charges to a consumer where it is identified that the consumer does not have a relationship or relevant policy with the lender would result in costs to CMCs if they undertake an initial investigation and it transpires there is no relevant policy. We did not receive any responses about the extent to which these practices currently occur, or the costs of complying with the proposal. However, we do not believe that the effect would be significant as many operating, especially in the PPI sector, offer their services on a “no win, no fee” basis.

Relevant price transparency initiatives

75. On 15 December 2016, the Competition and Markets Authority (CMA) published its final market study report into the legal services sector.⁵ This study found that competition in the legal services market for individual consumers and small businesses is not working well, and a range of recommendations were made in order to address the issues that were identified.
76. The CMA's report highlighted that consumers need providers to be transparent about both price and quality so that they can choose the service that represents both best value for money and address their needs. In turn, transparency would help generate competition, driving up standards across the industry.
77. A number of principles were established in terms of transparency around both price and quality including that consumers should be able to access key information to help them make effective purchasing decisions, and that this information should be presented in a way that consumers can assess. The CMA emphasises the importance of pricing information being clear, timely and comparative, and that other information that feeds into the value of the service – such as quality insight – should be presented alongside it. Most importantly this information should be digestible and presented in a way that is appropriate to the audience.
78. The Legal Services Board (LSB) published a response⁶ to this study in April 2017, acknowledging the need for greater competition in the legal sector and that a major part of achieving this will be to ensure there is better information available for consumers in relation to price, quality, redress and regulation. The LSB suggested that increasing transparency can help to promote a number of regulatory objectives including improving access to justice, increasing market completion, promoting and protecting the interests of consumers and, overall, making better information available to assist consumers.

Other factors

79. In March 2017, the FCA published PS 17/3 '*Payment protection complaints: Feedback on CP 16/20 and final rules and guidance*'.⁷ PS17/3 confirms the FCA's final rules and guidance in relation to PPI claims, including a new rule that sets a deadline of 29 August 2019 for consumers to complain about the way they were sold PPI. This deadline for lodging PPI claims could result in a surge of CMC marketing activity prior to the end of the two-year period in 2019.
80. The FCA launched a consumer awareness initiative on 29 August 2017 around lodging PPI claims that is due to run for two years until the FCA's time bar applies in August 2019, and would look to ensure that this is as inclusive as possible and engages with vulnerable consumers. This initiative is likely to mean that there are more mechanisms to make consumers aware of their options, and is likely to assist in balancing the effect of any market exits resulting from the deadline and the level of consumer awareness more widely.

⁵ <https://www.gov.uk/cma-cases/legal-services-market-study>

⁶ <https://assets.publishing.service.gov.uk/media/57d18fd5e5274a34fb00001c/legal-services-board-response-to-interim-report.pdf>

⁷ <https://www.fca.org.uk/publication/policy/ps17-03.pdf>

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81. It is important that any wider consumer awareness initiatives look to mitigate any potentially adverse effects where possible when making consumers aware of the deadline for PPI. The FCA led initiative is likely to reach a significant number of consumers, and it may mean that consumers are more likely to pursue claims themselves, as opposed to using a CMC.
82. Following the 2017 Queen's Speech, the Financial Guidance and Claims Bill was introduced to Parliament. It aims to strengthen the regulation of CMCs by transferring the regulatory responsibility of CMCs to the FCA and ensures that the FCA has the necessary powers to cap the fees that CMCs charge consumers. At this stage, there is an opportunity for businesses to highlight fair and transparent pricing structures in anticipation of consideration by the FCA of a future limit on fees charged for financial services claims (subject to the Bill being considered by Parliament and receiving Royal Assent). By adjusting now businesses may benefit from a smooth transition, as well as ensuring their clients have the information available to them to make an informed choice about their services.

Next Steps

83. The next steps in relation to this consultation response are outlined below.
84. **Summary of compulsory measures to be implemented via changes to the Conduct of Authorised Persons Rules:**
- A ban on upfront fees being charged to a consumer prior to the completion of work being undertaken or the claim being concluded.
 - A ban on any charges to a consumer where it is identified that the consumer does not have a relationship or relevant policy with the lender(s) for which a claim is submitted on their behalf.
 - Requirement for regulated businesses to ensure all charges are reasonable and to provide consumers with an itemised bill setting out details reflecting the work undertaken and what the charges relate to where a contract is cancelled after the 14 day 'cooling off' period.
85. The new rules will come into effect on **1 April 2018**. All CMCs offering regulated financial claims services in England and Wales will be required to adhere to these new rules as a condition of authorisation in accordance with Regulation 12(5) of the Compensation (Claims Management Services) Regulations 2006. Failure to adhere to the rules will lead to enforcement action which could result in a financial penalty or the variation, suspension or cancellation of a CMCs authorisation.
86. **Summary of indicative fee caps – non-compulsory:**
- Completion fee cap of 20% (excl. VAT) of the net amount of the final compensation awarded per individual PPI claim.
 - Completion fee cap of 25% (excl. VAT) of the net amount of the final compensation awarded per product for all other claims in the financial services sector (including PBA claims).
87. **It is suggested that the indicative maximum fee levels would apply to:**
- Each individual claim or product claimed against.
 - Any value of an individual claim, with no maximum monetary figure.

Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<https://www.gov.uk/government/publications/consultation-principles-guidance>

Equalities

Background

1. The Public Sector Equality Duty came into force in April 2011 and public authorities including the Ministry of Justice, are now required to have due regard to the need to achieve the objectives set out under section 149 of the Equality Act 2010 to:
 - a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
2. The relevant protected characteristics which we are required to consider are:
 - Age
 - Disability
 - Gender reassignment
 - Pregnancy and maternity
 - Race
 - Religion or belief
 - Sex
 - Sexual orientation
 - Marriage or civil partnership status⁸

Impact on those running Claims Management Companies

3. We have undertaken an equality impact assessment in relation to impact of the proposals on those running Claims Management Companies (CMCs). No evidence has been received to suggest that the proposals would have a particularly adverse effect on any group that shares a protected characteristic.
4. Upon applying for authorisation or renewing an existing authorisation, CMCs may provide information regarding the ethnicity and diversity of those running the business (i.e. Directors). CMCs, however, are not obliged to provide this information.

⁸ In relation to the elimination of discrimination, harassment, victimisation and other prohibited conduct, but not the advancement of equality of opportunity, or fostering of good relations.

Impact on Consumers

5. We have also conducted an equalities analysis of the potential impacts on consumers. It is not possible to obtain evidence on the total number of consumers that may have a financial services claim or the proportion of which share a particular protected characteristic. However, should financial services CMCs market exits occur as a result of these proposals this could prevent a proportion of consumers from instigating financial services claims – if they would not have otherwise become aware of their options through other means.
6. In the absence of responses to our consultation in relation to equalities, we have referred to the Equality Impact Assessment (EIA) published as part of the FCA's feedback on the consultation on the rules and guidance on payment protection insurance complaints (CP16/20) The FCA's EIA considered the three areas to which it is necessary to have due regard under section 149 in relation to each protected characteristic. The FCA also considered the broader category of vulnerable consumers. While the EIA did not find any evidence of harassment, victimisation or anything relevant to fostering good relations, it did identify that the FCA's proposals had the potential to result in less favourable outcomes for some protected groups and vulnerable consumers. This insight helps us to understand the potential impact on consumers who might be classed as vulnerable.
7. The FCA identified that there are particular reasons why those belonging to certain protected or vulnerable groups may be less able to understand or act upon the FCA communications campaign in relation to the Payment Protection Insurance (PPI) time-bar. There are similarities between these groups and those that our analysis has suggested may be affected by the introduction of our proposals in the financial services claims sector.
8. The particular groups which the FCA's research shows may be disadvantaged are:
 - Older people (particularly those aged over 65 and even more so for those over 75)
 - Women
 - Black and minority ethnic (BAME) groups (particularly those for whom English is not their first language)
 - Disabled consumers, with mental health problems, learning disabilities, cognitive and/or sensory impairments
 - Vulnerable consumers on low incomes with low financial confidence
9. The FCA also considered potential impacts on those in, or discharged from, bankruptcy, and those in other forms of debt relief arrangements, including Individual Voluntary Arrangements (IVAs) and Debt Relief Orders. The FCA assumed that individuals abide by the rules or requirements of their IVA, which (while varying from case to case) would generally require the disclosure of a potential PPI complaint as a potential asset at the point an individual became aware of it. The FCA has conferred with the Insolvency Service, which has confirmed its understanding of the arrangements is correct.
10. Age – The FCA identified evidence that those aged 65 or over could be adversely impacted because of lower financial capability, knowledge and confidence and lower levels of usage of the internet. The issues become more significant for those aged over 75, as financial skills and proficiency can often decrease. The FCA also identified cold calling as an issue impacting older people as they are more likely to have land lines and be at home during the day.

