

CP21/1: Restricting CMC charges for financial products and services claims

BSA Response

Restricted
21 April 2021

 Building Societies
Association

Introduction

The BSA welcomes the overarching aims and desired outcomes that the measures proposed in CP21/1 set out to achieve.

The BSA is, however, concerned at the proposed charging bands, the construction of which appears to be underpinned by a desire to preserve the viability of CMC business models. While we acknowledge the stated rationale for this, we consider that basing fee arrangements on a need to ensure there is an incentive for CMC's to act on behalf of individuals with lower claims has the potential to increase the risk of poor outcomes for consumers.

We welcome the steps the FCA is taking, and has already taken, to ensure engagement with other regulators of CMCs. However, we remain very concerned that without a co-ordinated and consistent approach to regulation of claims management activities in the UK, the risk of confusion and poor outcomes for consumers is not being effectively addressed. Introducing these measures increases the risk of CMC firms choosing to adopt different business models to take them out-with the strong regulatory regime of the FCA. That flight could be damaging not just to consumers but to the FCA's own competition objectives.

The FCA published its supervisory statement in relation to CMCs in October 2020, which clearly sets out the areas of supervisory focus in this market. The measures proposed in this CP will require considerable and effective monitoring and oversight by the FCA to ensure they are being met. If the desired outcomes are to be achieved, it is imperative that the FCA ensures that it is appropriately resourced to ensure this, and to take the necessary action in respect of any breach of requirements.

Response to Questions

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

We agree with the principle of introducing a cap, although we have some reservations about its current proposed design.

Bandings:

For each of the bandings which would be subject to a maximum charge of over 20%, we urge the FCA to reconsider the maximum percentage rate and/or the maximum total fee. The government cap that was introduced prior to FCA regulation of CMC activity was set at 20%.

Reconsidering the higher %age cap could address the apparently disproportionate adverse impact on the amount of redress received by consumers whose redress/claims are of lower value. While we understand the rationale for the construction of the cap, we are concerned that a consumer whose redress amounts to less than £1500 would receive significantly less redress when compared to someone with a higher value claim. While the maximum percentages and total fee limits proposed may serve to ensure that CMCs remain active in dealing with smaller redress claims, from the consumer's perspective the current proposed design raises a crucial question as to fairness. This could be exacerbated in the case of customers with vulnerable characteristics.

Potential Alternative Fee Structures: The FCA has acknowledged that the introduction of a cap may lead to firms developing different fee structures, and we welcome the fact that the cap will still apply where that is the case. The FCA should consider and monitor whether claims that would have been previously dealt with as one claim may be being broken down into several to provide scope for a higher fee to be charged.

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

Yes. It will, however, be critical that the FCA actively supervises the application of "reasonable" fees which fall outside the statutory redress scheme.

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?

Yes. The FCA should ensure that there is appropriate supervision of the operation of any such requirement, and the interest element may be better linked to the date of receipt by the CMC rather than the date of payment by the consumer, to ensure that this also applies where the CMC deducts the fee payable from the amount of redress received.

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

Yes. We do not see how the proposals would require a longer implementation period, and there is clear benefit to consumers in introducing them quickly.

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, and we agree that creating transitional arrangements would not be appropriate. However, the proposal that fees already charged should count towards the cap risks the consumer

receiving a lesser level of service for activity performed after that fee cap has been breached. How does the FCA intend to address this risk?

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

Yes, subject to the following comments:

- The FCA's survey indicates a lack of consumer understanding of available options when making claims. With that in mind, rather than simply rely on the CMCs making the required disclosures does the FCA plan to use a publicity campaign or other means to raise public awareness? This is particularly important against the backdrop of existing FCA concerns around disclosure as highlighted in its October 2020 CMC portfolio letter.
- Our comments above regarding the fact that these measures address only part of the CMC market are pertinent. Without co-ordinated activity to address the impact on consumers of the multiple regulatory regimes for providers of CMC services, we are not convinced either that competition will be enhanced or that there will be any demonstrable greater clarity for consumers as a whole as to the cost of using a CMC. Consumers will remain at the mercy of whatever business model is being used by the CMC in question, and the requirements of whichever regulator it is subject to. While we note that the SRA is similarly reviewing CMCs, if complementary requirements are not imposed on those firms regulated elsewhere, then there is a risk that CMCs adopt business models that mean they are regulated elsewhere. This would allow them to circumvent the regulatory requirements, consumer protection, level of supervision and censure that accompany FCA regulation.
- The proposals in relation to disclosure are helpful in informing the customer as to the likely cost of using a CMC. What they do not address is the potential for consumers to overvalue the services provided by CMCs. We would like to understand the steps that the FCA intends to take to ensure that this is addressed.

It will be interesting to see whether over time the requirement to better tailor the information regarding costs leads to better up-front investigation into a potential claim by CMCs.

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?

Yes, but please also see our comments above regarding the potential increased awareness that a wider publicity campaign would be likely to achieve.

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

Yes.

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 & 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, provided that the required explanation is sufficient to ensure the customer fully understands the consequences.

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

Yes. However, in the second bullet point in Paragraph 12 of the Cost Benefit Analysis, reference is made to the fact that results may indicate that consumers with more complex claim types might anticipate a greater degree of involvement on their part. This statement seems odd in the context where 32% of respondents relating to loans felt they had to do more paperwork than expected. This suggests that at least a third found they had to do more themselves than expected.

Q14: Do you agree with our assessment of the impacts of our proposals on the protected groups? Are there any others we should consider?

We agree with your assessment.

By Elaine Morton
Head of Legal, Conduct Risk & Compliance
elaine.morton@bsa.org.uk
0207 520 5915

York House
23 Kingsway
London WC2B 6UJ

020 7520 5900
@BSABuildingSocs
www.bsa.org.uk

www.bsa.org.uk

The Building Societies Association (BSA) is the voice of the UK's building societies and also represents a number of credit unions.

We fulfil two key roles. We provide our members with information to help them run their businesses. We also represent their interests to audiences including the Financial Conduct Authority, Prudential Regulation Authority and other regulators, the Government and Parliament, the Bank of England, the media and other opinion formers, and the general public.

Our members have total assets of over £435 billion, and account for 23% of the UK mortgage market and 17% of the UK savings market.