Solicitors Regulation Authority

Closed Consultation

Protecting consumers from excessive charges in financial service claims

20 July 2023

- The consultation period ended on **19 July 2023**
- You can download the consultation paper [#download] or read it below

Next steps

- Download analysis of responses to the consultation [https://qltt.sra.org.uk/sra/consultations/consultation-listing/excessive-charges-financial-claims/#download]
- Download all consultation responses [https://qltt.sra.org.uk/sra/consultations/consultation-listing/excessive-charges-financial-claims/#download]

We are consulting on draft rules to protect consumers from excessive charges when they are represented by solicitors in claims relating to financial products and services. Once finalised, the rules will introduce important new regulatory safeguards into our Standards and Regulations, and will deliver our statutory duty under the Financial Guidance and Claims Act 2018 to make rules ensuring an 'appropriate degree of protection for consumers against excessive charges'.

We would like to hear your views. We will ensure to take on board a range of perspectives and evidence. This is important to make sure the rules we implement empower consumers to make informed decisions about the best way to progress their claim and protect them from excessive charges while protecting continued access to legal services in this important area.

The consultation is open for your comments from **Friday 31 March 2023** until **Wednesday 19 July 2023**.

After it closes we will consider any responses and feedback we receive about our consultation proposals in finalising our position.

Open all [#]

Background

Financial service claims management activity

Seeking redress

Where a consumer feels they have suffered loss or damage in relation to a financial product or service they may take action to seek redress. This could include seeking compensation, a repayment, or another form of restitution.

Actions include:

- Complaining directly to the business providing the product or service.
- Directing a complaint to a statutory redress scheme, which, depending on circumstances, could be the Financial Ombudsman Service [https://www.financial-ombudsman.org.uk/] (FOS), the Financial Services Compensation Scheme

[https://www.fscs.org.uk/] (FSCS), or The Pensions Ombudsman. [https://www.pensions-ombudsman.org.uk/] (TPO)
- Seeking redress through the courts (litigation), particularly if statutory redress routes have already been exhausted or if a claim is ineligible for progression through those channels.

Sometimes the consumer might instruct a representative to help or advise them in relation to the claim. This is called claims management activity. Annex 3 sets out the statutory definition of claims management activity and the relevant regulatory framework.

We regulate solicitors in England and Wales who carry out claims management activity for financial products and services on behalf of consumers. Our aim is to serve the public and protect consumers of legal services, by upholding high professional standards.

Claims management activity and statutory redress schemes

The statutory redress schemes in the financial services sector are designed to be simple and accessible for members of the public to use themselves, without needing help from a professional. Consumers can easily locate information about the schemes and how to use them, including:

- Financial Ombudsman Service: For consumers [https://www.financial-ombudsman.org.uk/consumers]
- The Property Ombudsman: How to make a complaint [https://www.tpos.co.uk/consumers/how-to-make-a-complaint]
- Financial Services Compensation Scheme: Making a claim [https://www.fscs.org.uk/making-a-claim/]

However, some consumers choose to instruct a representative to help them to progress some, or the entirety, of their claim. Statutory restrictions on who can provide this service mean this is usually a claims management company (CMC) regulated by the Financial Conduct Authority (FCA) or a regulated legal service provider (usually a solicitor). A consumer might have specific reasons for deciding to use a representative to progress their claim, for example, they might find the process daunting, they might not feel they have sufficient time, or they might feel their case is legally complex. The statutory redress system accommodates both represented and non-represented people and it is important consumers have the information they need to decide what is right for them.

In 2011, the High Court ordered banks to pay back up to £4.5bn in compensation to consumers for mis-sold payment protection insurance (PPI).

Despite the process of making a claim for repayment of PPI being simple for most, many consumers progressed claims with representation from CMCs or law firms. Consumer groups - such as Citizens Advice - became concerned that some consumers were paying representatives to help them because they did not know statutory redress schemes were simple and accessible. Concerns were also raised about excessive charges being made to consumers for representation, prompting us to publish a warning notice and guidance to solicitors.

The government's response included introducing the Financial Guidance and Claims Act (FGCA) 2018, which, among other things requires us to make rules that protect consumers from excessive charges.

In the rest of this consultation we set out the background to our work, a summary of the evidence we have considered and our proposals for introducing a framework to

prevent the charging of excessive fees for this work by those we regulate.

Solicitors and SRA regulated law firms

Our regulatory requirements already provide a high level of protection for consumers who instruct solicitors. Solicitors, their businesses, and people working in them that provide claims management activity must meet our requirements, set out in our Standards and Regulations [https://qltt.sra.org.uk/solicitors/standards-regulations/] . These include:

- Acting with honesty and integrity and in the best interests of the client.
- Not making unsolicited approaches to members of the public regarding claim representation, and not taking referrals gained from unsolicited approaches.
- Being accurate (and not misleading) when publicising claims management services.
- Ensuring any prospective client is in a position to make informed decisions about available options for progressing their claim - including information about free and easy access to the redress schemes.
- Providing the best possible information about the price of claims management services from the outset and as the claim progresses.

