Association of Mortgage Intermediaries

Association of Mortgage Intermediaries' response to FCA CP21/1: Restricting CMC charges for financial products and services claims

This response is submitted on behalf of the Association of Mortgage Intermediaries (AMI) and the Association of Finance Brokers (AFB). AMI is the trade association representing over 80% of UK mortgage intermediaries. AFB sits within AMI and represents second charge (formerly secured loan) brokers.

Intermediaries active in this market act on behalf of the consumer in selecting an appropriate lender and product to meet the individual consumer's mortgage requirements. Our members also provide access to associated protection products.

Our members are authorised and regulated by the Financial Conduct Authority (FCA) to carry out mortgage and insurance mediation activities. Firms range from sole traders through to national firms and networks, with thousands of advisers.

Response

AMI welcomes these well considered proposals by the regulator and hopes that they will reduce the harm caused to consumers (some of whom are vulnerable): those who have to pay large amounts of the redress awarded to them to Claims Management Companies (CMCs) through fees and other charges; those who do not fully understand the options available to them; and those who are encouraged to take out loans to fund the claims process.

We are hopeful that the application of these proposals will see a reduction in the number of vexatious claims made against our member firms by unscrupulous firms looking for the next 'golden egg' and that, in time, it will ease the uncertainty that professional indemnity insurance providers feel towards the risk of providing insurance to mortgage intermediaries. The current activities of CMCs and Solicitors Regulation Authority (SRA) regulated complaints firms have had a destructive effect on many SMEs acting within the intermediary sector, with small firms who may not have professional indemnity insurance (PII) cover from that period facing closure and the livelihoods and mental health of affected individuals adversely impacted.

We recognise that a large number of CMCs acting on the behalf of financial services customers are regulated by the SRA rather than the FCA. We would welcome a joint approach from the two regulators and hope that the SRA will fulfil its duty to regulate against excessive fees in the overall market to reduce harm for all financial services consumers from excessive fee charging structures. It is important to ensure that any differences between the two regimes do not lead to consumer detriment and mitigate the risk of FCA regulated firms life boating to a different regulatory regime to avoid these important new consumer protections.

We also have concerns that CMCs will seek to split one initial "case" into a number of "claims" to maximise revenue from cases in light of the fee cap. We strongly advocate consideration of the wording of the new rules to avoid such an occurrence, with the term 'a single claim' adequately defined. Is this a claim about one event, one product, against one firm, or within a time period?

To ensure full transparency for the consumer, we believe the pre-contractual documentation provided by the CMC should outline both the scope of the complaint and detail who it is against. This should be part of the initial CMC fact-find, provision of disclosure, information and advice given to the customer, to assist their decision on whether to pursue the claim and will help the customer better understand the risks and costs of making the claim. If definition of the claim is not possible at outset, then it should be provided to the client as soon as the claim is submitted to the relevant entity, be that a firm, FOS, the FSCS or the courts. This will also protect a consumer from a CMC taking a 'scattergun approach' to a complaint and submitting a number of different complaints that the consumer is unaware of.

We believe that the information required to be given to a customer relating to the risks and costs involved in making the claim and the possibility of not recovering any money but becoming liable for any costs, should include a signed statement from consumers that they have read and understood these risks.

We are concerned by reports that consumers who have been promised a 'no-win, no-fee' relationship with CMCs or SRA regulated firms, have then, as part of the process, been required to take out an after the event insurance policy to protect the claims firm from costs in the event of a complaint being unsuccessful. We question the mass-provision of these policies by some firms and whether the products are being sold in a transparent manner. We would welcome the regulator's thoughts on this.

We welcome the consultation's assertion that fees charged by CMCs should better reflect the value of service that customers receive. We recognise that this may be difficult for customers to assess and so we would support consideration of a requirement for CMCs to provide measures for customers, relating to service standards and success rates. These would both enhance competition and enable customers to see the value of the services offered, over and above the 'free to consumer' model of taking a complaint directly to FOS or FSCS.

Questions

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

Yes, we agree. We are concerned that there is a risk that CMCs will send in a number of claims for different elements on one case to circumvent the fee cap which a firm, FOS or the FSCS would consider to be one claim. In this event, a customer could be charged multiple 'fees' for just one outcome and incidence of redress and we ask the regulator to mitigate against this. We'd be grateful for clarification of whether the proposed cap applies to a single claim as considered by the firm or statutory redress system, or a single claim as considered by the CMC. Our introductory remarks cover this in more detail.

We would support a requirement for CMCs to provide measures for customers, relating to service standards and success rates, to enhance competition and to enable customers to see the value of the services offered, over and above the 'free to consumer' model of taking a complaint directly to FOS or FSCS.

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

Yes, we agree. These changes will help to ensure that customers who claim for redress through a CMC receive good value for the service provided. We hope that the Solicitors Regulation Authority,

which regulates many of the firms responsible for the data subject access requests in the mortgage sector, will follow suit to ensure that the differences in the two regimes do not lead to consumer detriment. CMC firms should not be allowed to routinely sell potential complaint cases to a SRA regulated firm to avoid the fee 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?

As a breach of the contract would make the contract unenforceable, consideration should be given to whether, in these circumstances, the whole fee should either be refunded or not charged to the consumer. Where this is not the case, then we agree that the cap should be unenforceable to the extent of the breach and that simple interest of 8% should apply.

We would like clarification on the regulator's proposed method of monitoring compliance of this. Supervision will need to be able to act quickly and effectively in this area, with enforcement where appropriate to mitigate harm to consumers.

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

We agree.

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.

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

We agree that the proposed disclosures will improve consumer awareness of the value offered by CMC firms on the management of claims. As CMCs deal with a large number of vulnerable customers, it would seem to be a sensible step to mitigate any potential harms caused by behavioural bias or information asymmetry.

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?

This has been answered elsewhere.

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

This would seem sensible to ensure that CMCs have time to fully implement the proposals.

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

We agree.

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.

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.

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.

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

We are not able to comment on the costs to the sector or to individual firms, but to the best of our knowledge, agree with the benefits outlined for the consumer.

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.