Consultation Response to the **Claims Management Regulation Consultation:**

Cutting the Costs for Consumers – financial claims

11 April 2016

Contents PAGE

About the PFCA **4**

Response to Question 1 **6**

Fee caps 6
Why fee caps won't work 7
Why these caps should not be introduced 9

Response to Question 2 **12**

Response to Question 3 **13**

Response to Question 4 **14**

Response to Question 5 **15**

Consumers need our help 15
The changes to our industry 19
The banks 21

Response to Question 6-8 **22**

Responses to Questions 9-10 **23**

APPENDICES

	Title
I	PFCA Code of Practice
II	PCFA Code of Practice: more robust than external regulation
III	Enquiry and reclaims customer journey
IV	FOS data to 31 December 2015
V	[redacted] analysis
VI	Financial CMCs summary report
VII	PPI Advice Ltd.
VIII	PFCA Polling
IX	Case Study: Mr R[redacted]

About the PFCA

The PFCA [Professional Financial Claims Association] is a trade association for professional financial claims management companies.

The PFCA was founded by some of the UK's leading financial claims management companies [CMCs]. This followed a consultation period with its regulators, industry trade bodies, other associations, consumer groups and experts in the field of financial services. It became clear there was a desire for more accountability and adherence with regulation which will help raise standards in the financial claims management sector.

Where CMCs fall short, they tarnish the reputation of our industry and we consider that they have no rightful place in the market. Where CMCs work towards higher standards of consumer care, this should be recognised.

Above all else, our members are the consumers' friend and we aim to deliver a necessary service to a high standard for them.

That is why the PFCA engages proactively on an ongoing basis with the Claims Management Regulator [CMR], the Financial Conduct Authority [FCA], the Financial Ombudsman Service [FOS] and the British Bankers Association [BBA].

It is also why our members have signed up to our own Code of Practice covering their work in the financial claims industry. That code goes beyond current CMR requirements in 54 distinct areas. Mark Boleat, Chairman of the City of London Policy and Resources Committee, was supportive of the code and provided substantial input during the drafting – as he did on both the governance and the structure of the PFCA. We also engaged Which?, Martin Lewis (*MoneySavingExpert)* and the BBA on their views and received positive input. The CMR was also consulted and supportive.

The Code of Practice reflects the fact that we put consumers first. For example, in order to ensure maximum transparency over fees, it requires our members to make clear their terms and conditions – including fees – on their websites, on the telephone during any initial conversation, and in writing before entering any written agreement (s 4.15; 4.17; and 4.18).

Our members also pay for an annual audit – independent of the CMR – to confirm that they are compliant with the published PFCA Code of Practice. We enclose with this document a copy of that code (Appendix I) and an analysis by one of our members of each area in which the code holds them to higher standards (Appendix II).

Over recent years we have achieved a lot. Working with the BBA, we have agreed a 'statement of principles' to be contained in a Letter of Authority. Working with the media, providing evidence and data to the FCA, FOS, MoneySavingExpert.com we have highlighted, publicised and cut the banks' inappropriate use of comparative/alternative redress. Working with individual customers, we have won back money for millions of customers who might otherwise never have received a penny from the banks. It is a record to be proud of.

The PFCA, therefore, welcomes this process as an opportunity to help promote fair practice within our industry. We believe that CMCs should adhere to high standards and be subject to proper regulation in their approach to financial claims management activities, including 'bulk claims' and all professional matters.

That way, they can perform their rightful role as an ongoing advocate for consumers who have been subject to erroneous charges by the banks. Our response to this consultation is based upon that premise[1].

