

Cutting costs for consumers in financial claims

Citizens Advice's response to the Claims
Management Regulator

April 2016



About the Citizens Advice service

The Citizens Advice service provides free, independent, confidential and impartial advice to everyone about their rights and responsibilities. It values diversity, promotes equality and challenges discrimination.

The service aims:

- to provide the advice people need for the problems they face
- to improve the policies and practices that affect people's lives.

Citizens Advice is the membership body for local Citizens Advice services in England and Wales. There are over 300 local Citizens Advice services in England and Wales giving advice from about 3,500 locations including high street offices, libraries, courts, prisons, GP's surgeries and hospitals.

Citizens Advice and Citizens Advice Scotland jointly run the Citizens Advice Consumer Service (formerly Consumer Direct), which provides consumers and small businesses with advice about problems with goods and services. The Consumer Service database also provides a source of intelligence for Trading Standards Services across Great Britain and national regulators.

Responses to consultation questions

PPI / PBA Claims Only

Q1. Do you have any comments regarding the proposals to implement;

- **A cap of 15% (Inc. VAT) of the net amount of the final compensation awarded with a single lender, where any final compensation amounts to less than £2,000?**

We welcome a cap of 15 per cent including VAT for claims where the final compensation awarded is less than £2,000. CMCs taking large fees out of consumers' compensation has been a persistent problem in our recent reports on the issues our clients face, and a cap should put a stop to firms charging excessive rates. The amount taken by CMCs is disproportionate in many cases, especially considering the limited work required to make PPI/PBA claims, and the fact that it is relatively straight-forward for consumers to make these sorts of claims directly with the lender or Ombudsman free of charge.

Many of our clients have felt that the amount they have been charged is unfair, as many of them had agreed to contracts following cold calls and had not been made fully aware of the terms of their agreements. In some cases, firms charged a huge proportion of compensation payouts under £2,000, as shown in the case study below:

A local Citizens Advice in the West Midlands saw a 45 year old unemployed man with learning difficulties. He received a letter in the post from a CMC relating to mis-sold PPI. The client was unable to read the terms and conditions included due to his learning difficulties but he signed the forms anyway authorising the firm to act on his behalf. He subsequently received a payout of £400 but was asked by the CMC to pay their fee. He set up a payment plan for £39.75 per month and paid £198.75 to the firm before stopping the payments as his only source of income is employment support allowance and council tax benefit. The CMC continued to press for further payments and the client ended up paying more in administration fees than he had originally received in compensation. The account was eventually closed with the assistance of an adviser. The firm then wrote to the client again offering their services to pursue further claims.

This case demonstrates the necessity of capping the final fees CMCs charge for cases where the compensation amount is under £2,000. In cases like this where the payout is relatively small, it is entirely unreasonable and unfair for CMCs to take such a large chunk of compensation from the consumer. This cap would go some way to protecting vulnerable consumers and would hinder the ability of some CMCs to take advantage of those who are unable to understand the terms and conditions of their agreements.

We recently conducted an analysis of our internal data for Quarter 3 2015-16 (financial year) relating to CMCs. The most common percentages taken from the final compensation awarded for mis-sold PPI or PBAs were 39 per cent and 25 per cent. The lowest percentage recorded was 20 per cent, and the highest was 56 per cent. The majority of these fees charged did not include VAT payments. Capping final fees at 15 per cent would be a welcome step in the right direction, and the fact that VAT is included in the cap will prevent consumers being hit with additional costs on top of the stated final fee.

● **A cap of £300 for the total net value of relevant claims awarded with a single lender that amount to more than £2,000?**

We fully support this proposal. Of the cases where final fees were the main issues reported by our clients in Q3 2015-16, 72 per cent stated that their total compensation was above £2,000, which highlights the need for action to protect consumers receiving such large payments, of which firms are routinely taking a very sizable portion (although we were unable to establish from the information we had available whether these were with a single lender). The average amount of compensation received by those who had issues with final fees was £3,406, while the average amount of money taken by CMCs as a final fee was £1,284.

Many of our clients were left surprised by the amount of their compensation CMCs tried to take:

A client received a cold call from CMC who offered to claim for mis-sold PPI on clients behalf. The client agreed to this and was sent a form to fill in along with two

letters from the company, but did not receive any terms and conditions. They were told verbally there would be a 'small' administration fee. Client was then notified that they were successful in their claim and would receive £4,725 in compensation. The CMC is now asking for £1,900 in fees.

