

MONEY
ADVICE TRUST

BUSINESS
DEBTLINE

NATIONAL
DEBTLINE

WISER
ADVISER

Consultation Response:

Financial Ombudsman Service Charging claims management companies and other professional representatives

Response by the Money Advice Trust

Date: July 2024

Contents

- **Page 2** Contents
- **Page 3** Introduction / about the Money Advice Trust
- **Page 4** Introductory comment
- **Page 5** Responses to individual questions
- **Page 8** Contact details

Introduction

About the Money Advice Trust

The Money Advice Trust is a charity founded in 1991 to help people across the UK tackle their debts and manage their money with confidence.

The Trust's main activities are giving advice, supporting advisers and improving the UK's money and debt environment.

In 2023, our National Debtline and Business Debtline advisers provided help to 127,390 people by phone, webchat and our digital advice tool with 2.38 million visits to our advice websites. In addition to these frontline services, our Wiseradviser service provides training to free-to-client advice organisations across the UK and in 2023 we delivered this free training to 800 organisations.

We use the intelligence and insight gained from these activities to improve the UK's money and debt environment by contributing to policy developments and public debate around these issues.

Find out more at www.moneyadvicetrust.org.

Public disclosure

Please note that we consent to public disclosure of this response.

Introductory comment

We very much welcome the proposed case fee charges regime as proposed in the paper. Indeed, we would like to see a higher fee charge for claims management companies (CMCs) to deter spurious claims.

- ✓ We are pleased to see that charges for complaints raised by consumers, their friends and family, and not-for profit advice services and charities, have been ruled out.
- ✓ The definition of “professional representatives” should be tightened up, to avoid inadvertently including some consumer bodies within the definition which we understand is not the intention.
- ✓ A higher retained fee would act as a greater deterrent to spurious claims and allow for greater awareness raising activity.
- ✓ We support charging the case fee to CMCs at the point of referral to the Ombudsman Service.
- ✓ We very much agree with the Ombudsman service’s intentions to improve accessibility to complainants and to provide support for consumers in vulnerable circumstances.
- ✓ it is vital that further action is taken to improve FOS’ accessibility to these groups of complainants in particular and to develop awareness of how it can be easy and straightforward to make a complaint directly or through a free advice service.
- ✓ We would support the implementation date of 1 October 2024.
- ✓ There should be a programme of supervision activity carried out by the FCA and other regulators targeting the activities of the most prolific bulk CMCs.

In the longer term we would urge the Ombudsman Service to work with government, the FCA, SRA and other regulatory bodies to establish whether the cap on CMC charges is set at an appropriate level and could be reduced further.

Responses to individual questions

Question 1: Do you consider a case fee level of £250 payable by CMCs and other professional representatives to be fair and appropriate? If not, please state what fee level you believe would be fair with clear evidence to support this.

We very much agree with the proposal to charge CMCs and other professional representatives a case fee so that the Financial Ombudsman Service can establish a more equitable funding model.

However, we feel it is important that the definition of “professional representatives” is tightened up, to avoid inadvertently including some consumer bodies within the definition which we understand is not the intention.

We would be in favour of an even higher case fee to deter speculative claims by CMCs. It appears to be clear from the evidence presented in the paper that CMCs are not achieving the outcomes in favour of the complainant that would be expected to be achieved by a professional service. The £650 cost to respondent firms in such cases seems unfair and disproportionate given the lack of financial risk to CMCs in sending meritless claims.

Question 2: What is your view on our proposed fee charging mechanism, where the £250 maximum fee level for CMCs and other professional representatives is reduced by £175 where the case outcome reached is in favour of the complainant?

We are pleased to see that charges for complaints raised by consumers, their friends and family, and not-for profit advice services and charities, have been ruled out.

We presume that the reduction in the £250 maximum fee for CMCs to £75 where the outcome is in favour of the CMC’s client will benefit the client. We assume that clients would otherwise be charged the £250 fee as well as a percentage of their compensation by the CMC in a “no win no fee” arrangement-where the CMC is not already operating at the maximum fee level allowed under the FCA price capping rules. We would therefore agree with the proposals.

Question 3: What is your view on our service retaining £75 from CMCs and other professional representatives in any event? Do you think this should be higher or lower? Please give clear reasons and evidence.