[1] **We have requested additional data from certain sources under the 'Freedom of Information Act 2000' which we have been notified is delayed. However, as this information is material to our submission, we would like the option to have it added retrospectively to our response.**

Our Response

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?**
- **A cap of £300 for the total net value of relevant claims awarded with a single lender that amount to more than £2,000?**
- **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?**
- **A ban on any charges being imposed on consumers where there is no relationship or relevant policy between the consumer and a lender?**
- **A ban on receiving or making payment for referring or introducing a consumer to a third party?**

Fee caps

While we welcome this opportunity to engage in the debate about further regulation, we cannot support the imposition of fees or caps on our industry.

In the recent Review of Claims Management Regulation, the CMR consulted with a wide range of stakeholders and concluded that "the overwhelming majority of stakeholders, including the banking and insurance sectors…argued that there is a legitimate need for CMCs and that the Government should not seek to regulate them out of existence".

We feel this is exactly what would happen should the proposed fee caps be implemented.

We consulted six PFCA members and asked them how fee caps set, as proposed, at 15% for claims under £2000 (i.e. up to £300 in value), or £300 for claims over £2000 would affect them. It is important to say that a fee of £300 including VAT is in fact a fee of £250 + VAT. The VAT element does not go to the CMC – it goes to the Treasury.

All six firms said they would be forced to end their involvement with 'bulk claims' on these terms. In our view, this would be tantamount to destroying the responsible end of industry.

1) Why fee caps won't work

a. The services we currently provide to consumers would become unaffordable.

Each consumer's enquiry and reclaim process can involve over twenty stages with multiple forms to complete (see Appendix III).

The reclaim process stages can take years to complete.

In fact, PFCA data shows for those cases that are upheld by the FOS, the average time elapsed between receiving the claims pack and hearing the ruling is 550 days – approximately one year and six months. Worse, individual cases can take up to five years to settle. Long delays are not isolated incidents. In our members' experience, they are frequent. Thousands of claimants still face such delays. At December 2015 PFCA members had a total of 8751 customers on their books with live cases that were more than twelve months old. 2451 of them were still unresolved after twenty four months or longer (see appendix IV).

£250 (+VAT) will not cover the cost of that work.

Using Payment Protection Insurance [PPI] claims as an example

This is compounded by the proposition that the cap should be applied on the basis of a single lender, rather than a single case. Many single lenders (i.e. banks) have multiple claims brought against them by one customer, using our companies' help.

On average, PFCA members raise between 3-4 claims per customer. As noted above, each case could involve over twenty stages and take over a year to finalise. The fact that it is the same lender does not diminish the amount of work required by the regulator or the banks themselves. Each must have its own paperwork, starting with a completed and signed PPI Questionnaire. In this case, it would clearly become disproportionately costly to pursue multiple claims against one lender, when the total award would be less than £2000.

Complex and time consuming cases require more CMC management hours meaning a cap would make most consumer cases economically unviable to pursue.

We asked our members to model the impact of caps on their businesses. One member calculated that a cap of 15% would slash revenue by 50%. The addition of the £250 + VAT restriction would compound this and lead to a loss of around 73%.

Another concluded that it would cut revenue by 80% per annum and their profit by 61%.

Any business facing this kind of reduction in turnover is faced with a stark choice; close the business or save money by reducing the standards of its services. Our industry is no exception.

We cannot see how any CMC could avoid this reality. It has been widely noted that one large CMC, [redacted] (not a PFCA member) has cut its fee recently from 29.17% + VAT to 17.5% + VAT (one of the lowest rates in the market); this is a 40% cut in fees.

We have looked at the public accounts for this company and analysed the effect that this reduction would have had on its last reported financial year, ending 31 October 2014 (see appendix V). With fees still at 29.17% + VAT, turnover was £17.3 million, with a declared profit of £4.11 million.

We then reduced the turnover by 40% to reflect the effect that the reduction in fees would have had. We kept the expenses the same as they had actually been reported. These expenses include a charge for a liability which we believe covers a legacy issue – but irrespective of the nature of this expense, these are kept constant to maintain the integrity of our analysis for the same financial period.

