

SRA BOARD
23 January 2024

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This paper will be published

Protecting consumers during financial service claims

Reason for paper	This paper provides the Board with our recommended final positions to introduce new protections for consumers during financial service claims. It asks the Board to make rules to implement these positions.
Decisions(s)	<p>The Board is asked to:</p> <ul style="list-style-type: none"> a) agree the four objectives that underpin our current and future work in relation to financial service claims. b) agree that we implement new information transparency requirements for solicitors representing consumers in relation to financial service claims. c) agree that we replicate in our rules the Financial Conduct Authority's banding framework, including its schedule of maximum charges. d) agree that we can exempt individual cases from the banding framework in exceptional circumstances. e) make the SRA Regulatory Arrangements (Financial Service Claims) (Amendment) Rules 2023 (at annex 1) which will implement the recommendations at b), c) and d).
Previous Board and committee consideration	<p>The Board reviewed a paper in June 2021 describing our duty under section 33 of the Financial Guidance and Claims Act 2018 (FGCA) to make rules protecting consumers from excessive charges during financial service claims, and the Financial Conduct Authority's approach. It approved activity to engage with stakeholders and collect evidence on law firm claims management activity.</p> <p>It considered updates in the CEO Reports at meetings in March and September 2022, and approved delegation to the Chair to finalise a consultation paper on draft rules.</p>
Next steps	Subject to Board approval, we will submit our application to the Legal Services Board in early 2024, seeking approval to introduce the rules during quarter two 2023-2024.

SRA BOARD

23 January 2024

CLASSIFICATION - PUBLIC



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Protecting consumers during financial service claims

Summary

- 1 This paper sets out recommendations for next steps following our consultation on fee restrictions for financial service claims.

Background

- 2 Our statutory duty under section 33 of the Financial Guidance and Claims Act 2018 (FGCA) requires us to make rules preventing excessive fees being charged by those we regulate for claims management activities connected to financial products or services.
- 3 Claims management companies (CMCs) may also offer these activities, and their regulator, the Financial Conduct Authority (FCA) launched equivalent rules on 1 March 2022.
- 4 In 2021 we published a discussion paper and undertook a stakeholder engagement programme to build and assess evidence to inform the development of rules to meet our obligations under the FGCA. We paused our work temporarily in 2022 while courts considered a judicial review application against the FCA's rules. This was refused permission.
- 5 Between 31 March 2023 and 19 July 2023 we [consulted](#) on our approach and draft rules. We received 29 written responses from law firms, financial service statutory redress schemes, consumer groups, lenders and representative bodies. We also delivered an engagement programme that included public focus groups, stakeholder roundtable meetings, and surveys.
- 6 Through the engagement programme we heard from a range of stakeholders including:
 - more than 1,000 members of the public across England and Wales
 - consumer groups
 - solicitors, firms and their employees operating in the financial service claims sector
 - banks and financial service representative bodies
 - financial service statutory redress schemes.
- 7 A summary of stakeholder feedback from our consultation programme is attached at annex 2. We will publish this alongside our consultation response.
- 8 Following the consultation, we carried out some additional work to further strengthen our evidence base. This included a survey with law firms that provide claims management activities carried out in September 2023.

SRA BOARD
23 January 2024

CLASSIFICATION - PUBLIC



Our assessment of financial service claims management activity provided by law firms and solicitors

- 9 In our consultation paper, we set out our analysis of financial service claims management activity provided by law firms and solicitors. This was based on information provided by law firms, statutory redress schemes and consumers. Our analysis showed two operating models for law firms working in this sector. Model A firms predominantly represent consumers in relation to larger volumes of claims and have operational similarities to many CMCs. Model B firms predominantly take on claims with complex or novel features that in some cases cannot be progressed through statutory redress schemes.
- 10 The majority of respondents agreed with our analysis. Some respondents, particularly consumer representative groups, were cautious about us taking a different approach to Model B firms if this meant consumers using these firms would not benefit from the same fee restrictions as consumers using Model A firms. Other respondents called for clarify as to what type of case would qualify as ‘complex’ or ‘novel’ and pointed out that even though a type of claim may be novel to begin with, such claims can quickly become routine and templated.
- 11 Some law firms raised concerns about our analysis, concerned that we recognise the differences between law firms and CMCs and that some cases, even if high volume, may be incredibly complex.

