

Chapter 5

Fee caps for regulated claims management activities

5.2 Fee restrictions for financial services and financial product claims other than payment protection insurance claims

Application

5.2.1

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This section applies to *firms* in relation to:

- (1) *FS claims management agreements* entered into by a *customer*; and
- (2) charges provided for in or imposed on a *customer* under such an agreement or a **connected agreement**.

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- (1) This section applies to financial services or financial product *claims*. However, as a result of the definition of *FS claims management agreement*, this section does not apply to a *claim* to the extent that the *PPI claims management fee cap* applies to it (for PPI claims see ■ CMCOB 5.1).
- (2) The terms in bold in this section (other than in headings or in titles) are defined in ■ CMCOB 5.2.19R.

Statutory context and purpose

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- (1) Section 137FD of the *Act* (FCA general rules: charges for claims management services) places a duty on the *FCA* to make *rules* in relation to all *regulated claims management agreements* and all *regulated claims management activities*, which concern *claims* in relation to financial products or services.
- (2) The *rules* must be made with a view to securing an appropriate degree of protection against excessive charges for the provision of a service which is, or which is provided in connection with, a *regulated claims management activity*.
- (3) In accordance with that duty, the purpose of this section is:
 - (a) to restrict the charges for *claims* in relation to financial products or services; and
 - (b) to secure an appropriate degree of protection against excessive charges.
- (4) *Firms* are reminded of their obligations to treat *customers* fairly under ■ PRIN 2.1.1R(6) (Customers' interests) and ■ CMCOB 2.1.1R

(*client's best interests rule*) which also apply where this section applies. Accordingly, as well as complying with the *rules* in this section, *firms* should ensure that their fees comply with ■ PRIN 2.1.1R(6) and the *client's best interests rule*.

Fee cap for financial services and financial product claims within scope of complaints resolution rules or statutory ombudsman or statutory compensation scheme, where customer is awarded redress

Application of the FS claims management fee cap

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- (1) Subject to (4), the *FS claims management fee cap* applies to charges for any of the activities in (2) which are payable by *customers* who are awarded financial redress for their *claim*, provided the *claim*, if made, would fall:
 - (a) within the scope of complaints resolution rules; or
 - (b) within the scope of any statutory ombudsman scheme or any statutory compensation scheme.
- (2) Subject to (3), the activities referred to in (1) are as follows:
 - (a) *FS claims management activities* carried on in relation to the *claim* which is the subject of the relevant *FS claims management agreement*; and
 - (b) services provided in connection with the activities in (a).
- (3) Where the charge is provided for in or imposed under a **connected agreement**, the reference to *FS claims management activities* in paragraph (2)(a) includes activities which would be *FS claims management activities* but for the exclusions in articles 89N to 89W of the *Regulated Activities Order*.
- (4) Where:
 - (a) the *FS claims management activities* carried on under an *FS claims management agreement* or a **connected agreement** are carried on for the purposes of actual or potential court proceedings; and
 - (b) one or more of the conditions in (5) is met,the *FS claims management fee cap* does not apply to the extent that the charges are for activities carried on for the purposes of those proceedings.
- (5) The conditions in this paragraph are:
 - (a) there are reasonable grounds to believe that the limitation period for issuing court proceedings may be about to expire and that it is therefore necessary to issue court proceedings;
 - (b) the *customer* is unable to pursue the *claim* through any statutory ombudsman scheme or any statutory compensation scheme because:
 - (i) the *claim* has already been determined under the relevant scheme; or
 - (ii) the operator of the relevant scheme has determined that the *claim* cannot or should not be considered under the scheme;

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- (c) there are reasonable grounds to consider that the value of the *claim* may exceed the maximum redress which can be awarded by:
 - (i) the *Financial Ombudsman Service* or by the *FSCS* (where the *claim* falls within the scope of those schemes); or
 - (ii) (where the *claim* does not fall within the scope of the schemes in (i)), other statutory compensation or statutory ombudsman schemes; or
- (d) the time limit for referring the complaint to the *Financial Ombudsman Service* has already elapsed and:
 - (i) there are reasonable grounds to believe that the *Ombudsman* may not conclude that the failure to comply with the time limits was the result of exceptional circumstances in accordance with ■ DISP 2.8.2R(3); and
 - (ii) where relevant, the *respondent* has not consented to the *Ombudsman* considering the complaint in accordance with ■ DISP 2.8.2R(5).

