

One Churchill Place
London
E14 5HP

Mr Ashley Palmer
Ministry of Justice
Claims Management Regulation – HQ Office
10th Floor – 10.11
102 Petty France
London
SW1H 9AJ

11 April 2016

Dear Mr Palmer,

Barclays' feedback on the 'Claims Management Regulation – Cutting the costs for consumers – Financial Claims' Consultation Paper

Thank you for providing Barclays with the opportunity to input into the Ministry of Justice (MOJ) consultation, 'Cutting the costs for consumers – Financial Claims'. We have outlined in Appendix 1 to this letter our comments on the specific questions posed throughout the consultation paper.

Barclays recognises that the complaints regulatory landscape is changing and that the forthcoming years will be particularly challenging as a result of the Financial Conduct Authority (FCA) consultation on a Payment Protection Insurance (PPI) deadline (CP15/39 Section 3), the FCA guidance on complaints affected by the decision in *Plevin v Paragon Personal Finance* (CP15/39 Section 5), as well as the recommendations contained within the Review of Claims Management Regulation. All of these factors may lead to volatility in how Claims Management Companies (CMCs) within the Financial Products and Services (FPS) sector operate.

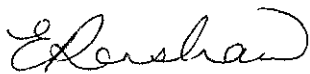
We believe that requiring the CMC commercial model to focus on valid mis-sold PPI cases should encourage more focused CMC marketing, which in turn will have a positive impact on both lenders speculative claim figures, and consumers, who are at present subject to intrusive nuisance calls.

Barclays is keen to ensure that the Claims Management Regulator has considered all the possible consequences and actions that CMCs may take as a result of this consultation. In particular, we are seeking assurances that the significant risk of CMCs seeking to circumvent the MOJ's jurisdiction and either merge with Solicitors or set up Alternative Business Structures (ABS) is recognised and mitigated through alignment of the regulation of claims management activities irrespective of the regulatory body. We have articulated this risk, alongside others for consideration, within Appendix 2.

That said, Barclays remains committed and fully supportive of working with the Claims Management Regulation Unit (CMRU) to ensure that customers who chose to employ the services of a CMC receive the right outcome and do so by paying for a service that is value adding and with transparent and fair costs.

For those CMCs operating within the FPS sector that do not demonstrate adherence to the Conduct of Authorised Person Rules (CAPR), or whose practices may cause customer detriment, we will continue to co-operate with the CMRU through the provision of Management Information and evidence of poor practices to support their investigative and enforcement activities.

We look forwards to your response,



Ellie Renshaw
Director of External Representation
On Behalf of Barclays Bank Plc

Appendix 1

Barclays believes that the CMRU is right to discount Options 0, 2, 4 and 5 for all of the reasons articulated within the consultation Impact Assessment. In particular we agree that the industry should not be allowed the opportunity to self-regulate. We remain supportive of the Claims Management Regulator's proposal to introduce new maximum fee limits that CMCs can charge to consumers for claims in the financial sector as well as the majority of the additional further restrictions within the consultation. We have a different view on the proposed limit that should be set on cancellation fees and we have set out our comments in relation to all of these below:

PPI/PBA Claims Only:

1. Do you have any comments regarding the proposal 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 £2000?

We agree with this proposal and our analysis of the current CMC market supports this recommendation.

- A cap of £300 for the total net value of relevant claims awarded with a single lender that amount to more than £2000?

We agree with this proposal and our analysis of the current CMC market supports this recommendation.

- 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 do not agree with this proposal as we are unable to justify a cap as high as £300 from our analysis. We do agree that CMCs should provide an itemised bill to consumers and in relation to the cancellation fee we would propose a maximum cancellation fee of £100 where a consumer cancels their contract after the 14 day cooling off period. This is based upon our assessment of the most likely points for consumers to terminate the contract with the CMC and the probable costs incurred by the CMC at these points. We have concerns that a larger maximum cancellation fee may leave opportunity for CMCs to charge customers excessively for cancellations.

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

We agree with this proposal.

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

Barclays agree that CMCs should be banned from receiving or making payment for referring or introducing a consumer to a third party. This ban should also include the use of gifts or other inducements.

