



Ministry
of Justice

Claims Management Regulation

Interim Fee Cap Guidance

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Introduction

In 2016, the Government announced the transfer of CMCs to the Financial Conduct Authority (“FCA”) as a result of an independent review conducted by Carol Brady. The Financial Guidance and Claims Bill was introduced into the House of Lords in June 2017 to effect this transfer.

On 10 May 2018, the Financial Guidance and Claims Act 2018 (“the Act”) received royal assent. The Act prohibits fees of more than 20%, excluding VAT, being charged for Payment Protection Insurance (PPI) claims and restricts claims management companies (CMCs) and legal services providers from charging a client where no award has been recovered. This cap will come into force on 10 July 2018 (two months from the date of royal assent).

CMCs will be aware that from 1 April 2018 the [Conduct of Authorised Persons Rules](#) (“Conduct Rules”) were amended, as result of the Claims Management Regulator’s (“the Regulator”) consultation on the fees that CMCs can charge. The Regulator published [guidance](#) about the new rules. These rules prohibit CMCs from charging their clients an upfront fee, charging any fees where there is no successful claim for PPI and the requirement to provide itemised billing for cancellation charges.

This guidance is to assist CMCs in ensuring that they understand the effect of the interim fee cap and details how the Regulator intends to approach and enforce this cap. It also details other measures that will impact the way in which CMCs can charge their clients fees.

The interim fee cap

Section 30 of the Act states that:

- (a) A regulated person must not charge a claimant, for regulated claims management services provided in connection with the claimant's PPI claim, an amount which exceeds the fee cap for the claim, and
- (b) must not enter into an agreement that provides for the payment by a claimant, for regulated claims management services provided in connection with the claimant's PPI claim, of charges which would breach, or are capable of breaching, the prohibition in paragraph (a).

This section sets out a prohibition on CMCs and legal services providers charging a client, or entering into an agreement that requires a client to pay, an amount that exceeds the interim fee cap for regulated services supplied in connection with a PPI claim. CMCs will be unable to charge any fees where the PPI claim is unsuccessful as the interim fee cap is zero in this circumstance.

The interim fee cap of 20% (excluding VAT) also applies to any of the following amounts recovered in relation to a PPI claim:

- Where the amount recovered is used against a debt owed by the client to the person against which the claim is being made; or
- Where the amount is paid to any third party that is not the client that was bringing the claim. This includes third parties providing regulated claims management services to the client or any other third parties.

The effect of the interim fee cap

Where you enter into a new contract with a client from 10 July 2018 you will need to consider the restrictions imposed by the Act. Any fees that CMCs are charging and receiving for a PPI claim that exceed the interim fee cap will be in breach of the following Conduct Rule.

General Rule 5: “a business shall observe all laws and regulations relevant to its business.”

In addition, it is likely that an agreement that exceeds this cap will be in breach of the following Conduct Rules, which form the basis for the Regulator to consider whether to take statutory action.

Client Specific Rule 1: “a business shall act fairly and reasonably in dealings with all clients.”

Client Specific Rule 15: “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) to the client.”

Client Specific Rule 16: “If there is no relationship or relevant PPI policy between a client and a financial services firm identified, a business must not charge the client any fees.”

CMCs will need to ensure that the contracts they use for clients comply with the Act and the Conduct Rules when charging fees. Contracts that provide for fees that exceed the cap will be unenforceable and the client will be able to recover the excess amount paid under the agreement.

CMCs will need to consider any business relationships that they have where a third party is also providing regulated claims management services to the client and charging for those services, to ensure that their collective fees do not exceed the interim fee cap. This also applies where CMCs refer their cases to a solicitor and both parties charge the client for their services.

Additional requirements

CMCs will be required to ensure that all contracts connected to PPI claims that are signed by clients on or after 10 July 2018 comply with the restriction on fees. Therefore, if there is a delay in the client signing your contract prior to the implementation of the interim fee cap, you will be unable to rely on that contract, as it has not been signed by the client and will no longer be compliant. You must send the client a new contract that complies with the interim fee cap for them to agree and sign. You will also need to do this if the client signs and returns a contract that does not comply with the interim fee cap once it is in force. CMCs must not pressurise clients to sign the contract prior to the date on which the interim fee cap comes into force, as this type of activity is likely to be in breach of the Conduct Rules.

Client Specific Rule 3: “A business must not engage in high pressure selling.”

CMCs will need to ensure their compliance when planning their approach with new clients and that any interaction with new clients prior to the implementation of the interim fee cap is not in breach of the Conduct Rules. From the date of this guidance you should inform all new or potential clients of the upcoming change to the fees you can charge. For example, you are likely to be in breach of the Conduct Rules if you fail to advise your clients that the interim fee cap will be implemented, particularly if a client asks about your fees.

Client Specific Rule 1a: “A business shall act fairly and reasonably in dealings with all clients.”

Client Specific Rule 1c: “A business shall ensure that all information given to the client is clear, transparent, fair and not misleading.”

Client Specific Rule 11a: “Honest, comprehensive and objective written information to assist the client to reach a decision including the risks involved in making a claim, in particular the possibility of losing money and, in the case of legal action, appearing in court.”

CMCs will need to consider their business relationships with other third parties that may also charge fees to the client for regulated services so that the client is not charged more than 20% (excluding VAT) for all the services provided during their PPI claim. We would expect that each of the parties would have measures in place to ensure that their arrangement complies with the Conduct Rules and the Act.

General Rule 2d: “A business shall conduct itself responsibly overall including, but not limited to, acting with professional diligence and carry out the following: take all reasonable steps in relation to any arrangement with third parties to confirm that any referrals, leads or data have been obtained in accordance with the requirements of the legislation and Rules.”

If you charge your client fees at an hourly rate, you will still be required to comply with the interim fee cap. As such, the total of your fees based on your hourly rate must not amount to more than 20% excluding VAT of the total amount awarded.

Where you provide different claims under the same contract, you must clearly explain your fees for each claim type to comply with the Conduct Rules. CMCs are required to demonstrate their compliance with the Conduct Rules and the following Conduct Rules apply when explaining your fees to your clients;

Client Specific Rule 1c: A business shall ensure that all information given to the client is clear, transparent, fair and not misleading.

Client Specific Rule 11e: "...The business must provide the client with the following information in writing or electronically before a contract is agreed: Any charge the business makes. Where this is a percentage of compensation payable, the percentage must be indicated together with a typical example of the actual cost in pounds, or more than one example if the business makes differential charges."

Regulatory enforcement

If the Regulator identifies breaches of the Conduct Rules in respect of how CMCs are dealing with potential clients and the fees charged, there are different enforcement tools available to ensure compliance. These include warnings, financial penalties and directions, as well as variation of conditions, suspension and cancellation of authorisation where action is needed to protect the public. This will be decided on a case by case basis.



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