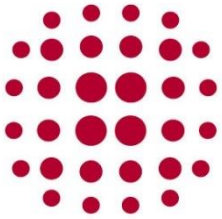

Solicitors Regulation Authority

Protecting consumers from excessive charges in financial service claims – responses to consultation

February 2024

The following respondents asked us to publish their responses and names.

Protecting Consumers consultation

Response ID:29 Data

2. About you

1.
First name(s)

Ann

2.
Last name

Murphy

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

Liverpool Law Society

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
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.

LLS has no reason to doubt the SRA's assessment and characterisation of the financial service claims management activity provided by law firms and solicitors and believes that the work carried out by law firms and solicitors is most likely split between the two models described in the consultation paper.
LLS observe that whilst the consultation paper contains a summary of claims by type, i.e. pension, mortgages and investments it does not contain an analysis of the split between Model A and Model B claims noting only that "there are 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 may not be appropriate". It would have been helpful to know the proportion of the total claims that could be properly described as falling within Model B.

11.

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

LLS considers that the appropriate starting point is to consider if further rules are required to ensure compliance with the FGCA, i.e., to ensure that there are rules in respect of claims management activities relating to financial services carried out by law firms and solicitors that prescribe an appropriate degree of protection against excessive charging. Only if the existing framework of requirements, including the obligations on firms and individual practitioners set out in the Code of Conduct and the Transparency Rules, are found wanting should further requirements be added.

When assessing whether the existing requirement on firms and individuals are adequate, LLS agrees that objectives 1(protect consumers from excessive fees and satisfy the FGCA requirements),3 (balance rules with the requirement to promote access to justice) and 4 (ensure consumers are empowered to choose and are well informed about those choices) should form part of the frame of reference.

LLS does not agree with objective 2 (replicate the FCA's approach to restricting fees for CMCs in the SRA's rules for solicitors as far as that is appropriate). 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 charged by businesses (who will have different cost bases) operating in this sector. There are already additional protection measures in place for consumers in relation to solicitors' charges which do not apply to FCA-regulated business.

12.

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

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.

13.

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.

LLS does not agree that the SRA should replicate the FCA banding framework in its rules. Instead, the SRA should consider whether the existing rules, perhaps supplemented by further guidance and a requirement to signpost and provide information to clients about their choice of alternative representation (and their ability to act for themselves), contain adequate safeguards to protect consumers from excessive fees during financial services claims and satisfy the FGCA requirements.

The FCA banding does not cater for reserved legal activity and the FGCA does not apply to reserved legal activity so it stands to reason that charges for reserved legal activity should be exempt from the banding. Likewise, it is LLS' understanding that the FCA banding is not directed at activities that are carried out in relation to actual or potential court proceedings.

To restrict the maximum charge for cases falling within the third suggested exemption- a claim falling within one of the statutory schemes assessed at having particularly novel or complex characteristics- to those set out in the banding would inevitably result in consumers not being able to secure representation for the types of claims that they lack the expertise to conduct for themselves. It follows that there should be an exemption for cases falling within the third exemption.

14.

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.

LLS repeats the answers given above as to the appropriateness of adopting the FCA's banding framework.

15.
6) Do you have any comments about information transparency for consumers, and our proposed requirements and approach?

LLS agrees that there is a need to inform prospective clients for financial services claims about their options to pursue their claims without representation and to signpost clients to the relevant redress schemes. Furthermore, if the FCA banding is not adopted for law firms and solicitors, for cases falling within that banding there should be a requirement for solicitors to inform clients of the charging limits imposed on CMCs.

16.
7) What areas do you think we should cover in guidance to support the introduction of the new rules?

LLS does not agree with the new rules proposed by the SRA.

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

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.

18. 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?

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.

Protecting Consumers consultation

Response ID:34 Data

2. About you

1.
First name(s)

Gary

2.
Last name

Bee

6.
I am responding..

in a personal capacity

7.
In what personal capacity?

Member of the public

8.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

9.
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.

No I think it would be better for firms to be incentivized with higher fees to take on cases. Putting a limit on fees like that (e.g. £1,000,000 claim could still be subject to a £10,000 fee) is playing right into the banks' hands.

10.
2) Do you agree we are using the right objectives as the basis for developing our rules? If not, please explain why.

No. 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.

11.
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

No, as I mentioned you should not have a fee cap as that is exactly what the banks want so they don't get as many claims.