The above case is a clear example of a firm deliberately misleading the consumer over the final fee, but also of how the existing rules allow firms to charge fees that are completely disproportionate to the amount of work they have actually done. Many clients were hit with excessive charges of thousands of pounds:

A client who contacted our consumer service claimed that they had been persistently cold called by a few CMCs. After having been pressured by the firms, and experiencing considerable stress, they gave in and allowed one CMC to pursue a PPI claim on their behalf. The client received a letter from their bank stating that they would be repaid £10,000 for mis-sold PPI - the client has since received a cheque. The CMC then began chasing the client for 39 per cent (£3,900) of their compensation.

The above case demonstrates how inappropriate it is for firms to be charging percentage fees for such big claims. It is simply unreasonable and unjust to charge thousands of pounds for PPI/PBA claims, when the process of claiming takes relatively little time and effort, and when the consumer could just do it themselves. In some instances clients have agreed to a contract with a CMC but have then done some, or all, of the work themselves but have still been charged huge proportions of their compensation, sometimes years later:

Client agreed to let a CMC act on their behalf in 2007 to claim compensation for mis-sold PPI. They never heard anything back from the company, so they assumed they had not actioned their claim. Client then contacted the lender themselves in October 2015 and was awarded £5,000 in compensation. The CMC are now asking for £2,800 in fees.

Whilst a cap on fees will not stamp out the practice in the case study above, it will at least limit the amount they can claim to £300. We absolutely support the idea of capping final fees for claims over £2,000 as it would allow consumers to keep more of their compensation, and would also ensure that firms can only charge fees that are genuinely reflective of the amount of work they have done.

- **A maximum cancellation fee of £300 where a consumer cancels their contract after the 14 day 'cooling off' period and providing an itemised bill to that consumer?**

We fully support capping cancellation fees for contracts terminated outside the 14 day cooling off period. Whilst we feel it is fair for CMCs to recover costs for work already undertaken, these charges must be proportionate to the relatively straight-forward process of making claims for PPI/PBA compensation. The clients who sought advice from us in Q3 2015-16 relating to cancellation fees reported a wide range of charge amounts, many of which were clearly disproportionate. Specific amounts that were mentioned included £3,000, £2,562, £906, £480 and £461 plus VAT. In some instances speculative claims had been left open for years which led some clients to believe that CMCs were purposefully doing this just to charge large cancellation fees:

A local Citizens Advice in the West Midlands saw a 44 year old self employed man in Q3 2015-16. He was contacted by a PPI CMC in 2011 and they offered a 'no win, no fee' service to claim compensation for mis-sold PPI. Client advised them he had no outstanding loans at the time and had shredded all the relevant paperwork. The CMC stated they could do all the searches and asked if the client agreed to an Experian report. Client agreed and received documentation about the searches stating there was no claim but others were 'ongoing'. The client eventually contacted the CMC by email and stated the process was dragging on and they were unlikely to find anything. He requested to cancel the agreement but the CMC sent him an invoice for £1,182.60 for outstanding searches. Client responded saying he was unaware of any cancellation costs and that they could continue with the claim. The CMC said it was impossible to 'uncancel' the searches and demanded payment. Client feels they purposefully leave claims open indefinitely in order to claim cancellation fees.

A cap of £300 on cancellation costs would help to stamp out practices such as those described in the example above. However, the proposal for all CMCs to provide an itemised bill is vital to ensure that firms do not always charge £300 for cancellation. It would also allow them to justify the amounts they charge by generally increasing transparency. We welcome this requirement, but we believe that the amended rules should also state that CMCs should provide an itemised bill free of charge and that the consumer must acknowledge receipt of the documentation in a durable format. This would help stamp out poor practices such as those described in the following case study:

A 75 year old client contacted the Consumer Service in Q3 2015-16. Three years earlier they agreed to a no win no fee contract with a PPI CMC following a cold call. Eventually the client advised them they wanted to cancel the agreement as nothing had happened with their claim. The CMC then sent the client an invoice for £3,000 for services already rendered. The client disputed this and requested a breakdown of the costs. The company stated this would cost £10 which the client paid. However, when the CMC emailed the breakdown to the client they were unable to access the email and the content didn't load properly. The client made a formal complaint to the CMC but they continued to send them invoices. Client felt they had been misled and that the service was a scam.