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- (1) **Within the scope of complaints resolution rules** is defined in ■ CMCOB 5.2.19R.
- (2) The statutory schemes in ■ CMCOB 5.2.4R(1)(b) include the *Financial Ombudsman Service*, the *Pensions Ombudsman*, and the *compensation scheme* (see ■ CMCOB 3.2.8G).
- (3) The *FS claims management fee cap* applies to *FS claims management activities* (and related services) carried on in relation to a *claim*. The cap applies to the entire *claim* even where the where the *claim* is based on various different grounds.

Guidance on the application of the FS claims management fee cap: activities which are covered by the cap

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- (1) The *FS claims management fee cap*:
 - (a) restricts charges provided for in or imposed under an *FS claims management agreement* or a **connected agreement** (see ■ CMCOB 5.2.11R and ■ CMCOB 5.2.12R); and
 - (b) applies to charges for any of the activities specified in ■ CMCOB 5.2.4R(2), namely, *FS claims management activities* carried on in relation to the *claim* which is the subject of the relevant *FS claims management agreement* and services provided in connection with those activities.
- (2) When assessing whether the fee cap has been exceeded, a *firm* must therefore include all charges, for *FS claims management activities* and related services carried on in relation to the *claim*, which are provided for in or imposed under:
 - (a) the *FS claims management agreement*; and
 - (b) any **connected agreement**.
- (3) A *firm* to which this section applies must therefore consider not only its own charges when assessing whether the cap has been exceeded,

but also the charges imposed by other *persons* under a **connected agreement** (where the conditions above are met).

- (4) Where charges are imposed under a **connected agreement**, the exclusions in articles 89N to 89W of the *Regulated Activities Order* should be disregarded when determining whether an activity is an *FS claims management activity* (see ■ CMCOB 5.2.4R(3)).
- (5) Accordingly, the cap applies to charges for *FS claims management activities* (and related services) carried on in relation to a claim by an unauthorised person relying on an exclusion under the *Regulated Activities Order* (such as services provided by legal professionals).
- (6) Hence, while this section does not impose obligations on *unauthorised persons* themselves, any charges for the activities above which are imposed under a **connected agreement** must be included by *firms* when assessing whether the fee cap has been exceeded.

Guidance on the application of the FS claims management fee cap: activities which are not covered by the cap

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- (1) The *FS claims management fee cap* only applies to charges which are for the activities specified in ■ CMCOB 5.2.4R(2), namely:
 - (a) *FS claims management activities* carried on in relation to the *claim* which is the subject of the relevant *FS claims management agreement*; and
 - (b) services provided in connection with those activities.
- (2) This is explained in the examples below.
 - (a) A *firm* performs *FS claims management activities* under an *FS claims management agreement* but also provides debt or probate advice under the same agreement and that advice does not relate to the *claim*. For instance, the advice is general advice about how the *customer* could reduce their debts, as opposed to specific advice about how that *customer's* debt would affect the level of redress which the customer could obtain under the *claim*. In that scenario, the cap does not apply to the debt or probate advice. That is because the advice does not relate to the claim and it is therefore not:
 - (i) *advice in relation to a financial services or financial product claim* (see the definition of *FS claims management activity*) carried on in relation to the *claim*; or
 - (ii) a service provided in connection with the above activities.
 - (b) However, if the debt advice was about how the *customer's* debts would affect the *claim* which was being handled by the *firm*, then the cap would apply to that advice. That is because the advice would be advice in relation to a financial services or financial product *claim* and it would therefore be either an *FS claims management activity* carried on in relation to the *claim* or a service provided in connection with that activity.
 - (c) Where a *firm* provides or obtains accountancy or actuarial advice for a *customer* in relation to a *claim*, the cap would apply to that advice because it would be advice in relation to a financial services or financial product *claim* and it would therefore be

either an *FS claims management activity* carried on in relation to the *claim* or a service provided in connection with that activity.

