Consultation on protecting consumers from excessive charges in financial service claims

Analysis of responses

February 2024

Contents

Respondents to our consultation

We received 29 responses to our consultation, from the following types of respondents.

Individual respondents	**3**
Solicitors	2
Member of the public	1
Organisation respondents	**26**
Law firms and other legal services providers	11
Local Law Society	1
Financial services providers and their representative groups	7
Consumer representative groups, including the Legal Services Consumer Panel	4
Others	3

Summary of responses

As well as their responses, some respondents to this consultation also provided detailed information in response to our call for evidence, all of which we are considering on a confidential basis. Some respondents also explained their evidence in their response, and again we will ensure confidentiality.

Respondents generally divided into two points of view, a majority who supported our assessment, objectives and proposals, and a significant minority who disagreed.

Respondents who supported our approach

A majority of respondents agreed with our overall approach, including our assessment of law firms' financial service claims management activity, our objectives and our proposals. These respondents included all the consumer representative groups and the financial services providers and their representative groups who responded, as well as a small number of law firms.

Respondents who supported our overall approach stated that our proposals would better protect consumers and improve consistency and clarity. The Legal Services Consumer Panel, for example, stated:

> 'We believe these proposals strike the right balance between the need to protect consumers and to ensure that providers are well renumerated for their work. We are also pleased that where feasible, the SRA purports to align with the Financial

> Conduct Authority's (FCA) rules. This will minimise consumer confusion and prevent regulatory arbitrage. '

Two financial services provider associations who submitted a joint response stated:

> 'We welcome this joint approach from the two regulators and are supportive that the SRA will fulfil its duty to regulate against excessive fees in the overall market to reduce harm for all financial services consumers from excessive or opaque fee charging structures. From our perspective it is critical that the regulation and review of firms undertaking claims through SRA authorisation is brought in line with the regime operated by the FCA. '

The Financial Ombudsman Service provided this additional background to our consultation:

> 'In recent years we have seen an increase in SRA regulated firms acting as representatives in complaints brought to our service. The Financial Markets and Services Act 2023… [gives us] the power to charge a case fee to persons other than the financial business… Secondary legislation will be drafted to set out who will be captured by this provision, but it is expected to include professional representatives who are regulated by the SRA. '

However, views on the details of our proposals were quite nuanced, because several respondents who broadly supported our approach had comments on our assessment and our models for financial services claims work, our objectives and our proposals. Some respondents also made a variety of suggestions.

Respondents who did not support our approach

There were also a number of respondents who were overall opposed to our assessment, our objectives and our proposals. Most of these were law firms, as well as Liverpool Law Society and the two individual solicitors who responded.

Many of the respondents who did not support our approach argued that measures which are appropriate in the claims management sector are not appropriate in the legal services sector. For example, we received these responses from law firms:

> '…If there is a problem with overcharging in the legal services sector the SRA has provided no evidence that it exists. It is unlikely that precisely the same solution needs to be used to tackle a widespread problem in one sector and a (seemingly) non-existent problem in another. '

> 'The effect of the overall cap being that those who have suffered the highest financial losses will be denied access to a qualified lawyer. It is also those who have suffered the highest financial losses who are likely to face the most vigorous defence of their claim given the potential impact on the Defendant. '

Some of these respondents predicted significant impacts in terms on law firms not taking on vulnerable clients or problematic claims, with negative consequences for consumers' access to justice. An individual solicitor stated:

> 'The risk of restricting the fees a solicitor can charge doing certain work is they will not do it. That is to the detriment of the public. The risk is the SRA will create further

advice deserts if there is an attempt to restrict, or further control, what solicitors can charge for this work. ‘

A law firm stated:

‘The proposed charging model is too prescriptive, is a disproportionate solution to a problem that does not appear to exist, is not viable economically, will diminish consumer choice, will lead to regulatory arbitrage, and most seriously of all will have a seriously deleterious effect on vulnerable clients and will impede their access to justice. ‘

Responses to our questions

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.