The drop in turnover to £10.45 million produces a loss of £2.86 million. We do not believe that this would have been commercially viable or sustainable. Lack of viability has also been the fate of other similar sized CMCs recently – including Key Financial Claims and Challenge Your Charges – which have all gone into liquidation.

Faced with a drop in income of around 75%, a similar fate is inevitable for our members. We are not prepared to short-change our customers by providing sub-standard services at the “nuisance” end of the market. This leaves closure as their only option in light of these proposals.

b. To save their business and continue their involvement in 'bulk claims' some firms would have to cut the least profitable and most time consuming side of their business – customer care.

Inevitably, some companies will cope with caps by cutting corners and adhering to lower industry standards.

That would be their only way to run a viable business.

They would be likely to:

- decline to pursue more difficult claims on behalf of consumers;
- adopt unpopular speculative approach tactics (including data purchasing);
- scale back awareness publicity;
- reduce customer support during the form-filling process;
- reduce personal customer contact to the bare minimum (replacing it with email and SMS communication).

This would be very bad news for customers. Declining to take on customer work will mean that fewer consumers get their money back from the banks. Cutting expensive public awareness campaigns will mean more nuisance calling. Reducing customer care will provide a less supportive service than many people need.

These are the very practices that give our industry a bad name – and the very outcome that the PFCA and the government want to avoid.

Our Code of Practice makes clear our members' commitment to be above such tactics. It would be tragic if the imposition of arbitrary fee caps in fact pushed up the instances of this behaviour in the consumer claims market, and drove out those who respect the consumer most.

2) <u>Why THESE caps should not be introduced</u>

a. Our understanding is that the current proposals fail to take into account the maximum harmonisation nature of EU consumer law that is set out in the Unfair Consumer Practices Directive or the Consumer Rights Directive. This is on top of the substantive

policy reasons to reject the proposals in the interests of UK consumers. We are also very concerned that this consultation has taken place over a period of 8 weeks (15 February to 11 April) that included the Easter holidays. This is wholly inadequate having regard to the complex legal and financial issues involved, in particular the detailed statistical analysis that has been advanced by the Ministry of Justice [MoJ] in support of the proposals.

b. The MoJ's point regarding the prospective monetary loss to our industry has been based on an incorrect interpretation of the figures. This has led to a false comparison, which has skewed the statistical information.

In the documentation, the MoJ suggests that CMCs have received around £3.5 billion in consumer charges. Based on this, the MoJ calculates that the impact of the proposed fee cap would be £390 million.

However, the £3.5 billion is a cumulative value since 2011 (paras 2.5 and 2.16 in the consultation document), while the £390 million is the MoJ's calculated loss for a single year. This is misleading; it diminishes the size of the industry's loss.

It also means that there is no evidence to support the £390 million figure. It could be that this is a twelve-month projection but we cannot see a basis or point of reference for this which is a serious omission in a consultation such as this.

Like for like figures must be used.

In fact, the CMR recorded the CMC's annual turnover from financial claims in 2014-2015 was £458 million.

Taking our estimate that the 15% or £250 + VAT caps would hit turnover between 75-80%, this would mean an annual reduction of between £344 million and £366 million to the industry – not across five years, but every year.

A further flaw is that the impact assessments assume a 100% benefit to customers. However, the loss of responsible CMC services, leaving only a lower quality service (as described above, in 1. b.) is not factored in.

c. The proposal for a cap of 15% including VAT (with a £250 + VAT cap) is wildly out of line with the rates that almost all financially robust CMCs find it necessary to charge. Using publicly available data published by Companies House, one of our members has produced a summary of UK financial CMCs' top level company accounts (see appendix VI). This shows that there are currently 71 companies with more than £50,000 cash on hand that remain active in accepting and processing PPI claims and are authorised and are not under investigation.

   Of these CMCs, the average fee charged was 28.31% + VAT on any given award. Just three were able to charge less than 25% + VAT.