Where a solicitor or law firm we regulate does not meet our standards we can take action.

The Financial Guidance and Claims Act 2018

Our duty

Section 33 of the Financial Guidance and Claims Act 2018 (FGCA) empowers certain legal regulators to make rules to prohibit individuals they regulate from:

- Entering into a specified relevant claims management agreement that provides for the payment by a person of specified charges.
- 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.

The FGCA provides, in section 33, that we (through references to the Law Society of England and Wales in the legislation) must make those rules in respect of claims management activities that relate to financial products or services. The FGCA requires those rules to include '...an appropriate degree of protection against excessive charges...'.

The FGCA does not prescribe how we should discharge this duty. It also does not define 'excessive charges'. However, it does provide that reserved legal activities [https://legalservicesboard.org.uk/enquiries/frequently-asked-questions/reserved-legal-activities] (defined as such under the Legal Services Act 2007) are to fall outside the scope of rules we introduce. These include certain activities involved in bringing litigation through the courts, described as 'the conduct of litigation'.

These activities can only be carried out by solicitors or some other regulated lawyers. A CMC is not able to conduct litigation and so may instruct a solicitor or another regulated lawyer to provide litigation services in relation to a particular claim.

The FCA has a duty to make rules for CMCs regulated by them. Other legal service regulators are referenced in section 33 but without equivalent statutory duties to

make rules.

The Financial Conduct Authority's approach

The FCA consulted [https://www.fca.org.uk/policy-statements/ps21-18-restricting-cmc-charges-financial-products-services-claims] on rule proposals in 2021. It published a policy statement [https://www.fca.org.uk/publication/policy/ps21-18.pdf] in November 2021 and its rules [https://www.handbook.fca.org.uk/handbook/CMCOB/5/?view=chapter] took effect from 1 March 2022.

The FCA's rules apply to relevant claims falling within the scope of the FOS, the FSCS or TPO and to regulated claims management activities provided by a CMC on behalf of a member of the public during those claims.

FCA rules provide for:

- Maximum percentage rates that may be charged to a client in respect of any final amount awarded to them - ranging from 30% for redress valued below £1,500, down to 15% for higher value redress of £50,000-plus.
- Maximum total fees that may be charged to a client - ranging from £420 for redress valued below £1,500, up to a maximum of £10,000 for redress of £50,000-plus.
- In certain circumstances, activity to support the progression of a claim through litigation rather than a statutory redress route to fall outside the scope of the fees restriction and for charges in relation to this activity to be reasonable.
- Except in limited circumstances, restrictions on fees not to be retrospectively applied to claims where the contract was entered into before 1 March 2022.

FCA rules also specify information that CMCs are required to provide to consumers, including information about the calculation of fees and about alternative redress options.

An important part of our policy development work has been to consider whether we should replicate the FCA's rules within our own requirements for solicitors and firms.

Engagement and evidence building

Our engagement programme

We carried out an engagement programme to build evidence about:

- Financial service claims management activity delivered by solicitors and their businesses and how that compares to the work of CMCs.
- Consumer experiences and risks they might face during claims relating to financial services or products.
- Approaches that make sure financial service claims management activity remains a viable area of work for solicitors, and that do not decrease access to justice.
- Impacts that any rules we introduce might potentially have for the public, for legal service professionals, the financial service claims sector, and the wider legal services market.

Our discussion paper

We published a discussion paper, **‘**Restricting fees for some claims management services’ [https://qltt.sra.org.uk/sra/consultations/discussion-papers/restricting-fees-for-some-claims-management-services/] , in July 2021.

We sought views about the approach that, at that time, was being proposed by the FCA for CMCs, and the extent to which that approach could be replicated within our Standards and Regulations framework.

We received 18 responses from our stakeholders, including solicitors and consumer groups. We reviewed the responses and, in some cases, reverted to individual stakeholders to explore specific points in greater detail with them. We also reviewed a range of data, including information provided by the FOS and the FSCS, and information provided by the statutory schemes following a third part Freedom of Information request.

Our survey

In September 2021 we issued a survey to solicitors and law firms who had reported to us that they carry out claims management activities. We asked about their work and the profile of financial service claims that they are involved in.

We received 94 partial or fully completed responses to the survey.

Consumer focus groups

In November 2021 we ran two focus groups with members of the public to explore perceptions and experiences of claims management services and to understand more about charges they currently pay for representation. One group involved people who had used a solicitor during a financial service claim and the other involved people who had used a CMC.

Stakeholder meetings

We met individually with a range of stakeholders to discuss our approach and to seek their input. This included:

- Representative bodies including the Law Society and the Consumer Redress Association
- Citizens Advice
- Financial service redress schemes
- The Pensions Regulator
- HM Treasury and the Ministry of Justice
- Other legal service regulators

Feedback

Feedback from solicitors and law firms

Through our engagement programme we heard from solicitors who are active in the financial service claims management sector, including solicitors operating business models that centred exclusively on those areas of claim.