Yes	19
No	7
Other (no response, or responded in other ways)	3

Respondents agreeing with our assessment

A majority of respondents stated that they broadly agreed with our assessment. For example, a consumer representative group stated:

‘We strongly believe that the principle of ‘Same Activity, Same Risk, Same Regulation’ should apply to all Claims Management firms authorised by the FCA and the SRA. We therefore welcome the proposal to replicate the FCA’s fee capping mechanisms (banding framework and its maximum percentage charges) into the SRA rules. ‘

A small number of those who broadly agreed with our approach also felt that we could go further. For example, a financial organisation agreed overall with our assessment, but felt that it should be wider:

‘We agree to some extent with the analysis of claims management activities provided by law firms and solicitors… [but] Ideally an assessment of fees would be one of a number of key areas covered by a review… For example, the question of whether consumers are receiving fair value (a key component of the forthcoming Consumer Duty) cannot be fully answered without a holistic review of the service being provided… ‘

Another consumer representative group stated:

‘The SRA assessment of activity in this area seems sensible and corresponds with many of the FCA’s findings in its earlier assessment of FCA-regulated CMCs. However, the two operating models identified for SRA-regulated law firms, could

present a risk that consumers of services provided by ‘Model A’ firms will clearly benefit from the new fee limits, while consumers of ‘Model B’ firms may not. ‘

A law firm stated:

‘The majority of the assessment is accurate. [But] you claim that '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'. From our experience this is far from reality. The typical layperson would find it extremely difficult to navigate the processes in place, firstly to the institution concerned and then via the channels of FOS or FSCS. ‘

Agreeing with our assessment and proposed objectives and approach, the FCA Practitioner Panel and FCA Smaller Business Practitioner Panel stated that they were aware of:

‘…an inconsistent approach to regulating CMCs [that] has created the conditions for regulatory arbitrage, including a growth in the numbers of CMCs registering under the SRA framework. The SRA’s proposals to adopt an approach which is consistent with the FCA’s should help close this gap. ‘

They went on to state:

‘The Panels’ overriding concern remains that there is no real disincentive to CMCs behaving in an aggressive way, and that unscrupulous activity by some CMCs continues to impact unfairly on firms and exploit vulnerable consumers. As one example, evidence of poor practice from CMCs in motor finance includes mass ‘fishing’ exercises to consumers which misrepresent redress options/ likely compensation, and groundless attempts at class action litigation some of which also show disregard for the protection of identifiable personal information. We would encourage the SRA to consider reviewing the current poor practices we are seeing across different financial services sectors against their existing rules including the SRA code of conduct (especially sections 5.1-5.3 which outlines specific rules for generating new client referrals, 6.3-6.5 on client confidentiality and disclosures, and 8.6-8.11 on client information & publicity). ‘

Respondents’ views on SRA models

There were a number of views, mostly from respondents who were overall in agreement with our assessment, regarding our models for financial services claims work, and the terms ‘complex ‘ and ‘novel ‘. A consumer representative group stated:

‘…there has to be greater clarity about what these terms mean, and certainty for consumers around whether their individual claim would qualify as ‘complex’ or ‘novel’ and why. This is important to ensure that consumers are able to make an informed decision at an early stage on whether to instruct a law firm or solicitor in their case, and to have a clear understanding of whether their claim can still be dealt with by a recognised alternative redress mechanism in which case the limits on charges should apply. ‘

A law firm, who stated they supported our Model A and our proposals on fee capping, also stated:

> ‘Model B… it is our understanding… that the SRA is receiving representations to the effect that many of the volume litigation claims are complex and that they need to be excluded from the framework to ensure that there is a continued good level of access to justice for consumers with complex or novel financial services claims. That is not often our experience. We would also point out that even in novel claims, while the first claim or claims in relation to financial services mis-selling may be novel, require factual and legal examination and may even involve the input of experts, very quickly such claims become routine, templated and general. ‘

A financial services provider and a consumer representative group made similar points:

> ‘…there may be claims that are initially ‘complex’ in terms of multiple complaint points and legal points raised, however once an outcome has been reached, future claims of this nature become simplified to fit an operational model… Have the SRA considered how the banding framework may be applied where an initial test case is complex, however subsequent claims can be templated? ‘

> ‘With regard to ‘novel and complex’, we would also recommend that the SRA and FOS look to identify trends where a solicitor or law firm may be classifying multiple cases as ‘novel or complex’, yet the underlying cases are similar in nature and case handling will follow the same methodology across all claims. ‘