The full cancellation fee of £300 should only be charged to consumers who choose to cancel a contract after a reasonable offer of compensation of £2,000 or more has been received. It would be unreasonable to charge the equivalent of the maximum final fee for successful claims if an offer has not yet been received and a consumer chooses to cancel their agreement. For those consumers who cancel their agreements after a reasonable offer of compensation of less than £2,000 has been received, they should never be charged more than 15 per cent of the compensation amount (the maximum final fee amount if the proposals in this consultation are implemented) in cancellation costs. This again emphasises the importance of itemised billing for costs that a CMC has incurred up to the date of cancellation.

We would generally like to see more detailed information relating to cancellation costs in the terms and conditions of financial claims management agreements. Despite it being a requirement in the CMR Conduct of Authorised Persons Rules 2014 for CMCs to provide information on the consequences of terminating an agreement outside the 14 day cooling off period, including any charges¹, some

¹ Client Specific Rule 11 k) Conduct of Authorised Persons Rules 2014

CMCs require consumers to send off for details of cancellation charges or state that and charges will be 'reasonable and proportionate'. We feel that this practice is not in keeping with the general principle that all information given to the client is clear, transparent, fair, and not misleading.² We would like it to be a requirement (similar to that for final fees) that all CMCs state in their general terms and conditions either the hourly rate they charge for work conducted after the 14 day cooling off period has elapsed (as many already do), or to provide a breakdown of the costs of any work that could be directly compared to an itemised bill for cancellation costs. This would again ensure that cancellation costs are more transparent and would allow CMCs to justify their cancellation charges. This may also lead to a reduced burden on the Ombudsman to deal with disputes relating to cancellation fees.

● **A ban on any charges being imposed on consumers where there is no relationship or relevant policy between the consumer and a lender?**

We support this recommendation. Whilst the majority of our clients in Q3 2015-16 came to us for advice about final fees or cancellation charges, we did find evidence to suggest that some CMCs are pursuing speculative claims and then charging consumers for the work they have done, mainly in the form of unspecified searches:

A client was cold-called by a CMC about making a PPI claim. The firm asked about any loans they had taken out, the client then mentioned such a loan, and the CMC informed them that they could make a no-win-no-fee PPI claim. The CMC was unable to claim PPI on behalf of the client as it turned out they had never been sold PPI. The CMC is charging the client £1,162 for the searches they conducted, and have set up a standing order to pay off the sum until cleared.

Banning fees when there is no relationship or relevant policy would prevent consumers being charged for spurious searches and remove the incentive for CMCs to lodge speculative claims. We agree with the rationale in the consultation document that this may also lead to a reduction in cold calls and irresponsible lead generation.

● **A ban on receiving or making payment for referring or introducing a consumer to a third party?**

Due to the lack of detail in many of the case notes for calls to the Citizens Advice consumer service, it is hard to know what proportion of our clients have problems with third party referrals. Despite this, we did find some evidence in the analysis of our data from Q3 2015-16 of CMCs who charge upfront fees using other firms to carry out claims. This is not a problem if there is no issue with the service provided. However, in the event that there are problems with the delivery of the service it makes it very difficult for consumers to obtain redress, cancel contracts, or even know who to approach to resolve their issues:

Client paid £499 to a company in August 2015 who said they would look into PPI claims. They said the client had a good chance of getting a payout but they would get their fee refunded if there was no valid policy. A third party are now dealing with the claims and promised that they would be closed within 30 days. It is now four months later and the third party have not found any valid claims, but they insist not all of them have been closed. The client has approached the company

² Client Specific Rule 1 c) Conduct of Authorised Persons Rules 2014

they paid the upfront fee to, but they refuse to refund the money until the third party confirms all the claims have been closed. Client paid the fee on their credit card and had to use their savings to pay it off to avoid being charged interest.

