



# Financial Guidance and Claims Act 2018

## 2018 CHAPTER 10

### PART 2

#### CLAIMS MANAGEMENT SERVICES

##### *Charges for claims management services*

#### **28 Power of FCA to make rules restricting charges for claims management services**

- (1) The Financial Services and Markets Act 2000 is amended as set out in subsections (2) and (3).
- (2) After section 137FC (inserted by section 20) insert—

##### **“137FD FCA general rules: charges for claims management services**

- (1) The power of the FCA to make general rules includes power to make rules prohibiting authorised persons from—
  - (a) entering into a specified regulated claims management agreement that provides for the payment by a person of charges which, taken with charges payable under an agreement treated by the rules as being connected with the regulated claims management agreement (if any), are specified charges, and
  - (b) imposing specified charges on a person in connection with the provision of a service which is, or which is provided in connection with, a specified regulated claims management activity.
- (2) The FCA must make rules by virtue of subsection (1) in relation to all regulated claims management agreements, and all regulated claims management activities, which concern claims in relation to financial products or services.

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*Changes to legislation: There are currently no known outstanding effects for the Financial Guidance and Claims Act 2018, Cross Heading: Charges for claims management services. (See end of Document for details)*

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- (3) 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.
- (4) The rules may specify charges by reference to charges of a specified class or description, or by reference to charges which exceed, or are capable of exceeding, a specified amount.
- (5) In relation to an agreement entered into, or charge imposed, in contravention of the rules, the rules may (amongst other things)—
  - (a) provide for the agreement, or obligation to pay the charge, to be unenforceable or unenforceable to a specified extent;
  - (b) provide for the recovery of amounts paid under the agreement or obligation;
  - (c) provide for the payment of compensation for any losses incurred as a result of paying amounts under the agreement or obligation.
- (6) The provision that may be made under subsection (5) includes provision corresponding to that made by section 30 (enforceability of agreements resulting from unlawful communications).
- (7) In this section—
  - (a) “regulated claims management agreement” means an agreement, the entering into or performing of which by either party is a regulated claims management activity, and
  - (b) “specified” means specified in the rules, but “specified amount” means an amount specified in or determined in accordance with the rules.”
- (3) In section 138E(3) (contravention of rules which may make transaction void or unenforceable)—
  - (a) omit the “or” at the end of paragraph (b), and
  - (b) at the end of paragraph (c) insert “or
  - (d) rules made by the FCA under section 137FD.”

#### Commencement Information

**II** S. 28 in force at 29.3.2019 by S.I. 2019/743, reg. 2(a)

## 29 PPI claims and charges for claims management services: general

- (1) This section and sections 30 to 32 make provision for a fee cap to apply in certain circumstances to charges for regulated services provided in connection with a PPI claim.
- (2) The following provisions explain terms used in those sections.
- (3) The fee cap applicable to the amount charged for regulated services provided in connection with a PPI claim is 20% of the amount recovered for the claimant in satisfaction of the claim.

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Accordingly, where nothing is recovered (whether or not a claim has been made or concluded) the fee cap is zero.

- (4) But the charging of a reasonable amount for work done for the claimant is not to be regarded as exceeding the fee cap for a PPI claim if—
  - (a) the amount is charged for regulated services provided in connection with the claim,
  - (b) no other amount is charged for those services,
  - (c) the claimant has terminated the agreement governing the provision of such services (whether before or after the making of a claim), and
  - (d) the termination was not achieved by the cancellation of the agreement during a cooling off period available to the claimant by right (whether conferred by the agreement or otherwise).
- (5) References to a claim are to a claim (however described) seeking compensation, restitution, repayment or any other financial remedy or relief, whether or not the claim is made or could be made by way of legal proceedings.
- (6) References to the amount charged for regulated services provided in connection with a PPI claim are references to a sum comprising all amounts charged for such services in connection with the claim (whether or not charged under a single agreement), exclusive of VAT.
- (7) References to the amount recovered for the claimant, in relation to a PPI claim, include a reference to any amount which (instead of being paid to or to the order of the claimant)—
  - (a) is set off against a debt due from the claimant to the person against whom the claim is made, or
  - (b) is paid to any person other than the claimant (whether a person providing regulated services in connection with the claim or any other person) with a view to discharging the whole or part of a debt due from the claimant.
- (8) In this section references to regulated services are—
  - (a) so far as relevant for the purposes of section 30, to be read as referring to regulated claims management services,
  - (b) so far as relevant for the purposes of section 31, to be read as referring to any service which is a regulated claims management activity, and
  - (c) so far as relevant for the purposes of section 32, to be read as referring to any service which is a relevant claims management activity (within the meaning given by subsection (5) of that section).
- (9) “PPI claim” means a claim relating to the selling of payment protection insurance (whether it concerns amounts paid by the policyholder or otherwise).
- (10) “Regulated claims management services”—
  - (a) does not include any reserved legal activities of the kind mentioned in section 12(1)(a) or (b) of the Legal Services Act 2007 (exercise of a right of audience or the conduct of litigation), but
  - (b) otherwise, has the same meaning as in the Compensation Act 2006 (see section 14 of that Act).