In a similar vein, two other consumer representative groups stated:

> ‘Yes, we are in broad agreement with SRA’s assessment of Model A and B but with a proviso in relation to more complex work, referred to as Model B… lenders already have experience of… firms who specifically advise their clients against pursuing complaints through FOS… on the spurious basis that FOS is incapable of handling the alleged complexity of those claims… ‘

> ‘The exemption for ‘complex’ claims may be exploited. [We] would welcome clear rules to define a ‘complex’ claim with uncapped fees. We believe that claims submitted through a redress scheme do not require complex work from a claims representative. ‘

However, a law firm stated:

> ‘Broadly speaking we agree with the assessment of financial service claims management activity provided by law firms and solicitors. However, there are some nuances that should not be overlooked, for example, there are firms that pursue larger volumes of claims... that you would consider operating under Model A... that are, to a point, pursued in initial the stages under a model with some operational similarities to CMCs however, they ultimately require litigation and/or will end up in some form of group action. ‘

Respondents disagreeing with our assessment

Some law firms and individual solicitors disagreed with our assessment of financial claims management activity by firms and solicitors. One law firm stated:

> ‘Parliament has nowhere stated or implied that such an alignment {between the legal and claims management sectors] is desirable, indeed, allowing each sector’s regulator to set its own rules… clients should have a genuinely free choice between

the CMC sector and the legal services sector, where different traditions and levels of protection – and costs – apply. ‘

Another law firm stated:

> ‘Financial pensions/investment claims can be intricate, time consuming, requiring substantial effort and resources by solicitors. A uniform fee cap fails to consider these differences and will not adequately reflect the efforts and resources required by each case. A better approach is to look at each type of claim and consider whether they should be part of a fee cap. ‘

Criticising the two SRA models, another law firm stated:

> ‘We also do not consider that it is appropriate or possible to categorise business models and areas of work into two ‘simplistic’ models. By way of illustration, we refer to claims in respect of car finance. This is likely to be a ‘volume’ area, however we refer to [evidence received] FOS have referred to the matters as ‘new and complex’. As such, clearly the simplistic notion that ‘volume’ means ‘simple’ is incorrect and basing fees and fee caps on such a notion will ultimately reduce access to justice for consumers. ‘

The firm went on to state that the SRA’s approach could also prevent law firms from taking on new types of claims, which may require significant up front investment of time and resources.

Another law firm was also critical of our assessment and models:

> ‘While your two models outline types of cases that are handled by law firms it is incorrect to say that firms only deal with one category of case. The nature of this work attracts clients with cases valued from below £10,000 to over £1,000,000 and the amount of work and complexity of a case is not always linked to its value… Statutory redress schemes can be a red herring and while these are certainly a useful route for many clients there are many and varied routes that have to be considered, and often discounted, as part of such a case. ‘

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

Yes	18
No	5
Other (no response, or responded in other ways)	6

A majority of respondents broadly agreed with our proposed objectives, believing that they would improve clarity and consistency for consumers. A law firm stated:

> ‘Yes. The 4 objectives the SRA has used do cover all the elements required as they span the necessity of the protection of consumers but also recognise that simply replicating the FCA's approach will not achieve this. In our view it is important that Objective 2 regarding this has the caveat 'as far as that is appropriate'. We believe the SRA… truly wish to prevent excessive charges, but also to allow law firms to offer

their clients full representation without incurring costs which would outweigh the fees they are able to charge. The objectives appear to allow this. ‘

Two consumer representative groups stated:

‘We agree with the objectives as set out in the consultation as they protect and empower consumers. ‘

‘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. ‘

Several respondents had detailed comments in respect of one or more of our objectives.