Our view

- 12 Having carefully considered views provided in response to the consultation and related engagement, we consider our analysis of financial service claims management activity provided by law firms and solicitors to be accurate. Our analysis acknowledges that while some law firms providing these services have operational similarities to CMCs, some firms deal with claims which are particularly complex. Our remaining proposals set out how our approach will recognise these differences so that it remains viable for law firms to represent consumers in relation to the most complex claims.

Our objectives

- 13 In our consultation paper we described four objectives that we proposed should underpin the development of our rules, and future monitoring and evaluation of their impacts. They were:
- Objective 1 - protect consumers from excessive fees during financial service claims, and satisfy the FGCA’s requirements in doing so.
 - Objective 2 - replicate the FCA’s approach to restricting fees for CMCs in our rules for solicitors, as far as that is appropriate.

SRA BOARD

23 January 2024

CLASSIFICATION - PUBLIC

- 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.
 - Objective 4 - ensure consumers are empowered to choose, and are well-informed about those choices, for pursuing financial service redress.
- 14 The majority of respondents and stakeholders agreed with our proposed objectives, particularly members of the public and consumer groups, believing that they would improve clarity and consistency for consumers.
- 15 Some law firms did not agree with our proposed objectives. Some pointed to the different standards, duties and expectations imposed on SRA-regulated firms compared to CMCs and of the consumer's right to have fees assessed by the courts. Liverpool Law Society pointed out that the FGCA does not require standardisation of approach from the SRA and FCA. Other law firms were concerned that fee restrictions may make the bringing of some types of claim unviable for law firms, impacting on access to justice. This included investigating new types of claims. In addition, one law firm pointed out that many financial service institutions instruct solicitors, making it more necessary for consumers to be represented. One law firm felt the proposals were anti-competitive.

Our view

- 16 Having carefully considered all of the feedback received, we consider that these objectives remain appropriate for our work. Objective 1 sets out the need to protect consumers from excessive fees. The main way we are achieving this is through a banding framework which sets upper limits on how much firms can charge. Firms can compete within these limits. Objective 2 acknowledges that we may not replicate the FCA's approach in its entirety, saying that we will do this 'as far as that is appropriate'. This recognises that there are important differences between law firms and CMCs that need to be reflected in our rules. Objective 3 acknowledges that we need to ensure our rules do not impede access to justice for those consumers who wish to be represented for financial service claims. Our detailed proposals, which respond to the points of disagreement, are discussed in greater depth below.

Recommendation: the Board is asked to:

- (a) agree the four objectives that underpin our current and future work in relation to financial service claims.**

Transparent information for consumers

- 17 We proposed a new requirement that solicitors inform prospective clients for financial service claims about their options to pursue a claim without representation and to signpost them to the relevant redress schemes. We also proposed new rules requiring solicitors to provide clear costs information to a

SRA BOARD
23 January 2024



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client before they enter into a contract, including whether the fee restrictions are applicable and the basis for the estimated fee.

- 18 We received almost unanimous support for our proposals, including from consultation respondents and members of the public in our focus groups. Just one law firm raised concerns about the ability of firms to give their clients the detailed information needed about costs at the outset of the case. However, other law firms responding to the consultation supported our proposals.

Our view

- 19 We consider that our proposed information requirements are necessary to make sure that consumers can make an informed decision as to how to pursue their financial service claim. We have made a minor amendment to the wording of our requirements to make it clear that solicitors must make clear to their client the circumstances in which fees could exceed an initial estimate (Rule 1.2(a)).