- (3) *Firms* are reminded of their obligations under:
- (a) ■ CMC0B 4.2.5R(7) (obligation to explain to customer where charges will fall outside the cap);
 - (b) ■ CMC0B 6.2.1R(4) (obligation to explain and include charges outside the cap in the itemised bill);
 - (c) ■ CMC0B 6.2.4R(2) (a *firm* must not impose charges on a *customer* who is unable to pay fees and charges to the *firm* when they fall due unless the charges are no higher than necessary to cover the reasonable costs of the *firm*); and
 - (d) ■ PRIN 2.1.1R(6) (Customers' interests) and ■ CMC0B 2.1.1R (*client's best interests rule*).
- (4) In particular, where a *firm* provides some services under an *FS claims management agreement* which fall outside the cap, it would not be in the best interests of the *customer* for the *firm* to increase the charges for those services in order to recoup revenue lost as a result of the cap.

Guidance on the application of the FS claims management fee cap: court proceedings

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- (1) ■ CMC0B 5.2.4R(4) provides that, in certain circumstances, the *FS claims management fee cap* does not apply to steps taken by the firm to enable the *customer* to pursue the *claim* through court proceedings.
- (2) The exclusion above is limited to the circumstances specified in ■ CMC0B 5.2.4R(4)(a) and ■ (b) and only applies to the extent that the charges are for activities which are carried on for the purposes of actual or potential court proceedings.
- (3) Hence, the exclusion will not apply to charges for activities which are carried on for the purposes of:
- (a) making a *complaint* to a *firm* in accordance with the *complaints resolution rules* or ■ DISP 1.1A.20R to ■ 1.1A.22R; or
 - (b) submitting a *claim* to any statutory ombudsman scheme or any statutory compensation scheme.
- (4) *Firms* are still able to provide advice to *customers* about the merits of issuing court proceedings in circumstances which are not covered by ■ CMC0B 5.2.4R(4)(a) and (b) (but the cap will apply in those circumstances).
- (5) ■ CMC0B 5.2.4R(5)(b)(ii) refers to circumstances in which the operator of the relevant scheme has determined that the *claim* cannot or should not be considered under the scheme. Examples of where this might occur are:
- (a) the claim has been referred to the *Financial Ombudsman Service* after the time limit for referring it has elapsed and none of the exceptions in ■ DISP 2.8.2R(3) or ■ (5) apply;

- (b) the *Ombudsman* has determined that the *complaint* should be dismissed without consideration of the merits in accordance with ■ DISP 3.3.4A; and
- (c) where the *claim* has been referred to the *Financial Ombudsman Service* and the *Ombudsman* proposes to cease to consider its merits so that it may be referred to a court to consider as a test case in accordance with ■ DISP 3.4.2R.

(6) When providing advice about commencing court proceedings, *firms* should consider their obligations under the *client's best interests rule* and under ■ CMCOB 2.1.7R (obligation not to make or pursue a *claim* on behalf of a *customer* or advise a *customer* to pursue a *claim* if the *firm* knows or has reasonable grounds to suspect that the *claim* does not have a good arguable base or is fraudulent, frivolous or vexatious).

FS claims management fee cap: level of the cap

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The *FS claims management fee cap* for a *claim* is the lower of:

- (1) the maximum percentage rate of charge, or
- (2) the maximum total charge,

in the table below applicable to the redress awarded for that *claim*.

Band	Redress awarded for a claim (£)	The maximum percentage rate of charge	The maximum total charge (£)
1	1-1,499	30%	420
2	1,500-9,999	28%	2,500
3	10,000-24,999	25%	5,000
4	25,000-49,999	20%	7,500
5	50,000 or above	15%	10,000

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The *FS claims management fee cap* for a *claim*:

- (1) includes expenses and any other charge provided for in or imposed under the *FS claims management agreement* or **connected agreement**; but
- (2) excludes VAT.