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

Many respondents agreed with this objective, but there were critical comments from a small number of respondents. A law firm stated

‘In respect of solicitor’ client fees there are already statutory protections for clients by way of the ability to have those charges assessed by a Court… due to the different nature of standards and duties imposed on SRA regulated bodies along with provisions for complaints to be made and if so inclined for costs to be assessed by a Court that there is sufficient protection already in place which can deal with both conduct issues (where appropriate) and overall outcomes (namely the level of costs). ‘

Another law firm stated:

‘While protecting clients from excessive fees is important the measure of what constitutes an excessive fee is equally important… As a starting point however fees should be commensurate with the remedy obtained or sought and the importance of the issue to the person involved. Banks have unlimited resources and engage expensive legal representation for even low value cases and semantic points on excessive fees are unhelpful in an area where inequality of arms is ingrained. ‘

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

Some respondents agreed with this objective. Other set out more detailed comments under our question 3 in respect of replicating the FCA fee bandings.

However there were a number of specific objections to this objective under question 2. Liverpool Law Society stated:

‘LLS does not agree with objective 2… One of the arguments advanced in support of adopting the FCA's banding framework is to ensure 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. However, if a consumer chooses to be represented by a solicitor rather than a CMC LLS queries where is the mischief if the solicitors' charges are not the same as those the CMC would have charged provided they are reasonable? What is required by the FGCA is

an appropriate degree of protection against excessive charges not standardisation of costs… There are already additional protection measures in place for consumers in relation to solicitors' charges which do not apply to FCA regulated business. ‘

A law firm stated:

‘One of the central ideas behind ‘no win no fee’ agreements was that the ‘winners pay for the losers’. This was done to encourage lawyers to take on more riskier cases and to assist those who can’t afford to pay hourly rates. It is not simply about one individual case. If there are arbitrary caps, based on PPI, you remove the ability of lawyers to take on riskier cases and remove one of the main rationale behind ‘no win no fee’ agreements. ‘

Another law firm stated:

[Objective 2] is not appropriate… The recent decision in Sequence Properties Ltd v Patel indicates that solicitors are expected to go above and beyond the scope of their retainers – this could include exploring litigation and advising clients on alternative funding methods and many potential routes for claims. None of these requirements are imposed on CMCs. Our obligation to act in a client's best interests can make restricted retainers problematic and the service a competent solicitor provides far exceeds that that can be performed by a CMC. ‘

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

In respect of objective 3 (balancing SRA rules with duties under the Legal Services Act 2007, including promoting access to justice) a consumer representative group stated:

‘This objective includes encouraging good competition between providers within the banding model and to ensure that this is achieved, it is critical that any exceptions to the model are effectively monitored… the same (claims management) activity carries the same risk and requires the same regulation. ‘

A law firm stated:

‘[There are] differences between the FCA’s general duties… and the SRA’s regulatory objectives… the SRA must consider the right of consumers to get access to justice… the SRA must try to achieve a balancing act that the FCA was not required to try to achieve. The SRA has an obligation to ensure that a business model exists that will enable consumers with difficult claims to get access to professional legal assistance. The model proposed will not strike this balance. ‘

Respondents who were opposed to our proposals went further, for example another law firm stated:

‘There is no evidential basis within the consultation to demonstrate that the proposed fees ensure that work in this sector remains viable… some SRA regulated firms will decide to no longer practice in this field or even those who are prepared to continue to do so may decide to restrict the type/s of work… Other firms will fall into financial difficulty trying to make these fees work in order to help consumers… The fee cap will prevent firms investigating certain industries who may have been mis-selling to consumers… ‘

Another law firm felt that fee capping would not reflect the inequality of resources between claimants and defendants:

> ‘Insurers and banks regularly instruct solicitors in small claims matters… Access to justice is imperative in a civilised society and those bringing claims against financial professionals are often met with responses by highly trained and knowledgeable compliance departments or specialised instructed solicitors. Access to Justice requires that clients are able to source legal representation and that the representative be remunerated adequately. ‘

And another firm stated that this objective could lead to a ‘race to the bottom’:

> ‘The capped fees will simply have to become the fees of all law firms. This is about as anti-competitive as it is possible to be. No law firm will be able to become outstanding by virtue of ‘going the extra mile’ for vulnerable clients with challenging cases. All will have to offer the same ‘no frills’ service or they will quickly become uncompetitive and get driven out of business. ‘

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

There were no stated disagreements with this objective, and only a small number of comments were received. A law firm stated:

> ‘This is an important objective. Clients should be signposted to a range of options with a recommendation and enabled to make a valid choice. ‘

Another law firm stated:

> ‘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… Transparency at the outset is crucial, and time for the individual to think about and discuss their options. ‘

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.