They broadly welcomed the idea of introducing charging parameters for claims that are eligible to progress through the FOS, FSCS or TPO schemes, and ensuring consistency between these and the charging parameters that are in place for CMCs.

Some solicitors also described areas of their work which are different from the more standardised, high-volume claims – and in particular where they undertake significant legal work on behalf of their client. They told us that this can include situations where financial service claims cannot be progressed, in part or in their

entirety, through a statutory redress scheme, or where expertise is required in order to progress claims through the statutory redress scheme, where these involve particularly complex or novel circumstances.

Solicitors also provided examples of claims that include litigation activity, sometimes as part of group litigation [representative test cases before the court for groups of legal claims that raise similar issues].

In those situations legal representation may include initial legal advice on claim routes and on the circumstances of the claim, technical investigation of specific points of law, and preparatory work to assemble court applications, pre-litigation notices, and to complete casework. This work takes place in advance of the solicitor commencing litigation on the consumer's behalf.

This is an important point because the litigation activity itself is exempt from any fee restrictions required by the Financial Guidance and Claims Act 2018.

We asked solicitors about the potential impacts of rules to protect consumers from excessive fees. Some solicitors were concerned about the possible reduction in commercial viability of representing clients in respect of claims with complex or novel circumstances, with some providing worked examples of their costs for such claims to help illustrate their view. These respondents included solicitors operating businesses that specialise exclusively in representation for complex financial service claims.

We heard concerns from some of these solicitors about the potential for solicitors to instead increasingly 'cherry pick' claims and move their business model away from claims with complex or novel circumstances towards representation for more standardised and well-established areas of financial service claims.

Some solicitors highlighted a number of cases and published decisions from statutory redress schemes where the claimant had been represented, and where they felt the circumstances and routes through to redress and / or an outcome were particularly complex. They include:

- Adams v Options UK Personal Pensions LLP [2021] EWCA Civ 474 [https://www.bailii.org/ew/cases/EWCA/Civ/2021/474.html]
- The Berkeley Burke SIPP litigation [https://www.financial-ombudsman.org.uk/news-events/berkeley-burke-sipp]
- Decision Reference DRN3635564 [https://www.financial-ombudsman.org.uk/decision/DRN3635564.pdf]

Feedback from consumers and consumer groups

Consumer groups were enthusiastic about potential new protections for members of the public. However, they also welcomed opportunities for consumers to be better empowered through rules requiring clear information to be provided about the options available to pursue redress and the charges they will pay if they choose to be represented.

The Legal Services Consumer Panel highlighted the importance of solicitors and law firms signposting consumers to the full range of options for progressing claims, including self-representation.

Citizens Advice felt we should consider our own opportunities to communicate maximum charges and other key pieces of information to the public - in addition to our requirements for solicitors - so that consumers can easily explore their options

even before deciding to contact a redress scheme or a claims management service provider.

Consumer groups also called for careful monitoring of the impacts of our rules on access to justice. This included concerns that there might be unintended incentives for solicitors to avoid charging parameters by directing more claimants to the courts from the outset, rather than the Ombudsmen schemes.

In our consumer focus groups we heard from people who had chosen to be represented by a solicitor during their financial service claim. All of these people described claims that were typically high value and centred on mis-sold pension schemes and investments. Their accounts demonstrated specific areas of complexity and positive experiences of their solicitor's approach and representation.

Our analysis

Business models and areas of work

We have taken into account a range of information when developing our proposals. Our analysis is based on information provided by law firms about their costs, services, client base and business models.

We have also used information provided by statutory redress schemes about solicitors and law firms they interact with, and from consumers who provided feedback about their experiences in the financial service claims sector.

In this section, we have set out what that analysis appears to show and which we would like to test further during this consultation.

The two models are:

- **Model A:** Where solicitors and law firms predominantly represent consumers in relation to larger volumes of claims progressed through statutory financial service redress schemes and with operational similarities to many CMCs.
- **Model B:** Where solicitors and law firms predominately represent consumers, or groups of consumers, for claims with complex or novel features and that in some cases are ineligible for direction to, or continuation through, statutory redress schemes.

Solicitors and law firm representatives in both types of firm who responded to our survey described the types of financial services and products that drive the claims they represent.

The table below summarises this, showing that more than 45% of those claims relate to pensions, followed by mortgages and investments. Feedback from our engagement programme suggests redress claims for areas such as mis-sold pensions, investment and shares can be more likely to have particular complexities than other areas of claim. We need to make sure that our rules do not make complex work of this type unviable. This could lead to consumers without access to legal representation in areas where they are most likely to feel that they need advice.

Reported percentage handling claim type chart

Claim type	Reported percentage handling claim type (%)
Pensions	46.70%
Mortgages	33.30%

Savings or other investments	30.00%
Loans	30.00%
Other	23.30%
Insurance	20.00%
Credit cards	10.00%
Packaged bank accounts	6.70%
Equity release	6.70%

Question 1

Do you agree with our assessment of financial service claims management activity provided by law firms and solicitors? If not please explain why and where possible provide evidence to support your view.

Should the FCA's banding model be replicated in rules for solicitors and law firms?