   What is proposed here is to cut some of the market's most financially sound CMCs' charges by well over half.

   This would bring about the devastation in the market described above with very negative consequences for consumers.

d. A cap of £300 including VAT is so punitive it would even hit hard a business that has, unusually, been able to keep its fees down to 15% + VAT.

   The PFCA has worked with such a business, PPI Advice Ltd. - a relatively small and new CMC - to assess the impact that the change in fees would have on their business. The conclusion is that it would lead to a net reduction in turnover of 69.23% (see appendix VII).

   PPI Advice Ltd. would, like most CMCs, likely face the prospect of closure.

Maximum cancellation fees and itemised billing

We support the proposal that an itemised bill should be provided to the consumer. This is in line with our own Code of Practice which states that the fees are "transparent and reasonable in light of the service being provided".

We do not support a £250 (+VAT) cap on fees for consumers who cancel services after the 14-day cooling off period.

A £250 (+VAT) cap would mean that some CMCs were not entitled to claim the appropriate amount of money for the work they had done. In many cases they would claim less than they had honestly earned. This strikes us as inherently unfair.

However, given i) the low number of cancellations that occur after the 14-day window and ii) the low rate of recovery when cancellation fees are raised, we believe that this is a proposal, the responsible end of the industry could withstand.

Charging for customer referrals

If CMCs were not allowed to charge when they referred a client to a different CMC it would be the consumer who lost out.

When a CMC recognises it is unable to offer the specialist services their customer requires, the responsible action is to find out which CMC is best suited to that customer and to refer them to the better-suited provider. Sometimes that provider is not a CMC at all; rather it might be a debt management company, a solicitor, or another business altogether. These referrals are only ever made with the explicit opt-in of the customer.

That referral costs the original CMC time and labour. We, therefore, think that it is fair to charge a reasonable and transparent fee. If such fees were banned, there would be no incentive for CMCs to do this work on behalf of the customer. This would take away the vital expert support customers need at the beginning of their claims journey. It would become a less responsible service, with the customer suffering more as a consequence.

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

Our position on the proposals under 2. is the same as our position outlined in answer to 1. In practice, the outcome would be even worse for consumers.

Our understanding is that no CMC company could hope to continue to operate in the field of 'bulk claims' with caps at these rates.

There are some CMCs who charge at this level, often because PPI bulk claims are a secondary product to their business and they can afford to make less profit from it. However, our discussions with them leaves us in no doubt that they too would be forced to close that aspect of their business.

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?

The language here is imprecise; there is a lack of clarity around definitions and terminology. It is unclear whether the references are to individual consumers only or cover businesses too. That means you could have a situation where a consumer PPI complaint would come under the definition of bulk claims, but commercial PPI, or business loan repayment insurance would come under non-bulk Claims - but they are both PPI.

With regard to terminology, reference is made to 'interest rate hedge funds'[2]. It is unclear whether this refers to claims for the mis-selling of hedge funds that contain rates as an asset class - which is what the terminology would seem to suggest - or whether it relates to the mis-selling of an interest rate hedging product. This is a financial product sold to businesses as a form of interest rate protection for which widespread mis-selling has been identified in the past.

Investments, Pensions and Endowment claims are much more complex than PPI and PBA claims. They require more in-depth fact finding and skilled workers which, in turn, pushes fees up.

For example, one of our companies, EMCAS, currently charges approximately 35% and has three claims managers all with around 20 years of experience working in the financial industry.

[2] For example, paragraph 2.26 of the consultation paper.

With a cap of 25%, it is very likely EMCAS would no longer be able to provide as much upfront information to a bank or employ as many skilled and experienced staff. Many decisions in this area also require appeals (time bar endowment decisions and Investment offers). PFCA members would have to consider offering a much smaller service to consumers that is targeted only to specific products and leave it to the client to appeal themselves. We do not think it fair for CMCs to charge on an offer that may require an appeal when the appeal may take an extra 100 days of work or more.