The practice of referring consumers to third parties gives them less control over who carries out their claim and leads to confusion around the amount they will be charged for the service. As such we agree with the proposal to ban making or receiving payments for introducing consumers to a third party. A ban would also make a referral fee based business model unviable and would discourage firms from engaging in invasive mass marketing techniques, such as cold calling, just to get fees. This, in turn, would reduce the number of speculative claims helping to alleviate the burden on lenders and the Ombudsman.

PPI / PBA Claims – Alternative Considerations

Q2. Do you have any comments regarding the consideration of alternative proposals to implement;

- **A cap of 10% (Inc. VAT) of the net amount of the final compensation awarded with a single lender, where any final compensation amounts to less than £2,000?**

While we welcome the proposal of capping fees for claims worth less than £2,000 at 15 per cent as it seems reasonable, we would always favour the cap being as low as possible, especially considering how little time and effort it takes to make a PPI/PBA claim, and the fact that consumers can actually make these claims for free themselves.

- **A cap of £200 for the total net value of relevant claims awarded with a single lender that amount to more than £2,000?**

Again, while we support the proposal to cap fees for claims worth over £2,000 at £300, we favour the lower cap as it seems like a fairer reflection of the limited work needed to make a PPI/PBA claim. Capping at £300 would significantly reduce the amount that CMCs can take out of larger claims, but capping at £200 would be even better for consumers bearing in mind that, as previously mentioned, they can make a claim themselves free of charge.

- **A maximum cancellation fee of £200 where a consumer cancels their contract after the 14 day 'cooling off' period and providing an itemised bill to that consumer?**

If the decision is made to cap the final fees of claims worth over £2,000 at £300, we would recommend that cancellation fees outside of the 14 day cooling off period should be capped at £200. We think it would be unfair to allow CMCs to charge the same amount for someone to cancel their claim as they would if they won the case; the only exception being when a reasonable offer of compensation is obtained by the CMC but is rejected by the consumer. We would also emphasise that if the decision is made to lower the final fee cap to £200, the cancellation fee must also be lowered to £200 or less, as it would be unfair to charge more to cancel the claim than if the claim were successful.

Other Financial Claims (excluding PPI/PBA claims)

Q3. Do you have any comments regarding the proposed cap of 25% (Inc. VAT) of any final compensation awarded for other claims in the financial claims sector?

At the moment, we have little evidence of issues with other financial claims, but we support a cap of 25 per cent - it seems reasonable as it would reflect the difference in complexity of other financial claims compared to PPI/PBA claims.

All Financial Claims

Q4. Do you have any comments in relation to the proposed ban on upfront fees charged to consumers for any financial claim?

We fully support the banning of all upfront fees for financial claims. In our analysis of our data from Q3 2015-16 just under half the calls to the Consumer Service (49 per cent) about authorised or previously authorised CMCs referred to complaints about upfront fees. The most common problem our clients faced was obtaining a refund of their fee following the liquidation or surrendering of authorisation by a CMC. In some circumstances this led to consumers on very low incomes being left with unmanageable debts they amassed as a result of paying the upfront fee:

A local Citizens Advice in the east of England saw a 60 year old disabled woman who was cold called by a CMC in December 2014. She was promised a PPI claim payout of £2,500 and was persuaded to pay a £200 upfront fee to the CMC to pursue the claim on her behalf. The client paid for this on her credit card and has chased them numerous times since to establish the status of her claim. The client has now discovered that the CMC have gone out of business and she is left with a £200 debt which she is unable to pay as her only income is disability living allowance, council tax relief, housing benefit and income support.

In some instances this appears to be an unintended consequence of enforcement action taken by the Claims Management Regulator as they acknowledge themselves in the consultation document. We fully support the Regulator in taking enforcement action against CMCs that are in breach of the Conduct for Authorised Persons Rules 2014, but this is clear evidence for the need to ban upfront fees to stop similar situations arising in the future.

CMCs going out of business is not the only reason consumers struggle to get their upfront fees refunded. Many of our clients who sought advice in Q3 2015-16 described situations where they were charged upfront fees on the understanding that it would be refunded if there were no valid claim. When they discovered that there was no valid claim, they found it hard to contact the company or had their request for a refund ignored:

A client was cold called by a CMC in May 2015 and agreed to a contract to claim compensation for mis-sold PPI. They paid an upfront fee of £499 which would be refunded once a claim amount was received. They then received a letter from the

CMC in September stating they did not have a valid claim. The company promised to refund the upfront fee by 16 October. It is now the end of October and the client has not received a refund. They have tried repeatedly to get in touch with the CMC to chase up their refund, but they have been unable to get through. Client is now looking to claim the fee back through their credit card company but wants advice.