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- (11) “Regulated claims management activity” has the same meaning as in the Financial Services and Markets Act 2000 (see the definition inserted by this Act in section 417(1) of that Act).
- (12) “Section 22(1B) specified activity provisions” means provisions of an order made under section 22(1B) of the Financial Services and Markets Act 2000 (as inserted by this Act) which specify a kind of activity as a regulated activity within the meaning of that Act.
- (13) “The FCA” means the Financial Conduct Authority.

### **30 PPI claims: interim restriction on charges before transfer of regulation to FCA**

- (1) A regulated person —
  - (a) must not charge a claimant, for regulated claims management services provided in connection with the claimant's PPI claim, an amount which exceeds the fee cap for the claim, and
  - (b) must not enter into an agreement that provides for the payment by a claimant, for regulated claims management services provided in connection with the claimant's PPI claim, of charges which would breach, or are capable of breaching, the prohibition in paragraph (a).
- (2) A breach of either of those prohibitions is not actionable as a breach of statutory duty; but—
  - (a) any payment in excess of the fee cap for a PPI claim is recoverable by the claimant, and
  - (b) any agreement entered into in breach of subsection (1)(b) is not enforceable to the extent it provides for a payment that breaches or is capable of breaching the prohibition in subsection (1)(a).
- (3) In subsection (2) “payment” means a payment of charges for regulated claims management services provided in connection with the claim.
- (4) A relevant regulator—
  - (a) must ensure that it has appropriate arrangements for monitoring and enforcing the prohibitions in subsection (1) as they apply to the regulated persons for whom it is the relevant regulator;
  - (b) may make rules for the purposes of doing so (which may include provision applying, in relation to breaches of a prohibition in subsection (1), functions the relevant regulator has in relation to breaches of another restriction).
- (5) For the purposes of this section—
  - (a) “regulated person” means—
    - (i) a person who falls within any category of regulated person specified in column 2 below, or
    - (ii) any person not within sub-paragraph (i) who, by virtue of article 4 of the Compensation (Exemptions) Order 2007 (S.I. 2007/209), is not prevented by section 4(1) of the Compensation Act 2006 from providing regulated claims management services;
  - (b) “relevant regulator” means a person listed in column 1 below; and

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- (c) the regulated persons for whom a person listed in column 1 below is the relevant regulator are described in the corresponding entry or entries in column 2.

<b>Relevant regulator</b>	<b>Regulated persons</b>
The Regulator	Persons authorised to provide regulated claims management services under section 5(1)(a) of the Compensation Act 2006.
The General Council of the Bar	<ol style="list-style-type: none"><li>(1) Persons who, or licensable bodies which, are authorised by the General Council to carry on a reserved legal activity.</li><li>(2) European lawyers registered with the General Council under the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000/1119) [<sup>F1</sup>], as they have effect by virtue of regulation 6 of the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2020].</li></ol>
The Law Society of England and Wales	<ol style="list-style-type: none"><li>(1) Persons who, or licensable bodies which, are authorised by the Law Society to carry on a reserved legal activity.</li><li>(2) European lawyers registered with the Law Society under the European Communities (Lawyer's Practice) Regulations 2000 [<sup>F2</sup>], as they have effect by virtue of regulation 6 of the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2020].</li><li>(3) Foreign lawyers registered with the Law Society under section 89 of the Courts and Legal Services Act 1990.</li></ol>
The Chartered Institute of Legal Executives	Persons authorised by the Institute to carry on a reserved legal activity.

(6) In column 1 “the Regulator” means the person designated under section 5(1) of the Compensation Act 2006, or, if no person is so designated, the Secretary of State.

