

## 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 ■ CMC OB 5.1).
- (2) The terms in bold in this section (other than in headings or in titles) are defined in ■ CMC OB 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 ■ CMC OB 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).

#### 5.2.5

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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

#### 5.2.8

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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

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(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.
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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

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(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
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(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 ■ CMCOB 5.2.12R(2)(a)-(d).
- (1) The *FS claims management fee cap* applies to charges for the activities in ■ CMCOB 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 ■ CMCOB 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.

Interpretation

5.2.19

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- (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.

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*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*.