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

We are unsure what is specifically meant *by "upfront fees*". If this refers to fees that are charged before an agreement is signed, then we agreed that such fees should be banned. However, if it refers to fees that are charged after an agreement has been signed, but before the claim is settled we disagree that such fees should be banned. There are circumstances where fees need to be charged to cover the work involved in the claim. It is, therefore, not always possible to work on a 'no win no fee' basis on non-bulk claims. We suggest that the wording of our Code of Practice is adopted as an industry standard. PFCA members have worked to this standard for the last three years.

Our Code of Practice states, at clause 7.4:

"Members are generally permitted to charge for services in advance of them being provided but only if the Member can unequivocally demonstrate that it could not reasonably provide the service without such a fee being paid in advance. However, Members are not permitted in any instance to charge a fee in advance of the services where the claim is in respect of PPI mis-selling."

PFCA members are not allowed to charge a fee in advance of the service where the claim relates to PPI.

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?

Consumers need our help

We believe that these fee caps would drive the responsible end of our industry out of the PPI market. This would not only be tragic for those individual companies and their employees, it would have a much wider significance. The PFCA and our members do more than provide fair, transparent and high standard support to our customers.

Banks have been poor in their efforts to re-engage with customers wrongly charged with PPI. We have filled that space. We fight for the consumers' interests - and we have a track record to prove it.

a. The banks initially set aside £3.5 billion in compensation. Today, over £24 billion has been paid out to customers who were mis-sold PPI. Our public awareness campaigns - which we have funded ourselves - have been at the heart of the awareness drive. Those campaigns have undoubtedly increased customer awareness and led to more consumers claiming, and getting back the money they are rightfully owed. Without them, countless scores of eligible people would never have got their money back from the banks.

b. Similarly, the PFCA took a public stand against the banks' use of comparative redress. Our analysis showed that when banks used comparative redress they were refunding their customers by around a third less than their entitlement. Our analysis featured heavily in the media, including a BBC feature. We also engaged positively with the FCA with the evidence that we had gathered and they pursued the issue. We are pleased that our actions precipitated a sharp decline in this tactic from the banks.

c. We also stand ready to support the consumer and call out the behaviour of individual banks. Collectively, we took a decision to escalate all Lloyds Banking Group decisions to the FOS when it became obvious to us that they had increased their inappropriate claims rejection rate. Lloyds now lose more appeals to the FOS than any other bank; vindication of our approach on behalf of the consumer.

d. Moreover, it is our members who continue to battle for customers who were mis-sold PPI on store cards. Until recently it was not possible to achieve redress for those sold before January 2005. Complaints stemming from before this date require a new approach. This is not publicised or even disclosed by the providers of the store cards. Consumers are, therefore, often completely unaware that this route even exists. Cards provided before 2005 are the responsibility of the underwriter (Genworth). Even if some consumers are alerted to the presence of this new route to redress, the Genworth initial uphold rate is less than 1%. This means that more than 99% of consumers who do the right thing and try to make their own claim are rejected. Genworth reported nearly 8000 PPI complaints in the second half of 2015; this is a considerable issue. By contrast, store cards since 2005 are the responsibility of Santander which upholds over 60% of consumer claims (in the first instance).

   For the 99% of consumers who are rejected by Genworth in the initial complaint period, our members continue to liaise with the FOS. We aim to ensure that complaints of the correct profile and merit are escalated and clients are not disadvantaged. Not one penny has yet been paid out by Genworth as a result of an online offer following a FOS uphold. Discussions are still ongoing between FOS and Genworth to agree the methodology of calculations despite the first uphold against Genworth being noted in July 2013. Consumers continue to wait for their redress and our members continue to manage thousands of cases. This shows the long term commitment and approach that our members take to ensure that consumers remain represented and are not disenfranchised. This would inevitably have been the case had our members not been prepared to sustain their financial commitment and patience in sticking with these cases.

e. There is plenty of evidence that people are discouraged from taking on the daunting task of seeking redress from the banks – and, where it becomes necessary – taking their case to the FOS for adjudication. Often people who are owed money have had previous experience of this kind of process. They can be intimidated, hesitant to begin, unsure of how to navigate the process or even how to fill in their forms.