(7) In column 2 “reserved legal activity” has the meaning given by section 12 of the Legal Services Act 2007.

(8) This section applies as follows—

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- (a) the prohibition in subsection (1)(a) applies only to charges imposed under an agreement entered into during the first interim period, and
  - (b) the prohibition in subsection (1)(b) applies only to agreements entered into during that period.
- (9) In subsection (8) “the first interim period” is the period—
- (a) beginning with the day on which this section comes into force, and
  - (b) ending with the day before the day on which the first section 22(1B) specified activity provisions come into force for (or for purposes which include) the purposes of the general prohibition in section 19 of the Financial Services and Markets Act 2000.

#### Textual Amendments

- F1** Words in s. 30(5) Table inserted (31.12.2020) by [The Services of Lawyers and Lawyer’s Practice \(Revocation etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1342\)](#), reg. 1(1), **Sch. para. 14(2)(a)** (with Sch. para. 13)
- F2** Words in s. 30(5) Table inserted (31.12.2020) by [The Services of Lawyers and Lawyer’s Practice \(Revocation etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1342\)](#), reg. 1(1), **Sch. para. 14(2)(b)** (with Sch. para. 13)

#### Modifications etc. (not altering text)

- C1** S. 30(5)(c) table modified (1.4.2019) by [The Legal Services Act 2007 \(Designation as a Licensing Authority\) Order 2019 \(S.I. 2019/166\)](#), arts. 1, **3(a)**

### 31 PPI claims: interim restriction on charges imposed by authorised persons after transfer of regulation to FCA

- (1) The rule specified in subsection (2) is to be treated for the purposes of the Financial Services and Markets Act 2000 as if—
- (a) the rule were a general rule made by the FCA under section 137A of that Act, and
  - (b) this section were contained in that Act;
- and accordingly functions conferred on the FCA by that Act which apply in relation to general rules made under section 137A apply to that rule as they apply to other general rules made under that section.
- (2) The rule is that an authorised person—
- (a) must not charge a claimant, for a service which is a regulated claims management activity provided in connection with the claimant's PPI claim, an amount which exceeds the fee cap for the claim, and
  - (b) must not enter into an agreement that provides for the payment by a claimant, for a service which is a regulated claims management activity provided in connection with the claimant's PPI claim, of charges which would breach, or are capable of breaching, the prohibition in paragraph (a).
- (3) A breach of either of those prohibitions is not actionable as a breach of statutory duty (despite section 138D(2) of the Financial Services and Markets Act 2000); but—
- (a) any payment in excess of the fee cap for a PPI claim is recoverable by the claimant, and

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- (b) any agreement entered into in breach of the prohibition in subsection (2)(b) is not enforceable to the extent it provides for a payment that breaches or is capable of breaching the prohibition in subsection (2)(a).
- (4) In subsection (3) “payment” means a payment of charges for a service which is a regulated claims management activity provided in connection with the claim.
- (5) The rule in subsection (2) applies as follows—
  - (a) the prohibition in paragraph (a) applies only to charges imposed under an agreement which is entered into during the second interim period, and
  - (b) the prohibition in paragraph (b) applies only to agreements entered into during that period.
- (6) In subsection (5) “the second interim period” is the period—
  - (a) beginning with the day on which the first section 22(1B) specified activity provisions come into force for (or for purposes which include) the purposes of the general prohibition in section 19 of the Financial Services and Markets Act 2000, and
  - (b) ending with the day before the coming into force of the first relevant general rule made by the FCA (whether for all purposes or for any specific purpose).
- (7) In subsection (6)(b) “relevant general rule” means a general rule that—
  - (a) is made under subsection (1) of section 137FD of the Financial Services and Markets Act 2000 (as inserted by this Act), and
  - (b) applies to, or to any description of, PPI claims (whether or not it also applies to anything else).
- (8) In this section “authorised person” has the same meaning as in the Financial Services and Markets Act 2000 (see section 31(2) of that Act).