Recommendation: the Board is asked to:

- (b) agree that we implement new information transparency requirements for solicitors representing consumers in relation to financial service claims.**

Replicating the FCA's banding framework

- 20 The FCA's rules for CMCs include a banding framework that sets maximum charges CMCs can make, based on the amount of compensation a consumer receives. Based on our analysis of financial service claims management activity provided by law firms and solicitors, we considered that law firms would be able to operate profitably and remain viable if (subject to an exception for particular cases discussed below) we adopted that framework in our rules. We also felt that a sector-wide approach would help to provide clarity and certainty for consumers and help mitigate the risk of regulatory arbitrage.
- 21 We also proposed to mirror the circumstances where the banding framework does not apply. These include, for example, charges for reserved activities as set out in the FGCA, to all claims that were started before the implementation of our rules, to charges in relation to actual or potential court proceedings and to claims out of scope of the statutory redress schemes.
- 22 Consumer groups, banks, redress schemes and others broadly supported our proposals. Consumer groups referred to the operational similarities between CMCs and law firms working in this area and the need to reduce the scope for regulatory arbitrage. Other consumer groups, including the Legal Services Consumer Panel agreed that there was a need for "carefully crafted" exemptions to the banding framework.

SRA BOARD
23 January 2024



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- 23 However, Liverpool Law Society, some law firms and one member of the public disagreed with our proposal. A key objection was that the proposed maximum charges would make it unviable for law firms to provide representation in some cases, leading to a contraction in the number of firms offering services in relation to some types of claims. This would reduce access to representation for consumers.
- 24 Some law firms questioned the legitimacy of costings and assumptions that underpin the framework, stating that the hourly rate for representation that the FCA uses is £6.10 (based on a figure the FCA used to value of an hour of consumer's leisure time). They also felt the evidence base assumes all claims are akin to payment protection insurance (PPI) claims, which firms argued were much more straightforward and formulaic than the majority of financial service claims. The FCA's rules were introduced in March 2022 and some firms pointed out that the maximum limits had not been uplifted since then despite inflationary pressures and some changes in the claims market. In particular, in April 2023 the maximum compensation amount that the Financial Ombudsman Service (FOS) can award rose to £415,000 from £190,000. Some firms were particularly concerned about the top band where the maximum charge is £10,000 for all claims with monetary awards exceeding £50,000.
- 25 Some law firms argued our Standards and Regulations already feature sufficient consumers protections to meet the FGCA's duty. A member of the public was concerned that our proposals would stifle competition.

Our view

- 26 The FCA devised the banding framework using calculations based on two methods: information from CMCs about the average time spent managing a claim by a CMC and derivation of time estimates using the data provided on hourly rates and annual staff costs. The FCA has said (in its defence evidence to a judicial review application) that the maximum charges in its banding framework are substantially higher than the FCA's estimate of the overall monetary value CMCs can bring to consumers. The banding framework was also checked against the civil court case procedures hourly figure of £19.
- 27 Although we are able to set a different framework for solicitors than the FCA has implemented for CMCs, we would need strong evidence to do so because of the risks of regulatory arbitrage and consumer confusion if there are two different frameworks in place for the same types of claim. The evidence we have and which we presented as part of our consultation, is that the FCA's banding framework is broadly suitable for the firms we regulate. Despite consultation and significant engagement, firms have not provided us with evidence to contradict this and our view is therefore that we should mirror the FCA's framework in our rules.

SRA BOARD
23 January 2024



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- 28 We recognise that there are a small cohort of cases for which the banding framework will not be suitable. We are therefore proposing an exemption for complex cases, which is set out below.
- 29 To address the concerns raised by firms about inflationary pressures and the increase to FOS' maximum compensation level, we will periodically review the banding framework to consider whether any changes should be made. We will collaborate with the FCA on our monitoring and evaluation work.
- 30 We do not agree that our Standards and Regulations already provide the specific mechanisms for protection envisaged by the FCGA. We also do not agree that a framework of maximum charges will stifle competition as there will still be potential for firms to charge different amounts within this limit.