FS claims management fee cap: prohibition on entering into agreements

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A *firm* must not enter into an *FS claims management agreement* that provides for the payment of one or more charges that, alone or in combination with any other charge under that agreement or a **connected agreement**, exceed or are capable of exceeding the *FS claims management fee cap*.

FS claims management fee cap: prohibition on imposition of charges

- 5.2.12 **R** (1) A *firm* must not impose one or more charges on a *customer* under an *FS claims management agreement* for a *claim* that, alone or in combination with any other charge in relation that *claim*, under that agreement or a **connected agreement**, exceed or are capable of exceeding the *FS claims management fee cap*.
- (2) The prohibitions in (1) do not apply to charges imposed under a provision in an *FS claims management agreement* or **connected agreement** where the agreement was entered into before this section came into force except where:
- (a) the provision was varied, after this section came into force, to increase the charge;
 - (b) the provision was added to the agreement after this section came into force;
 - (c) the charge relates to a *claim* which was added to the agreement after this section came into force; or
 - (d) the *customer's* first authorisation or instructions to the *firm* to act in relation to *claim* to which the charge relates were given after this section came into force.
- 5.2.13 **G** A charge is provided for or imposed for the purposes of **■** CMCOB 5.2.11R and **■** 5.2.12R, respectively, regardless of how payment of a *firm's* charge is made, including where a *firm*:
- (1) deducts payment from redress received by it on behalf of the *customer*;
 - (2) arranges for or instructs another person to impose a charge on its behalf; or
 - (3) (in relation to **■** CMCOB 5.2.12R) varies the *FS claims management agreement* to provide for the payment of one or more charges that, alone or in combination with any other charge under that agreement or a **connected agreement**, exceed or are capable of exceeding the *FS claims management fee cap*.
- 5.2.14 **G** (1) The *FS claims management fee cap* applies to charges paid or payable by a *customer* who is awarded financial redress. Such charges must not exceed the lower of the maximum percentage rate of charge or the maximum total charge.
- (2) For example, a *customer* who is awarded financial redress falling in band 1 must not be charged more than the lower of:
- (a) 30% (plus VAT) of the redress (the maximum percentage rate of charge in band 1); or
 - (b) £420 (plus VAT) (the maximum total charge in band 1).
- (3) Therefore, a *customer* who is awarded redress of £1,000 must not be charged more than £300 (plus VAT). This is the lower figure out of:
- (a) 30% of the redress awarded (30% of £1,000 = £300); and

(b) £420.

(4) However, a *customer* who is awarded redress of £1,450 must not be charged more than £420 (plus VAT). This is the lower figure out of:

(a) 30% of the redress awarded (30% of £1,450 = £435); and

(b) £420.

(5) The fee cap applies where a *customer* is awarded financial redress, irrespective of whether charges are imposed on a 'no-win-no-fee' basis, hourly basis, or other basis.

Consequences of breaching FS claims management fee cap

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(1) An *FS claims management agreement* is unenforceable against the *customer* to the extent that it provides for a charge that breaches or is capable of breaching the *FS claims management fee cap*.

(2) If a *firm* imposes a charge in breach of the *FS claims management fee cap*, the *firm* must:

(a) reimburse the amount of any overpayment promptly, irrespective of whether the *customer* has asserted the *firm* has breached the fee cap; and

(b) pay interest to the *customer*, at a rate of 8% per annum simple interest, from the date of overpayment by the *customer*.

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Firms are reminded of the need to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards (see ■ SYSC 3.2.6R).

Charges for financial products and services claims not within scope of complaints rules, or ombudsman or compensation schemes, or where customer is not awarded redress

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(1) This rule applies to charges in relation to a *claim*:

(a) for which the *customer* is not awarded financial redress;

(b) where the *claim*, if made, would not fall:

(i) within the scope of complaints resolution rules; or

(ii) within the scope of any statutory ombudsman scheme or any statutory compensation scheme; or

(c) which are excluded from the *FS claims management fee cap* as a result of ■ CMCOB 5.2.4R(4).