## **32 PPI claims: interim restriction on charges imposed by legal practitioners after transfer of regulation to FCA**

- (1) A legal practitioner—
  - (a) must not charge a claimant, for a service which is a relevant claims management activity provided in connection with the claimant's PPI claim, an amount which exceeds the fee cap for the claim, and
  - (b) must not enter into an agreement that provides for the payment by a claimant, for a service which is a relevant claims management activity provided in connection with the claimant's PPI claim, of charges which would breach, or are capable of breaching, the prohibition in paragraph (a).
- (2) Subsections (2) to (5) and (7) of section 30 apply for the purposes of the prohibitions in subsection (1) as they apply for the purposes of the prohibitions in section 30(1) but as if—
  - (a) references in those subsections to “regulated claims management services” were references to “relevant claims management activity” and references to “regulated persons” were references to “legal practitioners”, and
  - (b) the first entry in columns 1 and 2 of the table in subsection (5) were omitted.
- (3) Subsection (1) applies as follows—
  - (a) the prohibition in subsection (1)(a) applies only to charges imposed by a legal practitioner under an agreement entered into during the period—

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- (i) beginning with the first day of the second interim period (within the meaning given by section 31(6)), and
  - (ii) ending with the end date for that practitioner, and
  - (b) the prohibition in subsection (1)(b) applies only to agreements entered into by a legal practitioner during that period.
- (4) For the purposes of subsection (3), the end date is—
- (a) for a legal practitioner for whom the relevant regulator is the Law Society of England and Wales, the day before the coming into force of the first rule made by the Law Society of England and Wales under section 33 that applies to, or to any description of, PPI claims, and
  - (b) for any other legal practitioner, 29 April 2020.
- (5) In this section “relevant claims management activity”—
- (a) does not include any reserved legal activities of the kind mentioned in section 12(1)(a) or (b) of the Legal Services Act 2007 (exercise of a right of audience or the conduct of litigation), but
  - (b) otherwise, means activity of a kind specified in an order under section 22(1B) of the Financial Services and Markets Act 2000 (regulated activities: claims management services), disregarding any exemption in that order for activities carried on by, through, or at the direction of, a legal practitioner.

### **33 Legal services regulators' rules: charges for claims management services**

- (1) The Law Society of England and Wales, the General Council of the Bar and the Chartered Institute of Legal Executives may make rules prohibiting regulated persons from—
- (a) entering into a specified relevant claims management agreement that provides for the payment by a person of specified charges, and
  - (b) imposing specified charges on a person in connection with the provision of a service which is, or which is provided in connection with, a specified relevant claims management activity.
- (2) The Law Society of England and Wales must exercise that power to make rules in relation to all relevant claims management agreements, and all relevant claims management activities, which concern claims in relation to financial products or services.
- (3) The Law Society of Scotland may make rules prohibiting regulated persons from—
- (a) entering into a relevant claims management agreement concerning a claim in relation to a financial product or service that provides for the payment by a person of specified charges, and
  - (b) imposing specified charges on a person in connection with the provision of a service which is, or which is provided in connection with, a relevant claims management activity concerning a claim in relation to a financial product or service.
- (4) Rules under this section may make provision securing that for the purposes of the prohibition referred to in subsection (1)(a) or (3)(a) charges payable under a relevant claims management agreement are to be treated as including charges payable under an agreement treated by the rules as being connected with the relevant claims management agreement.



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- (5) In this section “regulated persons” means—
- (a) in relation to the Law Society of England and Wales—
    - (i) persons who, or licensable bodies which, are authorised by the Law Society to carry on a reserved legal activity,
    - (ii) European lawyers registered with the Law Society under the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000/1119) [F<sup>3</sup>, as they have effect by virtue of regulation 6 of the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2020], and
    - (iii) foreign lawyers registered with the Law Society under section 89 of the Courts and Legal Services Act 1990;
  - (b) in relation to the Law Society of Scotland, Scottish legal practitioners;
  - (c) in relation to the General Council of the Bar—
    - (i) persons who, or licensable bodies which, are authorised by the General Council to carry on a reserved legal activity, and
    - (ii) European lawyers registered with the General Council under the European Communities (Lawyer's Practice) Regulations 2000 [F<sup>4</sup>, as they have effect by virtue of regulation 6 of the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2020];
  - (d) in relation to the Chartered Institute of Legal Executives, persons authorised by the Institute to carry on a reserved legal activity.
- (6) 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 relevant claims management activity.
- (7) The rules may specify charges by reference to charges of a specified class or description, or by reference to charges which exceed, or are capable of exceeding, a specified amount.
- (8) The rules may not specify—
- (a) charges for a reserved legal activity within the meaning of the Legal Services Act 2007 (see section 12 of that Act);
  - (b) charges imposed in respect of—
    - (i) the exercise of a right of audience by a Scottish legal practitioner;
    - (ii) the conduct of litigation by a Scottish legal practitioner.
- (9) In subsection (8)(b)—
- “conduct of litigation” means—
    - (a) the bringing of proceedings before any court in Scotland;
    - (b) the commencement, prosecution and defence of such proceedings;
    - (c) the performance of any ancillary functions in relation to such proceedings;
  - “right of audience” means the right to appear before and address a court in Scotland, including the right to call and examine witnesses.
- (10) In relation to an agreement entered into, or charge imposed, in contravention of the rules, the rules may (amongst other things)—
- (a) provide for the agreement, or obligation to pay the charge, to be unenforceable or unenforceable to a specified extent;