   That is where responsible CMCs add value. Many people, including the most vulnerable, will not start this journey alone. Your own consultation document points out that 79% of PPI cases referred to the FOS in the year ending March 2015 were made with CMC help (para 2.9).

With £400m paid per month to consumers in redress, we would estimate an average of 250,000 successful PPI complaints (at an average fee of £1,600), with approximately 120,000 (48%) instructed by CMCs – compared to 130,000 sent directly by the consumer.

With a rejection rate of 20% across the board and around half of rejected CMC cases referred to the FOS, this amounts to around 12,000 CMC cases per month reaching the FOS (79% of the 15,000 in total). 60% of these cases are overturned, resulting in £11.5m of redress per month for consumers using CMCs.

Claims sent directly by the consumer make up only 21% (3,000) of the volume reaching the FOS, with similar levels of cases overturned – meaning these consumers are only receiving £2.9m in redress, a loss of £8.6m per month compared to CMC cases.

We have commissioned independent polling (see Appendix VIII) that also demonstrates public demand for our services. It shows that 67% of people believe that consumers should have the option of professional help to claim back money from banks that mis-sold them PPI. Just 8% disagree.

It found that under half of people surveyed (48%) would feel confident investigating and reclaiming money from banks that mis-sold them PPI.

Further, the results showed that 59% of people believe that CMCs' campaigns have led to banks repaying consumers more money.

Our members support customers through each stage of the process, right from our advertising campaigns through, ultimately, the appeals process. People often underestimate this task; yet as we make clear in our response to Q1, it's not simple, easy or short.

f. CMCs still have a very big job ahead of them. There are still an estimated 700,000 high-risk citizens who have not been contacted or who have not queried whether they are owed money. These are the customers who are judged likely to have a legitimate claim.

Add to that another 3.2 million high-risk customers who have been contacted, but have not acted.

These figures come from the FCA's consultation paper and guidance on PPI complaints. The document makes clear that since 2007, firms have sent 4.8 million letters (of a planned 5.5 million) to customers they have identified as being at a high-risk of having suffered a past mis-sale but have not yet complained – with a response rate of 33% (CP 15/39 s 1.5 and 2.13).

It is clear that the banks cannot communicate effectively with customers to stimulate the levels of interaction and redress that are justified. CMCs have invested millions in public information campaigns, which have proven to be the fairest and most effective tool. This investment must not be jeopardised by the proposals in this consultation. Instead, there must be an environment in which we can afford to continue this process, and look for ways of working together.

g. Consumers are grateful for the help most CMCs give them. We are proud of the work we do and we take great pleasure in being able to help.

The independent polling found that 65% of people agree that CMCs should be allowed to charge fees that are clear, transparent and not misleading. That is what we do and why our members rarely receive complaints about fee levels.

Attached in Appendix IX is an example case study. C[redacted] R[redacted], a retired merchant seaman came to one of our members after he saw their advert on television. He had tried by himself to reclaim mis-sold PPI but had failed. In his own words he had "got nowhere".

One of our members supported Mr R[redacted] over a 29 month period culminating in an appeal to the FOS. Mr R[redacted] won that appeal. He was awarded £1615.40.

Mr R[redacted] said: "I got a first class service in every way. Carry on the good work."

Unfortunately, under the proposed 15% cap our member could have charged no more than £242 for two and a half years of support. This would not have been viable. In fact

the company in question charged £484 (including VAT). Mr R[redacted] was completely satisfied.