Recommendation: the Board is asked to:

- (c) agree that we replicate in our rules the Financial Conduct Authority's banding framework, including its schedule of maximum charges.**

An exemption for complex cases

- 31 In our consultation, we outlined a possible exemption for complex cases brought through the statutory redress schemes. This departed from the FCA's position. The exemption we consulted on would have allowed solicitors to determine that a claim was particularly novel or complex and therefore exempt from the maximum charges allowed under the framework. This was to make sure that it remained financially viable for law firms to represent consumers in relation to the most complex claims and therefore maintain access to representation for those consumers. Charges would instead be required to be reasonable.
- 32 The majority of respondents agreed with the need for an exemption for particularly complex cases, including consumer groups, financial service providers and law firms. Respondents felt that such an exemption was necessary to ensure such claims remained viable for law firms and so preserved access to justice for consumers who wanted or needed representation. Some law firms provided case studies and client testimony to illustrate particularly complex claims and consumer journeys.
- 33 Some respondents disagreed, but objections related to our approach as a whole rather than to this proposal. Some stakeholders however were concerned that it would be for solicitors and law firms to decide whether a claim was eligible for exemption from the banding framework. Consumer groups and statutory redress schemes in particular highlighted risks for claims to be inappropriately categorised as being complex. Some solicitors and law firms were also concerned that they may be at risk of facing regulatory action if they incorrectly defined a case as complex.

SRA BOARD

23 January 2024

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- 34 Our rules must balance securing the consumer protection measures required by the FGCA, and maintaining good access to legal representation for financial service claims of all types.
- 35 Law firms have provided some examples of cases of clearly high complexity – with examples including claims that move across different redress schemes, or that involve mis-sold pensions or investments with inherent complexity. They also provided evidence which appears to show that, without representation, the consumer would have received a worse outcome. The evidence included some client testimony that illustrated complex cases where the claimant confirmed they had lacked capacity in some way to self-represent their claim at all. However, we did not receive evidence of charges to demonstrate that costs in the most complex cases exceed the amount that could be claimed under the banding framework.
- 36 We have also received data on a confidential basis which indicates that for some claims, a higher percentage of law firm-represented claims are upheld than self-represented claims.
- 37 Our consumer survey (of more than 1,000 consumers) found that 5% of those surveyed are unlikely or very unlikely to pursue a claim at all if no representation was available. This falls to 3% if the consumer is given clear advice about how to make a claim, including the stages, which forms to complete and how to upload evidence. Those with lower levels of legal confidence were significantly more unlikely to pursue a claim themselves. FOS received 165k claims/complaints in 2022/23, with 21% having representation. Based on our survey, even with clear advice on pursuing a claim themselves around 1,040 of these consumers would not have sought redress if representation had not been available. In 2022 the Financial Services Compensation Scheme determined 132,000 claims, with 38% being represented by law firms, meaning around 1,504 people would not have sought redress if representation had not been available. However, this must be caveated by the fact that only a proportion of these claims will have been complex. We have not been able to obtain meaningful data from the Pensions Ombudsman.
- 38 We are aware that the exemption we proposed carries the risk of eroding consumer protection and of regulatory arbitrage and therefore requires a high bar. Our view is that based on the evidence we have received, the risks are too high to implement the proposed exemption without controls. However, we are aware that not implementing this exemption may lead to some consumers being unable to access representation in the most complex cases, leading to poorer outcomes, including that they do not pursue their claim at all.
- 39 Having carefully considered the options, we recommend that our rules require solicitors and firms to receive approval from the SRA to charge for a claim that

SRA BOARD
23 January 2024



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falls within this exemption. We will consider such applications on a case by case basis.

- 40 To meet this requirement, firms would need to demonstrate that the circumstances of the case are novel and without precedent (such as a test claim) or are particularly complex. We will produce guidance to help firms to identify eligible cases and clearly set out the application process.
- 41 Eligible claims may have some or all of the following features:
- claims that move across multiple redress schemes or are reasonably expected to;
 - claims expected to be, or that are actually, prolonged significantly beyond the average case-determination timeframes for FOS / TPO / FSCS;
 - claims with multiple parties and multiple complaints;
 - claims with multi-jurisdictional aspects;
 - certain pension cases involving authorised representatives.
- 42 We will also require firms to provide us with information about their fee estimates and basis for charging.
- 43 We are mindful of the need to ensure that the application process is straightforward and that decisions are made promptly. A cumbersome application process may deter firms from undertaking complex and difficult cases, which would not be in the public interest. If applications are not dealt with swiftly this may lead to delays that may hold up a claim. We will be able to expedite urgent cases, for example where a limitation period is close to expiration.