Our evidence shows that significant numbers of law firms - particularly Model A businesses - represent consumers during claims that are fully in scope for progression and determination through a statutory redress scheme - sharing operational similarities with many CMCs.

This includes similar consumer experiences, and areas of financial service claim. Feedback from the statutory redress schemes for financial services and illustrated in their decision notices shows significant numbers of law firms are representing consumers during eligible claims within those schemes.

We asked solicitors and law firm representatives who are active in the claims management sector to tell us whether they felt the FCA’s assumptions and proposals for CMCs (which were at the time still in draft) were appropriate to apply also to solicitors. 60% of respondents to our survey confirmed they felt they are appropriate, with one stating: 'It is imperative to ensure the industry is aligned as closely as possible.'

We have reviewed the FCA’s rules for CMCs to consider whether the framework of maximum charges is appropriate to apply to law firms operating in the financial service claims management sector, taking into account the need to protect consumers and make sure that solicitors receive sufficient renumeration to make this work viable for them. Our evidence base includes information from the statutory redress schemes about law firms representing claimants, that indicates operational similarities between some (particularly Model A) law firms and CMCs - such as using generic complaint points and automated processes across their caseload.

Feedback from our stakeholders, including views held by solicitors as summarised above, shows support for replicating the FCA's maximum rates and for solicitors and their businesses. Based on this evidence, we consider that law firms will be able to operate profitably and remain viable if we include the framework within our rules.

Adopting the FCA’s banding framework and its maximum percentage charges in our own rules would also make sure that there are consistent, sector-wide parameters in place that protect consumers from excessive charges irrespective of the type of provider a consumer chooses to be represented by. It would improve clarity and certainty for consumers and reduce risks of regulatory arbitrage between legal service regulation and financial service regulation. (Regulatory arbitrage refers to situations where firms requiring regulation may seek out loopholes in different

regulatory systems in order to try and circumvent regulations perceived to be unfavourable.) For these reasons we are proposing to replicate the FCA's banding framework and its maximum percentage changes in our rules.

However, there is a small proportion of cases that solicitors and law firms deal with where, based on the feedback we have received and evidence we have seen, we consider that the banding framework and maximum percentages may not be appropriate.

This is because these cases incur higher costs for the law firm, meaning that if they were subject to the banding framework, this work may become unviable. This in turn would lead to some law firms no longer offering representation for the most complex or novel financial service claims, impacting negatively on consumer choice and access to justice.

We consider this further below, together with our proposals to address this.

How can our rules secure continued good levels of access to justice for consumers with complex or novel financial service claims?

We have considered information we received about financial service claims that have particularly complex or novel features, as well as a small proportion that may not be eligible for progression through a statutory redress scheme. As part of our analysis, we reviewed data and decision notices published by statutory redress schemes, such as FOS decisions [https://www.financial-ombudsman.org.uk/decisions-case-studies/ombudsman-decisions] and TPO decisions [https://www.financial-ombudsman.org.uk/decisions-case-studies/ombudsman-decisions] , alongside feedback and case examples from solicitors. In some cases solicitors represent consumers over a number of years, with periods of investigation and legal analysis taking place alongside periodic engagement with redress schemes.

Different factors may influence the complexity of a claim including:

- Jurisdictional considerations where a claim is not eligible for progression through a financial service redress scheme – sometimes driven by time limitations.
- The nature of the case: as certain pensions, investments and shares cases can be inherently complex, with legal and factual arguments taking place about the extent to which the principal financial service business is responsible.

We heard examples of situations where consumers choose a solicitor to progress their claim following a redress scheme’s conclusion that court consideration is required in order to progress the claim further. Represented consumers are typically clients of 'Model B' law firms in these circumstances. The conduct of litigation is a reserved legal activity [https://www.legislation.gov.uk/ukpga/2007/29/notes/division/7/3] , so litigation activity will generally be exempt from any fee restrictions imposed under the FGCA. However, we are aware that considerable ancillary work, and legal analysis, is necessary well in advance of the conduct of litigation itself.

We also heard examples of solicitors representing consumers as part of a wider process featuring multiple claimants. In these situations, the grounds for a claim can be untested and require significant technical investigation, legal analysis, and engagement with redress schemes in advance of any application to the courts. The government’s list of group litigation orders [https://www.gov.uk/guidance/group-litigation-orders] illustrate some examples of these types of claim in relation to financial services amongst other matters, such as the Berkerley Burke case. Consumer rights

class actions such as the Mastercard case [https://www.reuters.com/markets/europe/mastercard-loses-uk-ruling-three-million-dead-claimants-12-bln-case-2022-11-29/] help to demonstrate the extent of legal work that may be involved.

Our evidence base includes costed examples of financial service claim representation provided by solicitors, alongside decision notices from statutory redress schemes – where specialised, specific arguments are presented to redress schemes. From these we have identified two scenarios in which our initial view is that the banding framework of maximum percentage charges and rates may inhibit access to justice, by reducing the viability of this work. We consider that this would be detrimental to consumers who may want to access legal representation for claims with complex and/or novel circumstances, following a solicitor's explanation of options that are available to them.