C[redacted] R[redacted]'s story is one of thousands – and we are happy to supply you with further examples if that is helpful. We want to continue supporting people like C[redacted] so they too can reclaim what they deserve.

However, in order to have the time and resources to support them properly, we need to be able to charge fair and transparent fees in excess of the proposed caps.

In this respect, we think that there is value in establishing industry-wide standards on fee transparency that match those outlined in our Code of Practice or perhaps even beyond it. We would be happy to work with the regulator and others to develop a "key facts document" to capture this.

The changes to our industry

a. We have made it clear that we want to eliminate poor practice in our industry to ensure a fair, functioning and transparent market. We have sought to do this through our own Code of Practice; close working with the government and our endorsement of some of the suggestions made in this consultation.

   Our polling around half of people (47%) think that the introduction of further regulation to tackle issues such as nuisance calling and upfront fees would make the industry more legitimate. We would be happy to work with you to deliver these things.

   However, it is important to note that standards are already improving.

   CMCs are now bound to tell customers about their fees and exemplify them in our paperwork. The PFCA has worked with the BBA in standardising the letter of authority for greater consumer understanding and protection. Further, there is evidence that less reputable firms are already leaving the market.

   At a March 2016 CMC stakeholder event held by the Legal Ombudsman (LeO), LeO confirmed (in writing) that of the 2066 complaints received in a twelve month period,

42% were against firms that no longer trade. This suggests that those companies that maintain poor standards are also those already going out of operation.

b. The government recently announced that it will implement the recommendations, Review of Claims Management Regulation, led by Carol Brady. This was an in-depth review and a constructive process and we were happy to engage with it.

   Transferring regulatory responsibility to the FCA, establishing a Senior Managers Regime and applying a “fit and proper persons” test amounts to a fundamental shift in the way in which our industry is regulated. We are confident that this will help eliminate scrupulous practice and ensure a properly regulated CMC market.

   On the latter point, there is a strong parallel with the reauthorisation requirement introduced for the Debt Management Plan industry in 2014. This has had the positive impact of contracting the industry at the less reputable end (though there is a danger that it will go so far as to prevent some good businesses from offering advice, and restrict public access to the information and services that people want and need).

   Similarly then, we believe the changes announced in the budget should be given a chance to bed in. Surely the industry should be given time to properly assess their impact before any other new measures are introduced?

c. While many changes are borne out of negative customer experiences, the proposed cap on fees would not be one of those.

   The reality is that there are few complaints about fees charged in successful cases; this is supported by recent figures referred to by the CMR at the RCG meeting, 23rd February 2016.

   Quote from minutes:

   “Antony Bolton reported a slight decrease in consumer contacts, to 515 on average per month. He commented that there were also slightly fewer business contacts at 73 per month. Unsolicited telephone marketing was the most complained about issue (by consumer) followed by up-front fee and then settlement fee disputes. More than 10%

of contacts were about a single CMC that CMR had recently taken enforcement action against."

As stated, LeO has confirmed receipt of 2066 complaints about CMCs over the last year.

Of the total complaints made about fees, the most common (at 23%) was about the failure to refund upfront charges. As we said in our answer to 4., our code makes it clear that we do not charge upfront fees.

Complaints about insufficient fee information accounted for 3% of the total; complaints about excessive success fees accounted for just 2%. So over a full year, just 41 complaints were made against CMCs for excessive fee charges in the event of a successful outcome.

We do not, therefore, believe that there is any evidence of public dissatisfaction or indeed a public appetite that would justify legislative fee caps.

The banks

By contrast to the positive changes taking place in our own industry, we see no evidence whatsoever that the banks are improving their poor record in this area.

The responsibility for PPI re-claims is theirs. It was the banks that levied unjustified charges; it was the banks that failed to operate a comprehensive system of redress and it is the banks today that drag out the claims process – thereby requiring CMCs to do more work and, ultimately, to require higher fees.