12.

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.

No as it's too hard to know if it's appropriate in a particular situation and risk getting fined

13.

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.

14.

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

15.

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

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

No setting a fee cap is the wrong approach. Think about how to encourage competition on fees between firms rather than giving them a license to all charge the same fees. Increase incentives for firms to take on more cases!

17. 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?

Protecting Consumers consultation

Response ID:39 Data

2. About you

1.
First name(s)

Joseph

2.
Last name

Bailey

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Representative group

8.
Please enter the name of the group

Association of British Insurers

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
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.

We agree with the SRA's assessment of financial service claims management activity provided by law firms and solicitors.

11.
2) Do you agree we are using the right objectives as the basis for developing our rules? If not, please explain why.

We agree that the SRA is using the right objectives as the basis for developing its rules, namely:

- Protecting consumers from excessive fees during financial service claims, and satisfying the Financial Guidance and Claims Act's (FGCA's) requirements in doing so;
- Replicating the FCA's approach to restricting fees for CMCs in the SRA rules for solicitors, as far as that is appropriate;
- Balancing the rules with the SRA's 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; and
• Ensuring consumers are empowered to choose, and are well informed about those choices, for pursuing financial service redress.

12.

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

We agree with the SRA's proposal to replicate the entire FCA banding framework for CMCs in the SRA rules (albeit with specific limited circumstances where the banding model and maximum charges would not apply). As the consultation paper outlines, it is imperative to (i) provide clarity and certainty for consumers and (ii) reduce the risks of regulatory arbitrage between legal service regulation and financial service regulation. It is important to reduce the risk of claims management activity being displaced from CMCs (under FCA regulation) to law firms (under SRA regulation) simply because the SRA rules do not replicate the FCA banding framework.

13.

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.

We agree that the SRA's proposed circumstances for charges to be eligible for exemption from the parameters of the banding framework are appropriate, subject to our comments below.

14.

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.

We agree that there are 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. However, in our view these circumstances would need to be those outlined in the consultation paper: where 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. In addition, it will be important for the consumer to have been fully informed of this and alternative options, including self-representation, and then have chosen to be represented – in our view any exemption should not be wider than this. The use of exemptions from the parameters of the banding framework should also be subject to proactive, and ongoing, monitoring and supervision by the SRA.

15.

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

We agree that solicitors should be required to:

• Inform prospective clients for financial services claims about their options to pursue their claim without representation, in particular through signposting to relevant redress schemes; and
• 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.

16.

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

As all solicitors are authorised by the SRA to conduct litigation, they may not necessarily be clear on which activity does, and does not, constitute conducting litigation and therefore where an exemption does, or does not, apply. In our view the SRA should therefore publish clear guidance outlining which activity does, and does not, constitute conducting litigation. This will be essential in order for solicitors to understand where an exemption does, or does not, apply. The BSB has already published

guidance on conducting litigation.

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

We agree that the SRA has identified and is considering the right impacts, subject to our comments above.

18. 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 do not have any comments in response to this question.

Protecting Consumers consultation

Response ID:41 Data

2. About you

1.
First name(s)

Matthew

2.
Last name

Maxwell Scott

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Representative group

8.
Please enter the name of the group

The Association of Consumer Support Organisations (ACSO)

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
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, we agree with the SRA's assessment.

11.
2) Do you agree we are using the right objectives as the basis for developing our rules? If not, please explain why.

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

12.
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

ACSO agrees that a uniform approach to the framework is important to ensure consistency. We will briefly reiterate our comments to the FCA on the banding framework.

Well-governed and effectively regulated CMCs play an important role in helping consumers to secure redress, not least for those who may otherwise be unable or unwilling to bring a claim themselves. A well-functioning CMC market can act as a check and balance on the conduct and complaint-handling processes of businesses, which therefore serves the public interest. CMCs provide consumers with additional choice as to how to handle their claim: they can either be unrepresented, seek assistance from a McKenzie friend, use a legal representative, or have a CMC support them in their claim. In seeking to identify and regulate excessive charging, the value of the CMC sector should not be disregarded. Moreover, a distinction must be made between the many reputable firms who charge reasonably, and those minority who charge their consumers excessive fees or otherwise do not act in their best interests.

