Restricting CMC charges for financial products and services claims (CP 21/1)

FLA RESPONSE

The Finance & Leasing Association (FLA) is the leading trade association for the UK consumer credit, motor finance and asset finance sectors. FLA member companies include banks, the finance subsidiaries of major manufacturers and independent finance firms. They offer credit services to customers from all social groups, via credit and store cards, personal loans, point of sale finance, motor finance, mortgages and a number of other consumer credit products, as well as a wide range of leasing and hire purchase services to businesses of all sizes.

Introduction

We broadly welcome these proposals and are supportive of measures aimed at improving the consumer outcome within the CMC market. We agree CMC fees charged to a consumer for claims management activities should be capped in order to address consumer harm in the claims management market. These proposals would also further align the treatment of other financial service products with PPI, which is currently capped at 20%. However, as we allude to below, we would like the FCA to go further on their current capping proposals.

We broadly agree with the other proposals which will enhance requirements for all CMCs to disclose information to help consumers make an informed choice about using claims management services in cases where the claim may be made under a statutory scheme such as FOS. We also broadly agree with the FCA that improved disclosure of key information to consumers at the pre-contract stage will help consumers make better-informed decisions about using CMC services. But again, we would like to see FCA go further (see response to Q's 6-7 below).

We do have concerns and reservations around the current proposed band structure. We think 30% is too high and would prefer to see a 20% cap across all product lines and redress fees, accompanied by an adapted maximum total fee for any claim (see response to Q1 below). This becomes even more important as the value of the claim redress increases.

We would like to see the SRA align with the FCA on these issues, in order to prevent CMCs moving to SRA regulation. We note there is already a Memorandum of Understanding (MoU) between the FCA and the SRA but ultimately greater alignment here would be the best outcome for users of CMCs.

It's also worth noting that we had a "very helpful" roundtable with FCA, SRA and the ICO in October 2020. Going forward, we would like to get involved with the Lenders

Forum as a vehicle to continue to feed in evidence of consumer detriment in relation to CMC and Law Firm conduct matters.

Finally, we have a number of concerns with the way some CMCs process claims. These include, amongst others:

- Inappropriate and mis-use Letters of Authority (LOA's) and E-signatures
- Lack of proper due diligence around claims
- Continued use of templated letters; and
- Mass untargeted Data Subject Access Requests (DSAR's).

Questions

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

As discussed with the FCA on the 4th March, we have some concerns and reservation with the current proposed band system. We think 30% is too high for a number of reasons, including:

- CMCs are benefitting from a significant gap in consumers understanding as to exactly the role and service they provide, allowing them to charge excessive redress fees
- In May 2018, legislation was passed that prohibited fees of more than 20% being charged for PPI claims. Despite this there was an overall rise of 58% in complaints about insurance (with PPI making up 81% of these claims). Hence the 20% cap did not dissuade CMCs from managing vast quantities of PPI complaints or drastically effect their business models.

With this in mind, the FCA's proposed fee cap tiers (for bands 1-3) could be lowered further, without having any significant impact on the CMC offering. Our preference would be to see a 20% cap across all fee values, in line with PPI claims. This should be accompanied by a maximum total fee (£) along similar lines to the one FCA already proposes. This would also allow customers to better understand what a CMC is charging, whereas the current band system is both complicated and confusing.

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

We agree with the scope of the propose cap.

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?

We agree with the FCA that agreements which breach the cap should be unenforceable and that simple interest of 8% should apply. Lenders also have unenforceability sanctions under the Consumer Credit Act (CCA).

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

We agree that a 3-month implementation period for the cap is sufficient time for CMCs to adapt.

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

We agree with this proposal. It is important that pre-existing contracts are included in these proposals in order to provide consumer protection against excessive fees.

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

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

While both of these proposals are a positive step, it's not clear whether this will be enough to encourage customers to be able to make better-informed decisions about whether or not to use a CMC.

- We believe fee illustrations should be provided in £s not just as an indicative percentage of redress, as this will make it easier for customers to understand the cost of raising their complaint via a CMC.
- We believe there should be further consideration of an external campaign (either via the FCA, consumer bodies or Trade Associations) to better inform customers about their alternative options to using a CMC.
- More could be done to encourage customers to shop around between CMCs. The FCA should consider a 'fire break' or 'stop point' prior to contractual engagement to allow customers to decide if they want to shop around first.
- CMC market should move away from the 'fee as a percentage of redress obtained' model. CMCs could be required to set out their fees up front, based on a fixed rate or hours worked rather than as a proportion of redress obtained.

This is all part of conduct issues. CMCs often fall short of the standards expected of them, and given they are now authorised firms, the FCA should apply the same standards as it does to mainstream providers.

- CMCs should be required to demonstrate how they are ensuring 'customer fair value' in their pricing and services.
- FCA should require CMCs to do more testing or auditing to ensure customer understanding.
- FCA should also look to address any practices which lead to customers continuing with complaints that they know are spurious.

Further Considerations: There are a couple of further key areas that we feel the FCA should take into consideration. They are:

- **Duty of Care**: FCA has announced that it will be consulting on options for a Duty of Care in May 2021. It is more critical than ever to get the rules around CMC redress correct as a private right has the potential to lead to increased campaigns / complaints volumes from CMCs in future.
- **Fee distribution**: Sometimes a consumer will receive multiple services from a single firm or from multiple firms in relation to the management of a single claim and CMCs need to ensure total fees incurred by the customer do not exceed the cap. It is important that this is closely monitored, to avoid the risk of CMCs adding unnecessary complexity to the complaints process in order to circumvent the proposed fee cap.

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

We agree that a 3-month implementation period for these proposals is sufficient.

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

We agree. These are mainly clarifications and corrections.

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?

We agree. This is merely an update in line with current legislation.

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?

We agree with this proposal. The clearer and more transparent it is to a customer that they may need to pay the redress themselves the better. This will help make them make a more informed choice as to whether or not they can afford or indeed want to engage a CMC.

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?

We agree with this proposal.

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

We agree with the FCA's detailed CBA.

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 the FCA's assessment of the impacts of their proposals on protected groups.

FLA
21 April 2021