Data from the FOS shows that in December 2015, 76% of PPI rulings concerning nine banks went in favour of the consumer and against the bank. In the case of Lloyds, 93% of rulings went against them.

It is the banks that are costing consumers by withholding that which is rightfully theirs.

The banking industry still owes consumers many billions of pounds. Given that a majority of the money that they have paid out thus far can be accounted for in terms of

the account and statutory interest on the original sum charged, the PFCA believes that we may in fact only be a fraction of the way through the total redress that is lawfully owed.

The FCA itself has confirmed that between July and December 2015, PPI complaints rose by 6%. The banks, by contrast, are keen to suggest that this process is near its natural end and that a time bar should be placed on it.

As the owner of a large proportion of the UK's banking sector, we appreciate that the government must approach this with care. There is a danger that in taking measures that make it harder for consumers to reclaim their money from the banks – either by hitting CMCs with fee caps or by adopting the measures for which the banks are calling – the government could be accused of looking after the banks and their share price rather than those individual citizens who have lost out on a personal basis.

Should the MoJ require further information from us on our experience of dealing with the banks on our customers' behalf, we would be very happy to supply it.

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

Our understanding is that the CMC sector represents about 47% of complaints on PPI. However, the PFCA represents only our member CMCs and does not collect wider data of this sort.

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

The average amount awarded varies from companies depending on their specialisms, etc. For some the average is below £2000 and for some it is above.

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

Our members report that customers very rarely actively cancel. Some go non-responsive and their CMC will close their complaint due to lack of instruction.

However, there are multiple reasons why this might happen. These include banks encouraging them to discard with our services.

Some people also choose to give up because the banks have asked them for information that they have not retained (account numbers etc.) or because they do not want to proceed to an appeal procedure via the FOS.

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

PFCA members do not make "nuisance" calls. Under our Code of Practice, members are required to operate a "Do Not Call" list against which all new data purchases must be screened. They must employ enhanced screening rather than simply the Telephone Preference Service system. Consequently, we have limited information with regard to answering this question.

We note that in recent months there has been a regulatory clampdown on those companies that make high-volume nuisance calls including a record £350,000 fine for Prodial Ltd, which made 46 million automated nuisance calls and the decision to revoke Falcon and Pointer Ltd's licence for making 40 million calls in just three months.

We support this. We do so because it is in consumers' interests.

However, we are concerned that your question is about the impact on the banks that wrongfully took customers' money from them in the first place and the Financial Ombudsman who is the last arbiter between the banks and the customers on PPI claims - and who has found for the customer and against the banks in most cases.

This consultation is about "cutting the costs for consumers" and that is what it should focus on.

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

Again, we are concerned with getting back for consumers what is rightfully theirs.

We think that the focus should remain on customers' interests, not the banks or Ombudsman.

The PFCA is a trade association of claims management companies and we are, therefore, unable to comment on the following CMC specific questions. Our members will, however, answer these questions in their own individual submissions.

Q11 Do you charge an upfront fee? If so, how much?

Q12 Where a consumer cancels their contract after the 14 day cooling period how are costs calculated and what are the average charges for those that cancel?

Q13 Do you charge a completion fee or take a percentage from any compensation awarded to a client? If so, how much?

Q14 How much does it cost your business on average to pursue a single PPI or PBA claim?

Q15 How does your business calculate any upfront or completion fees for financial claims? What are the current rates charged to consumers?

Q16 In terms of profit, how much does your business make per annum in relation to PPI, PBA and other financial claims?

Q17 How would the proposed restrictions on fees affect the operation of your business?

Q18 On average, what is the volume (%) of initial investigations undertaken where there is no relationship or relevant policy between a consumer and a lender is ultimately found?

Q19 Generally, what would the initial and ongoing operational costs be to your business in order to ensure compliance and what would this involve?

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

Nicholas Baxter – Independent Chairman PFCA

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