The fee cap intends to provide consumers with the clarity and certainty they need to make informed decisions before entering a contract with a CMC. Therefore, we support the SRA's commitment to replicating the FCA's framework. Reputable CMCs will support this aim and co-operate with the SRA and FCA to achieve it. However, a reduction in CMC charges must be balanced with the need to maintain a viable and competitive market. While the framework intends to protect consumers, an ill-considered cap could lead to firms refusing to represent customers, thereby creating clear consumer detriment. Any new SRA regime must protect access to justice in addition to deterring exploitation and malpractice.

ACSO does make the following comments regarding the SRA's proposal in particular. In relation to the specific circumstances mentioned in the consultation, they appear proportionate to ensure the viability of regulated businesses without being detrimental to consumers. ACSO does note the SRA's decision to provide clarity as to the definition of 'reasonable' in this context. ACSO agrees with the factors that will be used to assess the reasonableness of charges outside the banding framework.

13.

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.

We support the proposed circumstances as outlined in the consultation. As noted in question 3, we acknowledge that there need to be circumstances where the cap does not inadvertently cause consumer detriment. For example, someone with a complex or novel case should have the same access to justice as a consumer with a straightforward claim.

14.

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.

No, we do not currently consider there to be any additional circumstances.

15.

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

We agree with the approach of the SRA regarding transparency. We support the introduction of rules to require solicitors to provide clear costs information to their clients, in turn strengthening the existing requirement in paragraph 8.7 of the Code of Conduct for Solicitors.

16.

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

We agree in general with the SRA's approach to guidance, particularly including practical examples. The guidance should encompass as many areas as possible, and any guidance produced by the SRA should be approved or made in conjunction with the FCA to ensure consistency.

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

Yes, we agree with the impacts as described.

18. 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, we agree with the main outcomes of the SRA's equality impact assessment of its proposals.

Protecting Consumers consultation

Response ID:43 Data

2. About you

1.
First name(s)

Rachel

2.
Last name

Cairnes

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Other

8.
Please specify

Campaign organisation - Fair Civil Justice

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

10.
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.

Fair Civil Justice (FCJ) is a campaign group that works to promote a balanced legal environment in the UK, that protects the interests of consumers, businesses and the public sector. We welcome the opportunity to respond to the SRA consultation on protecting consumers from excessive charges in financial services claims.

Yes. We agree that financial services claims management activity carried out by law firms and solicitors can be broadly grouped into models A and B, as outlined in the consultation document. However, these models may not always be mutually exclusive in the sense that some firms may provide both forms of service.

On model A firms, as with many CMCs, these are frequently set up for the purpose of advancing one particular kind of claim - for example, PPI claims - and therefore may not have some of the additional overheads associated with a firm providing a broader

range of services.

11.

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

We agree that the objectives are appropriate.

While section 33 of the Financial Guidance and Claims Act 2018 does not define " excessive fees", we consider that the guiding principle should be that fees charged to consumers should represent good value for money and not disproportionately "eat into" any redress awarded to the consumer.

There is a further objective that SRA should consider. Rules should be developed against the background of various observed behaviours of CMCs and law firms in the context of volume claims which cause or are likely to cause consumer detriments. These include:

1. failure to conduct proper due diligence on referred clients' identities before making enquiries and commencing claims;
2. misuse of the SAR process either as a "fishing expedition" or pressure tactic;
3. failure to obtain proper (or any) authority to act on behalf of clients;
4. duplication of claims and claims issued in error;
5. issue of claims that have little or no prospect of securing redress for the clients; and
6. law firm advertising which is misleading insofar as it overstates benefits such as potential levels of redress and understates complexity and risk (e.g. the fact that a claim which may initially proceed through a statutory scheme might ultimately have to be pursued through the courts with the associated downside costs risks).

Such conduct does nothing to improve access to justice and translates into poor consumer outcomes, which tend to erode public trust in the legal profession. Moreover, any consideration of the whether fees, even when capped, are reasonable and represent value for money needs to take into account such practices as an indicator of the quality of service offered. We comment further on how this objective might be factored into the development of rules below.

12.

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

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. A well-functioning and well-regulated market will improve consumer choice and drive down overall cost. Moreover, it should operate as an effective check and balance on the conduct of the complaint-handling processes of businesses.

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.