We agree with the proposals to retain a £75 fee element from CMCs whatever the outcome of the case. The paper suggests that this amount will broadly cover the costs of setting up the case and contributing to awareness activity. We are not able to comment on the accuracy of this amount, but would suggest that it sounds a fairly low amount. A higher retained fee would act as a greater deterrent to spurious claims and allow for greater awareness raising activity.

However, this should very much be subject to increased activity by the Ombudsman Service to raise awareness of the service. It is vital that consumers know that complaints can be raised free of charge and that there is no need to use a CMC service at all.

Question 4: What is your view on the case fee to CMCs and other professional representatives being chargeable when they refer the case to our service? Do you think there is another stage in our process where charging a fee would be appropriate? What is your evidence for this?

We support charging the case fee to CMCs at the point of referral to the Ombudsman Service. We would agree that charging the case fee at any other stage of the case will have a lesser impact on the practices of CMCs. It is clearly challenging for the Ombudsman to deal with high volumes of cases sent without warning by CMCs and where these may be of a dubious quality. Charging the fee later on in the process will not act as the same level of deterrent for such practices.

Question 5: Do you agree with our proposed approach to group charging of respondent firms? If not, what alternative method would you suggest?

We have no comment to make on these proposals.

Question 6: Do you support our proposed method for the late payment of case fees? If not, what alternative solution would you propose?

We have no comment to make on these proposals.

Question 7: What further measures could we implement to improve our service, accessibility and public awareness for all our customers? Please provide any supporting evidence.

We very much agree with the Ombudsman service's intentions to improve accessibility to complainants and to provide support for consumers in vulnerable circumstances.

It is vital that further action is taken to improve FOS' accessibility to these groups of complainants in particular and to develop awareness of how it can be easy and straightforward to make a complaint directly or through a free advice service.

It is also very important that the Ombudsman prioritises making the service easy to use, and allows access through as many contact methods as possible.

The Ombudsman service should do all that it can to promote the service as being free of charge. Vulnerable complainants should be able to access the service directly without losing substantial sums of compensation in fees and commission.

It is vital that the Ombudsman service works with the FCA and other regulators to research why people use CMCs to make complaints, and to identify groups of consumers who might be most susceptible to using these services unnecessarily. In particular, if there are vulnerable groups of consumers identified then the Ombudsman service can target these groups in particular to ensure that they are aware of free alternatives.

We are concerned that disreputable CMCs could mislead consumers by suggesting that there is a fee to make a complaint irrespective of who makes the complaint. This could result in consumers using CMCs because of misinformation about free access routes.

Therefore, it is vital that the Ombudsman priorities improving public awareness for all customers to avoid people needlessly losing up to 30% of their claim to CMCs.

The 30% cap on CMC fees and commission seems to be set at a very high limit. In the longer term we would urge the Ombudsman Service to work with government, the FCA, SRA and other regulatory bodies to establish whether the cap on CMC charges is set at an appropriate level and could be reduced further. This could help limit the ability of CMCs to pass on these fees to consumers. As a result, this could help to minimise the potential losses for consumers who have used a CMC when they could have made a complaint directly to the Ombudsman service for free and on the evidence in the paper, receive better outcomes.

In addition, we believe that there should be a programme of supervision activity carried out by the FCA and other regulators targeting the activities of the most prolific bulk CMCs. It cannot be right that the Ombudsman service has to deal with the effects of poor behaviour by bulk CMC firms where there should be supervision and enforcement undertaken by their regulatory bodies to tackle the problem at its source. As the paper says, there is a need to address:

"..the significant number of case referrals we receive that lack reasonable prospects of success for the consumer and that incur little to no risk of costs for the CMC or professional representative bringing the case".

Question 8: What implementation considerations should we take into account if we proceed with our proposals? Please support your answer with factual evidence where possible.

We would support the implementation date of 1 October 2024. This minimal implementation period seems to be appropriate as there would be an early impact on CMCs putting forward potentially spurious claims in bulk. Any delay will just benefit CMCs and their current working model, which is in direct opposition to the aims of these proposals. It will not assist consumers in resolving valid complaints.

For more information on our response, please contact:

Meg van Rooyen, Policy Lead

meg.vanrooyen@moneyadvicetrust.org

07881 105 045



The Money Advice Trust

21 Garlick Hill

London EC4V 2AU

Tel: 020 7489 7796

Fax: 020 7489 7704

Email: info@moneyadvicetrust.org

www.moneyadvicetrust.org