We note that precedent has already been set for CMCs dealing in Personal Injury (PI) cases and we believe that banning referral and introducer fees will support the objective of reducing speculative claims and nuisance marketing calls. However, we are seeking reassurances that customers within an Individual Voluntary Arrangement (IVA) (or similar scenarios involving financial difficulties) where the Insolvency Practitioner (IP) or Supervisor instructs CMCs to investigate these claims on behalf of the customer would not be adversely impacted by this proposal.

PPI/PBA Claims - Alternative Considerations

2. Do you have any comments regarding the consideration of alternative proposal 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 £2000?

We do not agree with this alternative proposal.

- A cap of £200 for the total net value of relevant claims awarded with a single lender that amount to more than £2000?

We do not agree with this alternative proposal.

- 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?

We do not agree with this alternative proposal.

Other Financial Claims (excluding PPI/PBA claims)

3. 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?

Barclays agrees that certain non-bulk claim types can be more complex (for example investment claims) and therefore there may be a requirement for consumers to seek expert advice. We would welcome further guidance on the definition of non-bulk claims and whilst we agree with this proposal we note there is a risk that this increased cap may make other non-bulk claim types more attractive for CMCs.

All Financial Claims

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

We agree with the proposal to ban upfront fees charged to consumers for any financial claim. We note the precedent that has been set by the FCA for credit brokers on this matter and we believe that the use of upfront fees by CMCs is high risk, can lead to customer detriment and should be banned.

General Analysis and Rationale

5. 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?

Whilst most CMCs will seek to adhere to any new rules, it is clear from the CMRU enforcement and investigative actions that some CMCs will fail to do so, creating risk and a likelihood of customer detriment. Appendix 2 documents additional risks and potential changes in CMC behaviour that we would ask the CMRU to consider. The largest risk we perceive from this consultation is that CMCs may amend their business models to circumvent the jurisdiction of the MOJ. We believe there is a material risk that CMCs may seek to merge with Solicitors and/or migrate to become Alternative Business Structures and fall under the regulation of the Solicitors Regulation Authority (SRA). This behaviour occurred when referral fees were banned for Personal Injury CMCs.

In 2015 Solicitors undertaking claims management activities, primarily for PPI claims, accounted for c.7% of our total logged volume. Solicitor volumes have increased almost three-fold between 2014 and 2015 and as a result of this increasing trend, Barclays has initiated engagement with the SRA to start to share this insight in an attempt to mirror the support we provide to the CMRU risk-based audit programme.

Impact Assessment

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

Since 2013, the volume of PPI CMC logged complaints has reduced year-on-year, in line with a reduction in customer complaints. However, whilst the overall volume of PPI claims is reducing, since 2013 the percentage of PPI claims submitted by a CMC has increased; since 2014, CMCs have driven consistently more volume than customers.

By comparison, PBA CMC logged complaints have increased significantly year-on-year. Whilst the overall volume of PBA claims is increasing, so too is the percentage of PBA claims submitted by a CMC. As with PPI, since 2014, CMCs have driven consistently more volume than customers.

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

As this is commercially sensitive information it will be provided to the MOJ on a confidential basis.

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

We believe that the two most likely points for customers to want to withdraw from their contract with a CMC will be once a complaint is submitted and the lender seeks to establish contact with the customer for further information to support their claim, and/or at the point of a FOS referral for defended cases. This belief forms the basis for our disagreement to the £300 maximum cancellation fee and our proposed view that it should be set at a maximum of £100.

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

In the financial services sector unsolicited communication from CMCs is something we regularly see our customers targeted by. These marketing calls have become at best a commonplace nuisance, and at worst a threatening invasion of privacy. In addition, consumer insight from our own research and external sources continues to highlight the frustrations and social nuisance caused by CMCs' unsolicited contact to customers.

Often these calls lead to CMCs undertaking a pre-complaint query where the CMC will seek to ascertain the presence, or otherwise, of PPI on a customer's account. These are regularly advertised as a 'free PPI check' and the measures within the query process can be an early indication of the quality of the CMC marketing and initial customer fact finding prior to submitting a PPI claim.

Volumes of CMC queries in this process continue to increase. However, despite increasing volumes, the percentage of queries that result in 'No Barclays product or relationship' has remained stable at c.40% and of the returns that indicate the presence of PPI, these have remained steady at c.26%. We are currently forecasting, based upon our analysis of CMC advertising spend, that the volume of queries will increase further in 2016.