11. Women – Evidence identified by the FCA shows that men are slightly more likely to have held PPI, but are also more likely to have complained already. Women in the UK appear less likely than men to complain, due to slightly lower financial knowledge and familiarity.
12. Race – The FCA’s evidence generally showed that many members of BAME groups have lower levels of financial knowledge which could impact their decision-making. It is also noted that language barriers for some, in particular for those with limited fluency in English, appear to lead to lower levels of awareness and interaction with financial institutions.
13. Disability – The FCA observed that while many disabled people effectively manage their day to day affairs, evidence also showed that many disabled people appear to have lower levels of financial confidence, lower awareness of financial matters, less engagement with financial issues and a lower propensity to complain. Specifically, it was identified that:
 - there is clear evidence that there is lower financial confidence among many people with mental health issues;
 - the process of complaining could be more difficult for those with a visual impairment, due to inaccessible formats, lower internet usage levels and the potential need to review historic information when considering making a complaint;
 - services offered may not be helpful for people with hearing-impairments; and
 - cognitive issues which impact on memory were likely to have an impact on financial capability, and a high percentage of this group may be supported by a friend, relative or carer.
14. Other groups considered by the FCA include lesbian, gay, bisexual and transgender (LGBT) consumers, pregnant consumers/recent mothers, consumers who hold a particular religion or belief and marital status. In relation to pregnancy and maternity, religion and belief and marital status, the FCA did not identify any specific, robust evidence or information about poor financial confidence or propensity to complain. For LGBT consumers limited evidence was identified by the FCA which highlighted that these consumers may be more confident making a complaint if improvements are made to customer experience.
15. The FCA identified that low income could be more likely to make someone vulnerable and impact their likelihood of complaining as a result of lower financial confidence.
16. Carers – Given the evidence on age and disability, the FCA has highlighted the importance of reaching out and engaging with carers.
17. It is important that consumers who decide to use a CMC to pursue a financial claim receive better value for money and are not taken advantage of by companies that may add little to the claims process in practice. Whilst there are many CMCs offering regulated claims management services in the financial claims sector, on the whole, consumers are likely to contract with the first CMC that contacts them, with many consumers still appearing not to fully understand that alternative mechanisms for making a claim exist.
18. Restrictions on fees would protect consumers who may not understand the information they are presented with at the outset of contracting with a CMC. It would ensure that they are only required to pay reasonable charges for work carried out by the CMC. Additionally, a restriction on fees would be likely to mean more focused marketing, leading especially to claims made where a PPI policy was sold, and helping to reduce the cost of speculative claims to the industry. As such these proposals are a proportionate response to the issues that have been identified in the financial claims sector.

Annex A – New measures

The revised measures the Claims Management Regulator will introduce under the Conduct of Authorised Persons Rules are as follows:

All financial services claims

- CMCs will be required to ensure that all cancellation charges are reasonable and to provide consumers with an itemised bill setting out details of what the charges relate to
- A ban on any charges to a consumer where it is identified that the consumer does not have a relationship or relevant policy with the lender
- A ban on any upfront fees being charged to a consumer

The following measures will not be made mandatory through the Conduct of Authorised Persons Rules, but are indicative and we encourage CMCs to adopt them:

Payment Protection Insurance (PPI) claims only

- A completion fee of 20% (Excl. VAT) of the net amount of the final compensation awarded per individual PPI claim

All other financial claims (including Packaged Bank Account (PBA) claims)

- A completion fees of 25% (Excl. VAT) of the net amount of the final compensation awarded per product for all other claims in the financial services sector (including PBA claims)

Annex B – Rules

The following show the Rules to be included within the Conduct of Authorised Persons Rules 2014 will come into force on 1 April 2018:

- Fees must not be charged to a client prior to the conclusion of a PPI claim. Fees for any other financial products and services claims must not be charged prior to the provision of any regulated claims management services (excluding advertising for, or otherwise seeking out)⁹ to the client.
- If there is no relationship or relevant PPI policy between a client and a financial services firm identified, a business must not charge any fees.
- If a contract for a financial product and services claim is cancelled, by either the client or business, any fees charged must be after the provision of regulated claims management services (excluding advertising for, or otherwise seeking out)¹⁰ to the client. A business must provide an itemised bill that sets out the charges to the client before obtaining payment details and before any payment can be taken. The itemised bill must evidence the regulated claims management services provided and how the fees have been calculated.
- **Amended** Client Specific Rule 16: A business, unless subject to Regulation 8 of the Damages-Based Agreements Regulations 2013, must permit the client to cancel a contract at any time. Any charge to the client must be limited to what is reasonable and must reflect work undertaken by the business. Where there is a contract for a financial product and services claim the business must provide the client with an itemised bill that evidences the regulated claims management services provided and how the fees have been calculated before obtaining payment details and before any payment can be taken.

⁹ As defined by The Compensation (Regulated Claims Management Services) Order 2006

¹⁰ As defined by The Compensation (Regulated Claims Management Services) Order 2006

Annex C – Proposals consulted upon

Bulk Claims – Payment Protection Insurance (PPI) & Packaged Bank Account (PBA) claims only

- A completion fee cap of **15% (Inc. VAT)** of the net amount of the final compensation awarded, for one or more **PPI** or **PBA** claims with a lender, where the total net value of all relevant claims equals £2,000 or less.
- An overall total charge cap of **£300 (Inc. VAT)**, for one or more **PPI** or **PBA** claims with a lender where the total net value of all relevant claims totals more than £2,000.
- A maximum ‘cancellation’ fee of **£300 (Inc. VAT)** where a consumer cancels their contract with a CMC after the initial 14 day ‘cooling off’ period. To support this, CMCs will be required to ensure that all charges are reasonable and will be required to provide consumers with an itemised bill setting out details of what the charges relate to.
- A ban on any charges to a consumer where it is identified that the consumer does not have a relationship or relevant policy with the lender.
- A ban on CMCs receiving or making any financial payment for referring or introducing a client to a third party in relation to **PPI** or **PBA** claims.