Recommendation: the Board is asked to:

- (d) agree that we can exempt individual cases from the banding framework in exceptional circumstances**
- (e) make the SRA Regulatory Arrangements (Financial Service Claims) (Amendment) Rules 2023 (at annex 1) which will implement the recommendations at b), c) and d).**

Next steps

- 44 Subject to Board approval, we will:
- submit an application to the Legal Services Board (LSB) for approval of the rules.

SRA BOARD
23 January 2024



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- publish our post consultation response.
 - develop guidance for solicitors and firms on the new requirements, including the exemption for complex cases.
 - continue our operational work to implement the rules, including making sure our handling approach for applications is appropriately resourced.
 - continue our engagement work with stakeholders such as the FCA.
- 45 We intend to implement our rules 42 days (six weeks) after LSB approval to provide firms with sufficient notice to prepare for implementation of the rules.

SRA BOARD

23 January 2024

CLASSIFICATION - PUBLIC



Supporting information

Links to the Corporate Strategy and/or Business Plan and impact on strategic and mid-tier risks

- 46 This paper describes how we have met our commitment in our Business Plan for 2022-23 to consult on rules. Our next steps will support the delivery of our strategic priority to deliver high professional standards, described in our incoming Corporate Strategy for 2023-26.
- 47 Introducing rules that meet the legislative intent of the FGCA mitigates risks that consumers may otherwise be disadvantaged by paying excessive fees to legal representatives during financial service claims.

How the issues support the regulatory objectives and best regulatory practice

- 48 The issues described in this paper, and the proposed next steps, are particularly relevant to the following regulatory objectives from the Legal Services Act 2007:
 - Protecting and promoting the interests of consumers (*as our rules will introduce specific protections to prevent exploitation and excessive charges*).
 - Increasing public understanding of the citizen's legal rights and duties (*as our rules will introduce specific information transparency measures*).

Public/Consumer impact

- 49 The FGCA aims to secure strong consumer protection measures. Our rules will meet our duties under the FGCA, and will introduce specific safeguards into our Standards and Regulations to protect members of the public during financial service claims.
- 50 Our rules will also improve transparency of information about different routes for financial service claims. This should have positive impacts for consumers who experience a need or desire to make a claim, but who may be uncertain about their options for doing so.

What engagement approach has been used to inform the work and what further communication and engagement is needed?

- 51 Our engagement activity has included publicising our initial discussion paper and our law firm survey in 2021, through social media channels, on our website, and in our communications activities with solicitors and their businesses.

SRA BOARD

23 January 2024



CLASSIFICATION - PUBLIC

- 52 We have worked closely with stakeholders including the FCA, the FOS, the FSCS, TPO, HM Treasury, representative bodies and consumer groups, during the policy development phase of our work
- 53 and throughout our consultation process. We maintain these relationships and are continuing discussions as we move ahead.
- 54 Our consultation was accompanied by a targeted engagement programme that included roundtable meetings and focus groups with members of the public.

What equality and diversity considerations relate to this issue?

- 55 Members of the public who need to make a claim for a financial product or service can be particularly vulnerable due to the circumstances of the claim – for example, claimants may have been placed in debt or experienced financial uncertainty. Feedback from members of the public shows they can feel confused about their options and have little knowledge about appropriate percentage amounts they should expect to pay from their claim award if they use professional representation.
- 56 Our rules will protect vulnerable consumers from excessive charges, and they will make sure clear information is available to them about their options for pursuing redress.

How the work will be evaluated

- 57 We will work alongside the FCA to periodically review the bandings for fees and the maximum percentage charges, and to collectively consider impacts and issues as they arise. We will also engage with law firms, statutory redress bodies, members of the public and other stakeholders about the practical impacts and operation of our rules.

Annexes

- Annex 1** **Draft rules**
Annex 2 **Summary of consultation feedback**

NB: an updated version of annex 2 will be published with our consultation response.