We also found evidence in the analysis of our data of some CMCs deliberately misleading consumers into paying an upfront fee over the phone. Had they been aware of the amount they had to pay upfront, some clients would never have formed a verbal agreement or disclosed their debit or credit card details:

Client was cold called by a CMC who advised they could make a PPI claim on their behalf. They said they would charge 25 per cent of the client's winnings if they were successful. Client agreed to this and gave their credit card details to the trader. They advised they would take 1p from the credit card to test the details were correct. Client has now discovered they have taken over £400 and they have written to the firm asking for their money back as they never agreed to this. So far they have not received their money back as they were outside their 14 day cooling off period.

The average amount of upfront fee charged to our clients who called the consumer service in Q3 2015-16 with problems with CMCs was £481. This is significantly higher than the proposed cap on final fees for PPI/PBA claims. For many consumers this is a significant cost to bear, and it appears to provide little incentive for CMCs to act on the client's behalf in a professional and expedient manner. The charging of upfront fees also clearly incentivises CMCs to carry out cold calls and submit speculative claims to increase their profits. In the past Citizens Advice has called for a ban on all cold calling by CMCs, and we believe that a ban on upfront fees would lead to a reduction in cold calling.

General Analysis and Rationale

Q5. In relation to the analysis and rationale set out regarding these proposals, is there any information that has not been taken into account that should have been?

Not to our knowledge.

Impact Assessment

Q6. Do you have any evidence relating to the total volume of claims made by CMCs?

No.

Q7. Do you have any evidence relating to the average amount of consumer redress per case?

The average amount of compensation received by our Consumer Service clients who complained about the amount of final fee taken by CMCs in Q3 2015-16 was £3,406. This is not representative of all cases.

Q8. Do you have any evidence on the number of cancellations which occur for work completed after a 14 day “cooling off period”?

Sixty-five per cent of our Consumer Service clients who complained about problems with cancelling contracts with CMCs in Q3 2015-16 attempted to cancel outside their 14 day cooling off period. This is not representative of all cases.

Q9. Do you have any evidence on how much a reduction in ‘nuisance’ calls will benefit lenders and/or the Financial Ombudsman?

No

Q10. Do you have any evidence on how much a reduction in ‘speculative’ claims would save lenders and/or the Financial Ombudsman?

No

Other Regulated Claims Management Sectors

Q20. Is there a need to consider further fee controls in other regulated claims sectors such as Personal Injury or Employment in future?

Yes. Whilst we have little evidence from our data to suggest that consumers regularly take issue with the fees charged by regulated CMCs operating outside the financial claims sector, cold calling by non financial claims firms has consistently been a problem for our clients, most notably in the personal injury sector. We think that this could be a consequence of the ban on referral fees for personal injury cases introduced by LASPO Act 2012. Many of the nuisance calls reported to us in Q3 2015-16 were clearly speculative in nature:

Client received a phone call from a personal injury CMC. The caller asked to speak to the policy-holder who had a car crash last year. The client doesn't have a car or an insurance policy, and is not the named driver on anyone else's policy.

Calls of this nature carried out by unauthorised or scam firms are also very common with many callers claiming to be calling from Government departments, local authorities, and, in some instances, authorised firms. Whilst taking effective action against scam firms is outside the remit of the Claims Management Regulator, a ban on authorised CMCs carrying out cold calls would allow consumers to differentiate between scams and reputable businesses. This would help to alleviate the detriment caused by scam calls.

To help reduce the number of cold calls made, the Claims Management Regulator should consider whether the current fee structures of non-financial CMCs are acting as an incentive to conduct speculative mass marketing. Any rule changes that would work in a similar way to reduce cold calling as those proposed in the financial sector would be fully supported by Citizens Advice. We would also suggest collaboration with the Solicitors Regulation Authority (SRA) to combat cold calling and wider consumer detriment, as many CMCs authorised to carry out business in the non-financial claims sector act on behalf of, or refer consumers to, solicitors or individuals regulated by the SRA.