The two scenarios that we consider are unsuitable for the framework of maximum charges are:

- Representation on a claim that is eligible for direction initially to a statutory redress scheme but that is are subsequently prevented from further progression through that scheme or another scheme - for example, where the scheme's conditions for eligibility cannot be met, or the scheme determines the claim should first be directed to a court.
- Representation on a claim with circumstances that are particularly complex, novel, or connected to group processes and that, as part of the solicitor’s discussion of options with the consumer and acting in the client’s best interests, result in agreement to pursue redress through the courts rather than a statutory redress scheme.

There is a third scenario where we are seeking, through this consultation, more evidence. This is:

- Representation on a claim that is eligible for progression and determination through a statutory redress scheme, but that has particularly novel or complex characteristics which means that the cost of representation exceeds the maximum amount the firm would be able to recover under the fee restrictions framework. The firm would be subject to our requirements to inform the consumer of their options (including for the consumer to bring the claim themselves) and to act in the consumer's best interests.

In relation to this third scenario we know there are divergent views among stakeholders. Some feel that given that the redress schemes are designed to be able to assist consumers regardless of the complexity of their claim, this exception cannot be justified. Others feel that if the most complex cases of this nature were subject to the framework of maximum charges, it would become unviable for law firms to provide representation. They feel that this would result in some consumers experiencing worse outcomes. This might include consumers who feel so daunted that they do not seek redress at all.

Our preliminary view is that since the redress schemes accommodate consumers being represented, consumers should be able to make an informed decision as to whether or not this is right for them. Putting in place rules which make it unviable for firms to take on the most complex cases could mean that representation is not available to some consumers who would otherwise choose this option.

However, in order to consider whether the framework of maximum charges would make it unviable for firms to pursue the most complex cases before the redress schemes, we need further evidence of the necessary costs of bringing those cases.

As well as considering responses to this consultation we will be testing these scenarios with the statutory redress schemes with a view to confirming whether these cases are unsuitable for the framework of maximum charges. We particularly want to understand whether there are some, more complex claims, which inevitably require more involvement from a consumer or their representative and if so, to what degree. We will also seek to engage further with consumers to understand more about why they might choose to be represented and what the impact might be if that option was not available to them.

Objectives

Our analysis of insights from our engagement programme has helped us to identify objectives as our starting point for developing our rules. They also provide reference points for us to monitor and evaluate their impacts in the future.

Objective 1: Protect consumers from excessive fees during financial service claims and satisfy the FGCA's requirements in doing so.

The protections we introduce through our rules will add important new consumer safeguards, in line with the FGCA's duty, into our overarching Standards and Regulations framework. They will prevent firms we regulate from charging excessive fees through the banding model and through requiring charges to be reasonable for any work that falls outside of the banding model.

Objective 2: Replicate the FCA's approach to restricting fees for CMCs in our rules for solicitors, as far as that is appropriate.

This will secure consistent and sector wide parameters to protect consumers from excessive charges in relation to the majority of financial service claims. Many law firms and CMCs are operationally similar, both in terms of categories of financial service claims being progressed, and services they provide to consumers. We think it is important to have consistency of approach for these cases so that consumers have clarity about charges regardless of the type of provider they use.

This is also important to reduce the risk of regulatory arbitrage between the FCA’s regulatory framework and ours, to manage risks that individuals and businesses providing claims management activity might seek to move from one regulated sector to another to try and avoid certain regulatory controls. Our regulatory processes help us in any event to manage these risks, including specific checks built into our authorisation processes and relationships within the claims management sector - but replicating as much of the FCA's approach as possible in our rules helps to reduce these risks significantly.

Objective 3: Balance our rules with our duties under the Legal Services Act 2007, including promoting access to justice for members of the public who wish to have professional representation for a financial service claim.

Through Regulatory Objectives [https://www.legislation.gov.uk/ukpga/2007/29/section/1#:~:text=1The%20regulatory%20objectives&text=(b)supporting%20the%20constitutional%20principle,services%20within%20subsection%20(2)%3B] set out in the Legal Services Act 2007 we are required to work in a way that improves access to justice. We need to be careful that our rules do not make it unviable for firms to provide representation in relation to financial services claims as this may reduce access to justice for those consumers who may only pursue a claim (or achieve a successful outcome) if represented. Another regulatory objective is to promote competition in legal services – so for example we would expect to see good

conditions for competition between providers who operate within the parameters of the banding model.

Objective 4: Ensure consumers are empowered to choose and are well-informed about those choices for pursuing financial service redress.

We propose to include requirements in our rules to make sure solicitors provide information to consumers about their choices before they 'sign up' to be represented by them for a financial service claim. In particular this will include signposting consumers to statutory redress schemes, making it clear that they can bring the claim themselves free of charge. We propose to reflect wording described in the FCA's rules for CMCs.

Question 2

Do you agree we are using the right objectives as the basis for developing our rules? If not, please explain why.