(2) A *firm* must not enter into an *FS claims management agreement* that provides for the payment of one or more charges in relation to a *claim* that, alone or in combination with any other charge in relation to the *claim* under that agreement or a **connected agreement**, exceed, or are capable of exceeding, an amount that is reasonable in the circumstances, in light of the work to be undertaken by the *firm*.

(3) A *firm* must not impose one or more charges on a *customer* in relation to a *claim* under an *FS claims management agreement* or

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- connected agreement** that exceed, or are capable of exceeding, an amount that is reasonable in the circumstances, in light of the work undertaken or to be undertaken by the *firm*.
- (4) The prohibition in (3) does not apply to charges imposed under a provision in an *FS claims management agreement* or **connected agreement** where the agreement was entered into before this section came into force except in the circumstances described in ■ CMC0B 5.2.12R(2)(a)-(d).
- (1) The *FS claims management fee cap* applies to charges for the activities in ■ CMC0B 5.2.4R(2) payable or paid by a *customer* who is awarded financial redress for a *claim*, in circumstances where the *claim*, if made, would fall **within the scope of complaints resolution rules**, any statutory ombudsman or any statutory compensation scheme.
- (2) In practice, the *FS claims management fee cap* is applicable to most cases where a *customer* is charged for a financial services or financial product *claim*. That is because such claims usually fall **within the scope of complaints resolution rules**, or a statutory ombudsman or statutory compensation scheme. Further, most *firms* which carry out *regulated claims management activities* do not charge customers who are not awarded financial redress.
- (3) The purpose of ■ CMC0B 5.2.17R is to ensure that charges not subject to the fee cap are nevertheless reasonable.
- (4) A *firm* is expected to be able to demonstrate what services it has provided, how charges are calculated, and why the charges are reasonable. In assessing whether charges are reasonable, *firms* are expected to take into account, where possible, the applicable level of the *FS claims management fee cap* if the fee cap had applied.
- (5) *Firms* are also required to take into account charges imposed under a **connected agreement** including charges imposed for *regulated claims management activity* which are carried on in reliance on an exclusion under the *Regulated Activities Order*, such as services provided by legal professionals.

5.2.19

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Interpretation

- (1) The terms in bold in this section (other than in headings or in titles) have the meaning below.
- (2) An agreement (agreement A) is a **connected agreement** in relation to an *FS claims management agreement* (agreement B) if:
- (a) (i) agreement A enables a charge to be imposed on a *customer* in connection with a *claim*, and
 - (ii) agreement B provides for *regulated claims management activities* in relation to that *claim*; or
 - (b) agreement A provides for services in connection with the *regulated claims management activities* provided for in agreement B;

- (c) agreement A varies, supplements, novates or replaces agreement B (or vice versa); or
- (d) agreement A requires the *customer* to pay a fee to a *lead generator* in respect of the activities performed or to be performed under agreement B.

(3) A *claim* is **within the scope of complaints resolution rules** where:

- (a) if received by the *respondent*, it would constitute a *complaint* subject to the *complaints resolution rules*; or
- (b) if received by the *MiFID investment firm* or *third country investment firm*, it would constitute a *MiFID complaint* subject to the provisions in ■ DISP 1.1A.20R to ■ 1.1A.22R.

5.2.20

G *Firms* are reminded that *complaint* in the *complaints resolution rules* means any oral or written expression of dissatisfaction, whether justified or not, from or on behalf of, a *person* about the provision of, or failure to provide, a financial service, *claims management service* or a *redress determination*, which:

- (a) alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and
- (b) relates to an activity of that *respondent*, or of any other *respondent* with whom that *respondent* has some connection in marketing or providing financial services or products or *claims management services*, which comes under the jurisdiction of the *Financial Ombudsman Service*.