Yes	15
No	9
Other (no response, or responded in other ways)	5

Respondents who agreed with the proposal

Many respondents agreed with our proposals. A consumer representative group stated:

> ‘We agree that it is appropriate to replicate the entire FCA banding framework as it applies to CMCs. Given the operational similarities between CMCs and solicitors firms in the financial services claims market, the market should be harmonised and any scope for regulatory arbitrage must be reduced as far as possible…. It is likely that solicitors' firms enjoy a better public perception than CMCs because of the enhanced regulatory oversight and duties of the profession. Bringing fee structures into line for most claims may encourage consumers to use solicitors in favour of CMCs which may lead to better overall consumer outcomes. ‘

Another consumer representative group stated:

> ‘While we believe that having consistency across charges consumers face whether they use FCA-regulated CMC services, or those claims management services offered by SRA-regulated providers is an important step forward, we would urge the SRA to work closely with the FCA to ensure that value for money is reviewed and assessed as a key outcome from the setting of these charges. ‘

The Legal Services Consumer Panel stated:

> ‘We strongly agree that the SRA should replicate the FCA’s banding framework for Claims Management Companies in its entirety. However, we also accept the need for carefully crafted exemptions to circumvent the unintended circumstances outlined in the consultation document. These exemptions must however be based on direct evidence or knowledge. ‘

Another consumer representative body stated:

> ‘Yes, but… any exemptions must be the exception rather than the rule… we agree, in principle, that parity here between the FCA and SRA would provide important regulatory equivalence. However, the SRA needs to be mindful of those law firms who say they are conducting litigation by sending ‘letters of claim’, as these are just ‘dressed-up’ complaints letters and there is no intention to ever litigate. ‘

A financial services provider stated:

> ‘We agree with the proposal to replicate the FCA's banding framework for SRA regulated firms, with the exceptions outlined in the paper. Although we agree it is appropriate that the new banding framework is not applied retrospectively, we are naturally concerned that this could create an unintended consequence of encouraging a concentration of complaints activity in the lead up to the implementation date as firms try to submit claims in a bid to avoid them being subject to fee caps. ‘

Respondents who disagreed with the proposal

Liverpool Law Society stated:

> ‘LLS does not agree with the proposal to replicate the entire FCA banding framework for CMCs in the SRA rules and remains unconvinced that the wholesale adoption of

the FCA banding framework is necessary or appropriate to meet objectives 1,3 and 4. LLS is concerned that adopting the FCA banding framework will limit consumer choice as the work becomes unviable for law firms and solicitor who have a higher cost base than their CMC comparators such that objective 3 is not achieved. LLS also considers that introducing a carve out for special circumstances where the banding framework would not apply will lead to disputes about whether a case comes within the exemption or not. ‘

A member of the public stated:

‘If you don't have a fee cap, you can encourage competition between claims management companies on fees rather than just having the same fees everywhere. ‘

A law firm stated:

‘…given the complex and novel nature of certain cases that we pursue (e.g., mis-sold pension schemes and investments), we are strongly of the view that experienced and qualified staff are required to run such claims to obtain the best outcome for the client. ‘

That firm provided information to show that the number of financial services claims providers has significantly reduced in the last few years, and stated:

‘…should the SRA introduce the rules as proposed, and certainly without clear and precise guidance on what they consider ‘reasonable charges’ to be, pursuant to the proposed exemptions and, crucially, without the inclusion of the proposed third exemption, we will also see drastic contraction of firms that will pursue mis-sold pension schemes and investment claims/complaints. ‘

Another law firm which provided extensive evidence stated:

‘85% of the work we carry out (by value) are cases involving pensions, investments and authorised push payment fraud. These are not simple cases and they often have their individual complexities which mean that the fees proposed are completely unviable but they would not fall within the current limited exceptions. ‘

The firm went on to state that the FCA bandings are based on the pre-2019 Payment Protection Insurance issue and are inappropriate:

‘the FCA bandings were based on a number of misconceived assumptions that:

- all financial mis-selling cases are like PPI;
- a Defendant will treat a claimant fairly and be honest about their failings;
- statutory redress schemes work well in all instances.
- whether to proceed via a statutory scheme is a simple, obvious binary choice and claims that proceed through a scheme involve significantly less work. ‘

A law firm who agreed with our assessment of claims management activity and with most of our proposed objectives stated:

‘We are not opposed to the principle of capping the fees that are levied on clients, as we fully understand the need for consumer protection where harm may exist. However, we cannot wholly support the proposals contained in the consultation, as

> we believe they are unreasonable and potentially detrimental to clients… there are significant difference in how we operate [compared to CMCs]… claims at law firms will be managed, in full or in part by Solicitors… Consumers are more likely to bring more complex cases to a law firm, rather than a CMC… While we understand that framework intends to protect consumers, an ill-considered cap could lead to firms refusing to represent clients. ‘

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

Yes	16
No	6
Other (no response, or responded in other ways)	7

While some respondents were in overall agreement with our proposed circumstances for exemptions to the banding, some respondents identified a variety of risks. A consumer representative group stated:

> ‘The proposal that ‘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’ is unclear. ‘

In respect of evidence they provided, a law firm stated:

> ‘These real life cases show the vulnerabilities of clients of all ages and in particular what comes through is that in many instances clients do not know where to start and if they do they find that the statutory redress schemes are not user friendly… [and] it is not uncommon for three of four separate claims to be submitted and dealt with simultaneously alongside that of a statutory redress scheme provider. ‘

An individual solicitor stated:

> ‘Possibly, but the problem is the uncertainty as to whether the exemption will be allowed. The risk averse solicitor will say I do not want to take that risk and decline the work leading to less solicitors willing to undertake it. Court precedents to costs being allowed in excess of fixed costs indicate cases where the exemption will be allowed are rare and any sensible solicitor will start from the presumption the same will apply to these charges. ‘

A law firm identified other risks:

> ‘While these are acceptable carve outs it is not acceptable to have a system whereby such caveats are needed. These charges are likely to be subject to satellite litigation and many of the issues in the carved out provisions cannot be investigated until a large amount of data have been obtained from clients and the involved parties.’

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

Yes	16
No	6
Other (no response, or responded in other ways)	7

A majority of respondents felt that exemptions should be able to apply where a claim is handled through a statutory redress process. A consumer representative group stated:

> 'Yes, but in very limited circumstances, such as the example given in the paper… transparency is key, allowing the client to make up their own mind based on the legal firm explaining the complexity of further progression and the legal work that would be required to evidence and bring an appeal and the costs involved. '

A law firm stated:

> 'We agree that there are circumstances in which exemptions from the parameters of the banding framework are appropriate where a claim is progressed to the Financial Ombudsman Service and progressed past the initial decision stage… These cases are often complicated and require significant work to evidence and appeal, over a prolonged period of time… In particular, pension, investment and SIPP mis-selling claims… These claim types require substantial due diligence and investigation prior to a complaint being submitted and in our view the time spent in doing so would not be reflective by them falling within the ambit of a fixed fee regime. '

Another law firm stated:

> 'Yes. The FOS and the FSCS are regularly subjected to Judicial Reviews of their decisions and matters… there are often extremely complicated areas of law where the financial institutions instruct expensive legal representation to deal with issues. Such matters cannot however be ascertained at the outset… '

And another law firm felt that there could be a wide variety of circumstances where claims dealt with through statutory redress should be exempted from the banding, citing:

> '…issues around:
> - vulnerable clients and the majority of scam claims involve clients who are vulnerable in some way
> - pension / investments / bank scams cases where there are multiple investments / scams involved in one case
> - in relation to claims involving Authorised Push Payments, these cases are particularly complex as we have to prove that the payment involved a scam of some sort
> - claim value. Some claim types, for example, solar panel mis-selling claims, seeking remedies other than financial compensation
> - clients who have previously tried to bring their own claims

- new claim types.