Our draft rules

Our proposed rules are designed to respond to any solicitor-represented financial service claim. They include claims within the scope and jurisdiction of a statutory scheme and those that fall outside.

Our draft rules are at Annex 2 of this consultation paper.

In line with our four objectives, we are proposing to replicate positioning in the FCA's rules for CMCs in our rules for solicitors and SRA-regulated law firms. This would mean that our rules would confirm:

- **The maximum percentage rate that may be charged to a client** - ranging from 30% for redress valued below £1,500, down to 15% for higher value redress of £50,000+
- **Maximum total fees that may be charged** - ranging from £420 for redress valued below £1,500, up to a maximum £10,000 for redress of £50,000+
- **Any charges eligible to be made outside the maximum rate and maximum total fee parameters must be reasonable**
- **Information that must be provided to clients (including prospective clients)** - including information about the calculation of fees, and alternative redress routes
- **Certain activity connected to the preparation of litigation proceedings (and distinct from the conduct of litigation itself) may be eligible to be charged outside the maximum rate and maximum total fee parameters**
- **Requirements in the rules do not apply retrospectively** - to any agreements that are already in place at the commencement date of the rules if the claim process itself has not yet completed.

Like the FCA, where claims management activity provided by solicitors would be exempt from the maximum charges and rates specified in the banding framework, we are proposing to require any charges to be reasonable. To assess reasonableness we propose to consider:

- Market rates - both in relation to hourly rates (taking into account the seniority of the fee earner) and success fees.
- Whether activities carried out were necessary and in the client's best interests.
- Whether the client gave informed consent.

In line with the FCA's approach, we propose to recognise in our rules that in limited circumstances it will be appropriate for litigation to begin on a claim even if a redress scheme route is available for it.

For example, it could be a situation where there are reasonable grounds to believe that the limitation period for action may be breached, or where the amount of redress being sought may be higher than the award limits of the relevant redress scheme.

Our proposed rules aim to ensure consumers are protected from excessive charges, for any financial service claim that they choose to access solicitor representation for. Charges made by solicitors and SRA-regulated firms will usually be within the parameters of the banding framework. In the small proportion of cases where they fall outside of this, charges will be reasonable. In circumstances where claims feature both circumstances covered by the framework and exempt circumstances, at different stages, our rules will require careful explanation and justification to be provided to consumers about the totality of charges made.

In this situation, a solicitor will only be able to charge outside of the maximum framework for the portion of work that relates to our exemptions. The professional duties solicitors are bound to follow will also complement the rules through existing safeguards to ensure consumers are well-positioned to make informed decisions - including about the routes to redress that are available to them.

Charging parameters

We are proposing that our rules share the same parameters for charges as the FCA's rules for CMCs as follows:

Scope and application	The rules apply when relevant financial services claims management agreements are entered into.
Fees that may be charged	The maximum percentage rate of charge, and the maximum total charge, are applicable to financial redress awarded for a relevant claim. The restriction includes all expenses and other charges, not inclusive of VAT.
Repayment requirements	Charges for relevant claims will be unenforceable if they exceed, or are capable of exceeding, the fees restriction. Any overpayment must be reimbursed promptly, together with interest at a rate of 8% per annum, simple interest from the date of overpayment, and irrespective of whether the client seeks repayment.

The banding framework and maximum charges

As confirmed above we are proposing to replicate the FCA’s banding framework in its entirety in our draft rules. We anticipate the framework will apply to the majority of solicitor-represented financial service claims. The framework is: .

Band	Redress awarded for a claim (£)	Maximum percentage rate of charge	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

Specific circumstances

As explained above, we are proposing to provide in our rules for specific circumstances where the banding model may not apply to financial service claims management activity undertaken by solicitors. We anticipate they will apply to a small proportion of solicitor-represented financial service claims. Any charges made will be required to be reasonable. The circumstances are as follows:

Circumstances where the banding framework and its maximum charges do not apply, and any charges must instead be reasonable

Any charges for reserved legal activities, such as the conduct of litigation (as required by the FGCA)

Any claims already started before our rules come into force (we will not apply the rules retrospectively)

No award for monetary redress is made in the client's favour

If the claim is not within the scope of:

- Complaints resolution rules set out in the FCA Handbook DISP: dispute resolution and / or
- Any relevant statutory ombudsman scheme or compensation scheme

To any charges for activities that are carried on in relation to actual or potential court proceedings, if:

- There are reasonable grounds to believe that the limitation period for issuing court proceedings may be about to expire
- The claim cannot be pursued or continued through any statutory scheme because it has already been determined under the relevant scheme, or the scheme operator has determined it cannot or should not be considered under the scheme
- The claim's value may exceed the maximum redress which can be awarded by any applicable statutory scheme
- The claim raises a novel, complex or important point of law with potential wider ramifications such as to indicate that, acting in the client's best interests, a representative action, group action or test case before a court is the appropriate approach
- Any time limit for referring the complaint to the relevant statutory scheme has already elapsed, and there are no reasonable grounds to believe that the claim could be brought within such scheme out of time

Subject to the responses and evidence we are provided with as part of this consultation, we may add a further circumstance:

- A claim before the TPO, FOS or FSCS is reasonably assessed as having particularly novel or complex characteristics which means that the cost of representation exceeds the maximum amount the firm would be able to recover under the fee restrictions framework – and having been fully informed of this and alternative options, including self-representation, the consumer chooses to be represented.