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- (b) provide for the recovery of amounts paid under the agreement or obligation;
- (c) provide for the payment of compensation for any losses incurred as a result of paying amounts under the agreement or obligation.

(11) For the purposes of this section—

“relevant claims management activity” means activity of a kind specified in an order under section 22(1B) of the Financial Services and Markets Act 2000 (regulated activities: claims management services), disregarding any exemption in that order for activities carried on by, through, or at the direction of, a legal practitioner;

“relevant claims management agreement” means an agreement, the entering into or performance of which by either party is a relevant claims management activity;

“Scottish legal practitioner” means—

- (a) a person qualified to practise as a solicitor in accordance with section 4 of the Solicitors (Scotland) Act 1980;
- (b) European lawyers registered with the Law Society of Scotland under the European Communities (Lawyer's Practice) (Scotland) Regulations 2000 (S.S.I. 2000/121);
- (c) foreign lawyers registered with the Law Society of Scotland under section 60A of the Solicitors (Scotland) Act 1980;
- (d) an incorporated practice within the meaning given by section 34(1A)(c) of the Solicitors (Scotland) Act 1980;
- (e) a licensed legal services provider within the meaning of Part 2 of the Legal Services (Scotland) Act 2010 (see section 47 of that Act) that provides, or offers to provide, legal services under a licence issued by the Law Society of Scotland;

“specified” means specified in the rules, but “specified amount” means an amount specified in or determined in accordance with the rules.

(12) This section does not limit any power of the Law Society of England and Wales, the Law Society of Scotland, the General Council of the Bar or the Chartered Institute of Legal Executives existing apart from this section to make rules.

#### Textual Amendments

- F3** Words in s. 33(5)(a)(ii) inserted (31.12.2020) by [The Services of Lawyers and Lawyer's Practice \(Revocation etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1342\)](#), reg. 1(1), **Sch. para. 14(3)(a)** (with Sch. para. 13)
- F4** Words in s. 33(5)(c)(ii) inserted (31.12.2020) by [The Services of Lawyers and Lawyer's Practice \(Revocation etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1342\)](#), reg. 1(1), **Sch. para. 14(3)(b)** (with Sch. para. 13)

#### Modifications etc. (not altering text)

- C2** S. 33(5)(d) modified (E.W.) (1.4.2019) by [The Legal Services Act 2007 \(Designation as a Licensing Authority\) Order 2019 \(S.I. 2019/166\)](#), arts. 1, **3(b)**

#### Commencement Information

- I2** S. 33 in force at 29.3.2019 by [S.I. 2019/743](#), reg. **2(b)**

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**Changes to legislation:** There are currently no known outstanding effects for the Financial Guidance and Claims Act 2018, Cross Heading: Charges for claims management services. (See end of Document for details)

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### **34 Extension of power of the Law Society of Scotland to make rules**

- (1) The Treasury may by regulations amend section 33 for the purpose of extending the power in subsection (3) of that section so as to apply to—
  - (a) all relevant claims management agreements;
  - (b) all relevant claims management activity;
  - (c) any description of relevant claims management agreement;
  - (d) any description of relevant claims management activity.
- (2) The Treasury must obtain the consent of the Scottish Ministers before making regulations under subsection (1).
- (3) Regulations under this section—
  - (a) are to be made by statutory instrument;
  - (b) may make incidental, supplemental or consequential provision.
- (4) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

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#### **Commencement Information**

**I3** S. 34 in force at 29.3.2019 by S.I. 2019/743, reg. 2(c)

**Changes to legislation:**

There are currently no known outstanding effects for the Financial Guidance and Claims Act 2018, Cross Heading: Charges for claims management services.