> There are also many claimants who pursue their own claims to the statutory redress scheme and those claims are rejected by that scheme… Equally cases where the redress scheme has incorrectly calculated what the client is entitled to by way of compensation. ‘

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

General comments

A majority of respondents made comments supporting our proposed approach to information transparency. A law firm stated:

> ‘We support the proposed rules pertaining to the required information that must be disclosed to consumers, which would be more consistent with the type of information that CMCs must also provide consumers… ‘

A consumer representative group stated:

> ‘We welcome this increased transparency and signposting. We think it’s essential that consumers are aware that there are free to use statutory redress schemes available to them. We also agree that clear cost information is paramount, so again welcome this increased transparency here. ‘

Two financial services provider associations who submitted a joint response stated:

> ‘It is our view that the information transparency will improve consumer awareness and given the large number of potentially vulnerable customers, it would seem to be a sensible step to mitigate any potential harms caused by behavioural bias or information asymmetry. ‘

The FCA Practitioner Panel and FCA Smaller Business Practitioner Panel stated:

> ‘There is a pressing need for the FCA, SRA, the FOS and the Financial Services Compensation Scheme to collaborate with consumer interest groups to help educate consumers. Ensuring consumers understand their redress options at the outset of their engagement and feel able to make claims directly, rather than being caught by the ‘fishing’ exercises of unscrupulous third parties, will be key. ‘

Specific comments

A small number of respondents had specific comments about aspects of information transparency. A financial services provider stated:

> ‘[We] would like to see information clearly stated that consumers can use the statutory scheme themselves for free, along with clear specific examples of the fees and charges, including where VAT would be charged for each individual claim. Use of standard wording would be welcome. ‘

Another consumer representative group stated:

> 'Firms need to consider the accessibility of the communication used and where appropriate it should be tailored to the individual's needs (e.g. translated into British Sign Language) and compatible with assistive technologies such as screen readers). The format of the communication also needs to be considered, ensuring that the wording is appropriate for the average UK reading age of nine years old and relevant disclosures are not hidden in the small print. '

A law firm stated:

> 'We agree with the requirement for transparency for consumers and sign posting to relevant redress schemes. However, we do have concerns that the proposed changes will lead to more confusion for consumers… [for example the SRA states] that work done before referral to The Pensions Ombudsman and Financial Services Ombudsman would be subject to the banding / cap framework. Does this then mean that as soon as the matter is referred to the relevant statutory redress schemes that it would fall outside of any proposed banding / cap? We say this as considerable work can be involved in making enquiries, investigations and thereafter drafting the actual submissions to the relevant Ombudsman… What if those enquiries / investigations are subsequently used in 'subsequent litigation activities'? '

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

Supporting the publication of SRA guidance, a consumer representative group stated:

> 'We agree focusing on their practical application and in particular the circumstances where charges may be exempt from the banding model will help raise standards in this area. Case study examples to help illustrate this is another useful support tool, as illustrated in these proposals. We also agree that the SRA should be working with solicitors and their representative bodies to make sure the guidance is both helpful and known about. '

Another consumer representative group suggested a number of areas of guidance, including:

- 'Information clearly stated that consumers can use the statutory redress scheme without incurring charges themselves, along with clear specific examples of the fees and charges…
- A set of principles or a framework which clearly sets out the parameters for what constitutes an appropriate exception, with clear definitions for key terms such as 'novel and/or complex'…
- Clear guidance on what comprises an individual claim and how the banding framework should be applied where an initial test case is complex, but subsequent claims can be templated. '

A financial services provider stated:

> '[We] support complementary escalations to the SRA drawing on the following behaviours by SRA regulated Firms:
>
> - Complaints made on behalf of individuals about products/services that were not actually provided by Barclays

- Complaints based on inaccurate information
- Poorly particularised complaints that do not provide sufficient information for Barclays to identify the product/service being complained about
- Complaints which are otherwise meritless or have been addressed.
- Principle 7: where a firm has not having acted 'in the best interest of each client' or where there is 'a persistent or concerning pattern of behaviour'
- under the Code of Conduct, where we are aware that law firms may be acting beyond the scope of their client's intention. '

A law firm stated

> 'The only fair way to do it is to let law firm decide whether the matter falls within the fee bandings or falls within an exception. Solicitors and regulated law firms still have to comply with code and all other regulations and action be taken if firms taking advantage. However, any rules and subsequent guidance should make sure that any actions taken are based upon knowledge at the time rather than with the benefit of hindsight. This would penalise firms who sought to take on 'riskier ' and more complex cases if a favourable outcome was achieved. '