We have included draft rules in relation to this circumstance at 2.5(f) to illustrate how we might implement this exception.

Illustrative examples

Reasonable charges entirely outside the banding framework

B complained to his bank after it withdrew a commercial mortgage offer as he felt the bank had not notified him or justified the withdrawal decision. His commercial contracts collapsed without his new premises, and he requested compensation from the bank. The bank rejected Mr B's complaint and directed him to contact the FOS within six months if he wished to progress it further.

Mr B did not contact the FOS until a further 18 months passed. The FOS confirmed it was unable to accept his complaint for investigation because the limitation period had passed. Mr B decided to contact a law firm to consider his options. A solicitor at the firm confirmed the matter could instead be pursued through court proceedings.

As the claim relates only to actual or potential court proceedings, the banding framework for maximum charges would not apply to the solicitors' fees. Instead, the fees would be subject to SRA requirements on reasonableness.

Charges made within and outside the banding framework

F complained to their self-invested personal pension (SIPP) provider about their due diligence on certain investment decisions, and financial losses their SIPP had incurred. The provider did not resolve the complaint to F's satisfaction, and F contacted a law firm for advice, and decided to instruct them.

The solicitor directed the claim to the FOS, and then to the TPO. After investigation F's claim was determined as requiring court consideration to test specific points of law. The solicitor prepared the case for court proceedings and commenced litigation on F's behalf.

The distinct stages of the claim mean that fees for the initial work before TPO and FOS will subject to the banding framework, and reasonable charges, outside the banding framework, will be made for the subsequent litigation activity.

A complex case dealt with entirely within a redress scheme

J and P complained to a wealth management company about advice the company had provided to them to switch their personal pension schemes to SIPPs, and to then invest in an overseas property scheme. The investment failed and J & P incurred significant financial loss.

The company rejected the complaint, stating its advice extended only to the decision to switch to SIPPs, but not any specific investments, which it said were advised on separately by unregulated advisers located overseas. The company signposted J and P to the FOS.

After researching options available to them, J and P decided to find a solicitor to help them with their next steps. They approached a solicitor who discussed options with them, and they decided to instruct her.

The solicitor represented J and P during their claim, and the progression of their complaint with the FOS. An initial decision was made by the FOS that the complaint should not be upheld. The solicitor prepared grounds and evidence to appeal the decision, and a provisional decision was taken by the FOS to consider the evidence.

Further investigation and engagement took place between FOS and the solicitor on behalf of J and P took place over a three-year period, and a further provisional decision. The solicitor provided ongoing legal advice and representation, and legal analysis to constitute grounds for appeal.

The FOS ultimately upheld the complaint in favour of J and P and awarded compensation.

After the interim decision to not uphold the complaint, the solicitor had discussed with J and P the complexity of further progression and the legal work that would be required to evidence and bring an appeal. The solicitor has also fully informed J and P of the costs involved.

Question 3: Do you agree with our proposal to replicate the entire FCA's banding framework for CMCs in our rules, but with specific limited circumstances where the banding model and maximum charges would not apply? Where possible, provide evidence or examples that illustrate why you think this.

Question 4: Do you think our proposed circumstances for charges to be eligible for exemption from the parameters of the banding framework are appropriate? If not, please explain why.

Question 5: Do you consider that there are any circumstances in which exemptions from the parameters of the banding framework would be appropriate for a claim entirely dealt with through a statutory redress scheme (the third exemption we are considering)? Please provide evidence where possible to support your view.

Transparent information for consumers

Transparent, accessible information for consumers is an important component of our regulatory framework. We are proposing to require solicitors to inform prospective clients for financial services claims about their options to pursue their claim without representation, and in particular through signposting to relevant redress schemes.

This will help to make sure consumers can make well-informed decisions about what is right for them.

Our proposed rules also require solicitors to provide clear costs information to a client before they enter into a contract, including whether a fee restriction applies and if not, the basis of and an estimate of fees.

These new requirements will strengthen our existing requirements for solicitors in paragraph 8.7 of our Code of Conduct for Solicitors, RELs and RFLs [https://qltt.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/] , which states: 'You ensure that clients [https://qltt.sra.org.uk/solicitors/standards-regulations/glossary/#client] receive the best possible information about how their matter will be priced and, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of the matter and any costs [https://qltt.sra.org.uk/solicitors/standards-regulations/glossary/#costs] incurred.'

We will also use our own engagement channels and targeted digital advertising to proactively direct members of the public to plain language information that explains their options for financial services claims and the protections in our rules.

Question 6: Do you have any comments about information transparency for consumers and our proposed requirements and approach?

Guidance for solicitors

We understand that our rules will introduce entirely new regulatory requirements for solicitors, their businesses and their employees, and that we will need to be clear about our expectations.