Non-Bulk Claims – Other Financial Claims (excluding PPI & PBAs)

- A completion fee cap of **25% (Inc. VAT)** of the net amount of the final compensation awarded per product for all other claims in the financial claims sector.

All Financial Claims

- A ban on any upfront fees being charged to a consumer for the pursuit of any financial claims.

Annex D – List of respondents

ACL Consultancy Ltd
Acorn Claim Assist
Active Credit Reclaim
Allianz
Allixium Ltd
Anonymous – CMC (x3)
Anonymous (x3)
Arch Hall Ltd
Association of British Insurers (ABI)
Association of Mortgage Intermediaries (AMI)
Association of Professional Financial Advisers (APFA).
Aviva Insurance Ltd
AXA UK
Bank Charge Recovery Ltd
Bar Council
Barclaycard
British Bankers Association (BBA)
Beech Consumer Services Ltd
Capital One (Europe) Plc
Central Claims Group
Citizens Advice
Claim 2 Gain Ltd
Claimline Legal UK Ltd
Claims (London) Ltd
Claims Advice Bureau (UK) Ltd
Claims Advisory Group
Claims Thru Us Ltd
Clydesdale Bank
Consolidators Ltd
Consumer Finance Association
Consumer Saving Network
Credit Card Compliance Ltd
Credit Hero Ltd

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Credo Claims
Crystal Legal Services Ltd
DAC Beachcroft Claims Ltd
Demirtas Finance
Devon and Somerset Trading Standards Service
DRSP Ltd
DWF LLP
Eagles Claims Money
Easy Claims Collection Ltd
EMC Advisory Services
Employment Law Associates
Equity in Finance Ltd
Fair Trade Practice
Family Money Savers
Finance & Leasing Association (FLA)
Financial Claims Made Simple
Financial Ombudsman Service (Financial Ombudsman)
Financial Recovery Solutions Limited
Flairford Securities Ltd T/A Brunel Franklin
Forum of Insurance Lawyers (FOIL)
Franklyn Hughes Ltd
Gladstone Brookes
Goldentree
Goodwin Barrett
Gregory Pennington T/A Think 2 Claim
Hardwick Financial Solutions Ltd
Help Your Claim
Hill Dickinson LLP
Ian Knight JP
IFM LLP
Investor Compensation (UK) Ltd
It IS Your Money Ltd
It's Your Money Ltd
JMP Partnership (IW) Ltd
Just Resolve
Keoghs LLP

LeadX Holdings Ltd (The Claims Guys)
Lease Advisory Service Ltd t/a Leasing Advisory Service
Legal and General
Legal Beagles
Lepus Marketing Ltd (The PPI Team)
Liverpool Victoria Insurance Company
Lloyd's Banking Group
Lower Cost Complaints Ltd
M Law LLP
Maple Leaf Financial Ltd
Marshall Scott
McGinness Associates T/A – Dooneen Ltd
Midas Marketing Management Ltd
Miller Gardner Solicitors
Money Active
Money Advice Group
Money and Me Claims Ltd
Money Back PPI
Money Charity
Money Management Team Ltd
Moneyexpert Ltd
Mortgage Claims Bureau Limited
MP Financial
My Claim Solved Ltd
My Congruent Legal Ltd
National Accident Helpline
Onyx Management Ltd
Open Media Solutions Ltd
Oracle Legal Ltd
Professional Financial Claims Association (PFCA)
PPI Advice Ltd
Private Individual – Name not released (x3)
Quickly Finance Limited T/A Fast Track Reclaim
Quigley and Carter Ltd
Rapid Reclaims Ltd
Redhawk Legal Ltd

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Refresh My Credit
Resolved Claims Ltd
Robin John Oliver
Royal & Sun Alliance Insurance plc
RYM Claims
Secure Compliance Ltd
Stanton Fisher
Sun Lane Ltd
Symmetric Systems Limited trading as Bank-Smart
Synergy Financial Solutions Ltd
Tenet Group Ltd
UK Cards Association
Verso Group UK Ltd
Watchdog Advocate, Staffordshire County Council
We Fight Any Claim
Which?
Whitehall Randall
William Paisley Ltd
X-Claims Ltd
Your Money Back Ltd
Your Money Management Ltd
Zurich Insurance Plc



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