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

Yes	12
No	5
Other (no response, or responded in other ways)	12

A number of respondents did not respond to this question. Of those that did, some felt that we had identified the correct impacts. A consumer representative group stated:

> 'We agree that the SRA has identified the right impacts. These include:
>
> - greater transparency around pricing
> - greater regulatory arbitrage
> - greater information transparency, particularly around consumer choice and the potential for self-representation
> - the potential for the exemptions to the band to cause some consumers to be pushed down the more expensive complex or litigation route and the potential mitigations to this
> - access to justice and potential mitigations through monitored exemptions that require 'reasonable' costs. '

Another consumer representative group stated:

> 'We agree that the right impacts have been identified: consumer empowerment, consumer protection, routes to redress, access to justice and regulatory arbitrage. With regard to regulatory arbitrage, we see this as a key concern and are supportive of the close engagement between the SRA and FCA at operational levels to ensure alignment of the rules in a changing market. '

However, a number of respondents stated that we had not identified all the impacts of our proposals. Liverpool Law Society stated:

> ‘LLS agrees that the SRA has considered the right impacts but queries if insufficient regard has been had on the impact the changes will have on the access to justice and the likelihood of law firms and solicitors exiting the market as the provision of the service becomes commercially unviable under the banding model. ‘

And two law firms stated:

> ‘The impact that has been neglected is the impact on vulnerable clients with mental health and wellbeing issues, poverty and homelessness issues, and other disadvantages such as poor literacy or English comprehension. It is the responder’s view that these will almost immediately be denied professional legal representation by any law firm that wishes to survive. ‘
>
> ‘We believe that the harm to consumers by way of claims that will not be brought or alternatively do not have proper legal representation and as such will ultimately receive no or less compensation than they are entitled will far outweigh any perceived harm by not imposing a fee band or overall cap. ‘

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?

Yes	13
No	7
Other (no response, or responded in other ways)	9

Many respondents broadly agreed with our assessment of equality, diversity and inclusion issues. Others did not respond to this question.

Some respondents made additional comments to state that there were equality, diversity and inclusion impacts that we had not addressed. A law firm stated:

> ‘Yes, in the main we agree with the main outcomes of the SRA’s equality impact assessment of its proposals. However, we would highlight that, according to the Financial Lives Survey 2022 – insight on vulnerability and financial resilience relevant to the rising cost of living:
>
> - 12.9 million UK adults had low financial resilience (ie 1 in 4 of all UK adults).
> - The result is worse than was recorded in the 2020 survey
> - Low financial resilience is 1 of the 4 drivers of vulnerability, along with poor health, recent negative life events and low capacity
> - 47% of adults showed 1 or more characteristics of vulnerability.’

A consumer representative group stated:

> ‘SRA’s proposals will impact customers with protected characteristics. For example, customers may face difficulty in reading small print disclosures if they experience a disability or are elderly. FSCS therefore asks SRA to consider how disclosures are presented to customers with protected characteristics and the needs that different customer groups may have. FSCS calls upon SRA to continue to consider the impact of their proposals on customers with protected characteristics. ‘

Similarly, a financial services provider stated:

> ‘…accessibility of … information is important to mitigate consumer harm, specifically plain English, accessible in alternate languages and clear visibility of the necessary information, such as bold/large font type and front page of materials. ‘

A law firm stated:

> ‘…we consider that the impacts and risks in relation to equality, diversity and inclusion have been inadequately assessed… the suggested proposals will lead to a reduction in firms dealing with this type of work and most particularly at both ends of the financial value scale, both at low and high values… In so doing, this will lead to a reduction in access to justice for the most vulnerable members of society including the elderly, financially unsophisticated, those with physical and/or mental health issues as well as those for whom English is not a first language. ‘

Liverpool Law Society stated:

> ‘LLS repeats its response to Q8 above and takes issue with the statements (a) that the proposed rules will help secure good access to solicitors claims management activity and (b) the rules will secure good conditions for solicitors and their businesses to continue operating in this area. ‘