We will publish guidance for solicitors and law firms alongside the rules, focusing on their practical application and in particular the circumstances where charges may be exempt from the banding model. We will provide case study examples to help illustrate this and will work with solicitors and their representative bodies to make sure our guidance is genuinely helpful.

Question 7

What areas do you think we should cover in guidance to support the introduction of the new rules?

Impacts and monitoring approaches

We have described a number of potential impacts and risks as we see them at Annex One of this consultation paper. It considers impacts from our draft rules for consumers, solicitors and other professionals in the claims management sector, and describes our views on them – including mitigating factors that we think are important to take into consideration. We also assess equality, diversity and inclusion considerations.

Question 8

Do you agree we have identified and are considering the right impacts? If not, what else do you think we should consider?

Question 9

Do you agree with our assessment of equality, diversity and inclusion considerations in our impact assessment? If not, what else do you think we should consider?

We will carry out a programme of monitoring and evaluation to establish the impact of our rules on consumers, solicitors and the broader claims management and legal service market. We will work closely with the FCA and the statutory redress schemes for financial services following the implementation of our rules, to share information about their application and impacts.

Our approach will include consideration of:

- Regulatory reports about solicitors in the financial service claims management sector.
- Data from the statutory redress schemes for financial services, and from the Legal Ombudsman.
- Information provided by the FCA about claims management activities.
- Consumer experiences.

Given concerns raised by consumer groups that our rules could create an incentive for solicitors to pursue unnecessary litigation, we will consider what proactive monitoring we should undertake to identify whether there are any negative unintended consequences arising out of the implementation of our rules.

Next steps

After our consultation closes we will review all responses and feedback we receive. We will discuss this with our Board and agree an approach for finalising and

introducing our rules, including making an application for approval of our new rules to the Legal Services Board.

We will confirm a date for implementation of our new rules and we will engage closely with our stakeholders ahead of this date.

Consultation questions in full

This is the full list of detailed consultation questions we would like you to respond to:

Question 1

Do you agree with our assessment of financial service claims management activity provided by law firms and solicitors? If not please explain why and, where possible, provide evidence to support your view.

Question 2

Do you agree we are using the right objectives as the basis for developing our rules? If not, please explain why.

Question 3

Do you agree with our proposal to replicate the entire FCA's banding framework for CMCs in our rules, but with specific limited circumstances where the banding model and maximum charges would not apply? Where possible, provide evidence or examples that illustrate why you think this.

Question 4

Do you think our proposed circumstances for charges to be eligible for exemption from the parameters of the banding framework are appropriate? If not, please explain why.

Question 5

Do you consider that there are any circumstances in which exemptions from the parameters of the banding framework would be appropriate for a claim entirely dealt with through a statutory redress scheme (the third exemption we are considering)? Please provide evidence where possible to support your view.

Question 6

Do you have any comments about information transparency for consumers, and our proposed requirements and approach?

Question 7

What areas do you think we should cover in guidance to support the introduction of the new rules?

Question 8

Do you agree we have identified and are considering the right impacts? If not, what else do you think we should consider?

Question 9

Do you agree with our assessment of equality, diversity and inclusion considerations in our impact assessment? If not, what else do you think we should consider?

Downloads

- Annex 1 - assessment of risks (PDF 3 pages, 98KB) [https://qltt.sra.org.uk/globalassets/documents/consumer-reports/annex-1---assessment-of-impacts-and-risks-pdf-3-pages-98-kb.pdf]
- Annex 2 - draft rules (PDF 5 pages, 180KB) [https://qltt.sra.org.uk/globalassets/documents/consumer-reports/annex-2---our-draft-rules-pdf-5-pages-180-kb.pdf]
- Annex 3 - financial services activity (PDF 1 page, 39KB) [https://qltt.sra.org.uk/globalassets/documents/consumer-reports/annex-3---financial-services-activity-pdf-1-page-39-kb.pdf]
- Consultation paper (PDF 37 pages, 510KB) [https://qltt.sra.org.uk/globalassets/documents/consumer-reports/consultation---protecting-consumers-form-excessive-charges-pdf-37-pages-202kb.pdf]
- Fee restrictions consultation response (PDF 13 pages, 144KB) [https://qltt.sra.org.uk/globalassets/documents/sra/consultations/2023/fee-restrictions-consultation-response.pdf]
- Consultation analysis (PDF 20 pages, 150KB) [https://qltt.sra.org.uk/globalassets/documents/sra/consultations/2023/report-fee-restrictions-consultation-analysis.pdf]
- Responses to consultation (PDF 52 pages,573KB) [https://qltt.sra.org.uk/globalassets/documents/sra/consultations/2023/fee-restrictions-responses-to-consultation.pdf]
- Claims Management Fees Rules 2024 - Board approved (PDF 8 pages,187KB) [https://qltt.sra.org.uk/globalassets/documents/sra/consultations/2023/claims-management-fees-rules-2024---board-approved.pdf]

Back to closed consultations [https://qltt.sra.org.uk/sra/consultations/consultations-closed/]