

Annex one: Assessment of impacts and risks

Consumer empowerment

Our rules may help to increase certainty, for individual consumers and groups that represent their interests, about maximum payable charges for most financial service claims if a consumer decides to use professional representation. Parity between our proposed banding model and the model in the FCA's rules will provide increased clarity to consumers - whether they choose to use a CMC or a law firm.

We are proposing to require solicitors to provide information up-front to consumers before they sign-up to be represented by them for a financial service claim, about other options for pursuing redress. We will also create and promote new information resources for members of the public about routes to redress, including self-representation. We think that these steps will positively impact consumers and should help to empower them with the right information, made available to them at the right time, about financial service redress claims.

The specific circumstances for exempting charges from the banding model that we are proposing to include in our rules are particularly important for consumers. We think they will help to secure the continuation of good access to legal representation for consumers who wish to access it, particularly where the circumstances of their claim are complex and through necessity involve specific, and often considerable, technical legal work. This is an important feature of the wider legal services market, and we think is therefore a positive impact for consumers overall.

Consumer protection

The maximum charges required by our proposed banding framework, and our proposed regulatory requirement for any charges falling outside the scope of those maximum charges to be reasonable, will add important new protections into our Standards and Regulations framework.

Through our supervision activities we will monitor these requirements and assess compliance, including assessing the reasonableness of charges, and taking steps to assure they are achieving our objective of protecting consumers from excessive charges. Through our evaluation activities (as described in the consultation paper) we will consider the impacts of the rules for consumers.

Routes to redress

Our proposed rules will allow solicitors to exempt their charges from the banding model in specific circumstances, and instead make charges that are reasonable. We have considered the risk that this might inadvertently incentivise solicitors to unduly direct consumers towards litigation activity, or to increasingly define

financial service claims as being complex or otherwise capable of being an exempt circumstance, in order to purposely avoid the maximum charges required through the banding model.

We think that this risk is very low and can be mitigated, including through the mechanisms in our rules that confirm our expectations for when litigation may be charged for outside of the bands, as part of a claim. Undue or inappropriate attempts to litigate a claim that can otherwise be progressed through other more suitable routes will also be subject to checks and balances in the courts. They include expectations for methods of alternative dispute resolution to firstly be explored, and engagement with relevant statutory redress schemes to take place, before court action is commenced.

Our Standards and Regulations further help us to respond to this risk, including requirements of our [Principles](#), and specific requirements in our [Code of Conduct for Solicitors, RELs and RFLs](#), including paragraphs:

- 1.4 You do not mislead or attempt to mislead your clients, the court or others, either by your own acts or omissions or allowing or being complicit in the acts or omissions of others
- 2.6. You do not waste the court's time

Access to justice

Our proposed rules aim to ensure a continued viable market for solicitors to represent consumers with financial service claims, and particularly where claims are complex and /or within untested areas. We have explored the risks that the availability of claims management representation reduces if solicitors feel some areas become commercially unviable under the banding model.

Our proposed rules specify exempt claim circumstances to provide flexibility of approach. The maximum percentage charges described in our proposed rules also reflect accepted industry standards, by following the existing precedents already in place for PPI-related claims and within the FCA's model. We think that our rules will support this important feature of the financial service redress sector to continue, and in so doing, to manage potentially adverse impacts towards access to justice for consumers.

Regulatory arbitrage

We have considered scenarios where claims management providers may seek to leave either the FCA or the SRA's regulatory framework to move into a framework which offers, in perceived or actual terms, more desirable conditions for financial service claims management activity providers.

We do not think that our proposed rules will increase this risk, with the majority of the details of the FCA's rules and the SRA's proposed rules the same, and creating the same impacts for providers.

Our authorisation processes are also an important component of the mitigation of this risk. We authorise legal service providers, but not claims management companies, or businesses intending to exclusively provide claims management activity rather than legal services. In those situations, our authorisation processes consider the applicant's links with FCA firms and claims management activities, helping us to respond to situations where we believe an applicant would be more appropriately regulated as a CMC rather than a law firm. The SRA and FCA engage closely at operational levels to ensure we are communicating between our respective regulatory frameworks.

We are mindful that the FGCA's duties to introduce rules do not extend to other relevant regulators, including the Bar Standards Board and CILEx Regulation. We aim to engage with other regulators to understand where further steps might be taken to manage concerns and risks relating to regulatory arbitrage.

Equality, diversity and inclusion (EDI)

We have considered whether there are any specific risks or impacts for EDI considerations. We think our proposed rules will help to secure good access to solicitors claims management activity, and good regulatory protection from excessive charges, for consumers from all communities.

We also think that our rules help to secure good conditions for solicitors and their businesses to continue operating in this area of the market, including firms of different sizes.

We have not identified any adverse EDI impacts. However, we will work with consumer groups to make sure different groups are well-signposted to clear and accessible information about claims management charges, and different routes to redress. We will also consider EDI perspectives through our monitoring and evaluation activity (as described earlier) to make sure we are continuing to consider, and respond to, any possible changes or emerging EDI impacts.