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

Where a valid claim exists we are always keen to see customers compensated. Under the current Conduct of Authorised Persons Rules (CAPR) there is no impact to a CMC in submitting a claim that results in a 'No PPI' response. For customers a 'No PPI' response can create confusion and disappointment if they were led to believe, based on persistent misrepresentative marketing, that they were eligible for compensation.

Since 2013, the volume of CMC 'No PPI' cases has reduced year-on-year in line with the reduction in total volumes. However, in 2015, c.33% of cases referred to Barclays via a CMC were found to have 'No PPI' in the customer's history, despite CMC communication claiming it was. CMC driven FOS referrals for 'No PPI' have decreased dramatically since 2013, as have customer 'No PPI' FOS referrals. Notwithstanding this, CMC 'No PPI' FOS referrals continue to be significantly higher than customer referrals.

Questions for CMCs only (Questions 11 – 19) - No response required from Barclays

Other Regulated Claims Management Sectors

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

We agree that it would be in the best interest of consumers to have the same levels of protection applied across the CMC industry.

Appendix 2

Barclays believes that the most significant risk from this consultation relates to CMCs seeking to merge with Solicitors or seeking authorisation as an ABS. Notwithstanding this, we believe that supporting the principles of this consultation outweigh this key risk but would like to take the opportunity to highlight other risks we believe the CMRU should consider during the consultation review process:

Risk that CMCs may make changes that impact the market:
Change to alternative operating models (ie ABS) or merging with Solicitors to circumvent the proposed CMC fee changes
Utilise alternative lower cost marketing models (rather than expensive TV/radio advertising) which may result in an increased in lower costs channels such as calls and texts
Change geographical locations and specialise in customers from this location (ie handling claims from Scotland for Scottish customers)
Move to the next most profitable claim sectors ie PI and effectively move the issue to a different sector
Create complex company registrations to set up separate companies to bypass the proposed customer/product fee model (ie one company for Barclaycard PPI credit card complaints, one company for Barclays PPI mortgage complaints)
CMCs may make changes that adversely impact customers:
A reduction in income resulting from the fee caps may reduce the levels of service customers receive from CMCs
Potential increase in nuisance calls and texts as CMCs re-evaluate their marketing strategies
CMCs may seek to ramp up their marketing and activity before the implementation of these rules and/or the potential PPI time limit under consideration by the FCA
CMCs may make changes to their operating models that adversely impact lenders and/or other third parties including:
Increased volumes through PPI pre-submission process requests as there is no penalty for 'no product/no relationship' outcomes to queries (vs. complaints)
Increased SARs as CMCs seek to evidence/audit PPI pre-submission processes
CMCs challenging previous all 'No PPI' outputs from the pre-submission processes where they have not submitted a complaint, but where they subsequently identify, though lender remediation, that a PPI claim was present
Increased FOS referrals as CMCs challenge more 'No PPI' or defended outcomes
Increased complaints to the Legal Ombudsman from consumers who may receive a lower level of service from CMCs
Potential impact on the Solicitors Regulation Authority should the risk of CMCs moving to ABS/Solicitors materialise
CMCs Impacts from these proposals adversely impact the CMRU:
Any reduction in CMCs within the market may put at risk the ability for the CMRU to be self-funding from CMC application and authorisation fees
An increase in CMCs operating without authorisation
Changes in CMC behaviours before and after any proposals may stretch the current CMRU resource
CMCs may challenge the consultation on the basis that:
The consultation is presented without firm evidence to support the proposals
Any actions that result in a reduction in the CMC FPS market may restrict access to justice for consumers who chose not to complain to their lender directly
The implementation of a fee cap and maximum fee charge is punitive with no option available to 'unbundle' the fee cap and the maximum fee charge
Implementing a single fee cap/maximum fee charge for PPI claims is unfair as redress for credit card cases can be significant and well above the average redress figure
Complex PPI cases (generally pre-2001 cases) require greater investment in time and effort from CMCs and will generally have higher redress. Therefore a maximum fee for these cases is unfair
There will be a greater role for CMCs as a result of the FCAs rules on Plevin as many customers will not understand their rights and may choose to seek third party advice
There are current examples of where Regulators are attempting to implement fee caps which are under scrutiny for failing to deliver (eg. the Competition and Markets Authority proposal to cap energy company default tariffs)
A reduction in the number of authorised CMCs may increase application and authorisation fees for CMCs