We recommend that SRA applies the following further measures:

1. a reasonable implementation period for firms to adopt the proposed rules and charging framework in order to ensure that there is no impact on the quality of service to clients. In that regard, we welcome the proposal in draft rule 2.5(b) that the fee restrictions should not have retrospective effect; and

2. a monitoring period of between three to five years to enable SRA to understand the impact of the fee caps and associated rules upon both quality of service and consumer choice. Such monitoring should also assess the effectiveness of rules relating to disclosure of information to clients.

13.

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.

We agree that, on the whole, the proposed exemptions are appropriate.

However, the following elements require further clarification and, as necessary, further elaboration in the draft rules.

1. It is not clear why it is intended that the fee caps should not apply in circumstances where no award for monetary redress is made (draft rule 2.5(c)). If no redress is paid, the application of the framework would mean that the law firm receives no fee and this would be consistent with a standard "no win, no fee" retainer. If the intention of the exemption is that a firm should nonetheless receive a fee when some other valuable non-monetary outcome is secured for the client (e.g. a formal apology) then this requires further clarification in the rules.

2. Where an exemption applies because the charges relate to reserved legal activities, there is a risk of the charging of duplicate fees for the same work by the same firm (or related firm). An example would be where a firm acts for a client in obtaining redress under a statutory scheme and then seeks further compensation on behalf of the client in subsequent legal proceedings, such as in so-called "Plevin top-up" PPI claims.

While we recognise that draft rules 2.6 and 2.7 appear to be directed at these and similar circumstances by requiring that overall charges be reasonable in light of the services provided, the rules could in our view be strengthened to contain an express prohibition on the duplication of fees.

14.

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.

The proposed exemption set out in draft rule 2.5(f) is that claims which are of an "unusually complex or difficult nature" which proceed wholly through one of the statutory schemes will not be subject to the banding framework.

We agree that there will be claims which are appropriate to advance through the statutory schemes in their entirety which, due to their legal or factual complexity, it would not be fair or appropriate to make subject to the banding framework. This is because proper choice entails a fully informed client being entitled to choose to pay more for an expert level of service if they believe this will achieve a better overall result and the inflexible application of caps is likely to disincentivise firms best placed to pursue such claims from taking them on.

However, the asymmetry of information between solicitors and consumers gives rise to the risk that, without more, such an exception could be routinely misused as a "get out" by certain operators. We can envisage circumstances in which just one feature of a claim (for example, the difficulty in obtaining historical customer records) is employed as a basis for describing a claim as falling within this exemption. While such complexities are in fact relatively common in volume claims, this will not necessarily be apparent to consumers who may have no previous exposure to solicitors or claims processes and may accept the assessment of a claim as having an "unusually complex or difficult nature" at face value.

While it is of course recognised that, in addition to the draft rules, solicitors are already subject to a range of professional obligations, we consider that the further objective we highlighted above in response to question 2 above must be taken into account in considering the risks of such an exemption.

If such an exemption is to be implemented, we suggest that ways of mitigating those risks include:

1. a more prescriptive definition in the draft rules of what constitutes (and does not constitute) a claim of an "unusually difficult or complex nature", possibly by reference to a non-exhaustive list of features;

2. illustrative examples of such claims in both a schedule to the rules and in guidance which solicitors must provide to consumers; and

3. regular and consistent monitoring of firms subject to the rules (as referred to above).

15.
6) Do you have any comments about information transparency for consumers, and our proposed requirements and approach?

We agree that the proposed requirements for information transparency, when taken together with solicitors' existing obligations, are appropriate and consistent with SRA's objectives.

The importance of providing clear and accurate information to consumers who are considering instructing a solicitor (or CMC) cannot be understated. Those faced with making a claim (whether through one of the statutory schemes or through the litigation process) are inherently vulnerable and may have suffered very significant financial losses, sometimes entire life savings. Any measures which serve to reduce the risk of that vulnerability being exploited are to be welcomed.

How information is provided

There is scope for requiring that the information provided to clients before entry into a retainer is done so in a standardised manner.

One potential consumer detriment in the context of volume claims highlighted above is the effect of misleading law firm advertising - there is a risk that the messaging of such advertising may have more of an enduring impact on the expectations of a consumer than a law firm retainer letter received at the point of instruction which a consumer may regard as perfunctory "legal jargon".

One way to ameliorate that risk is to require that the information disclosures be set out prominently in a dedicated "key information" document to be provided to the consumer at the point of instruction in addition to the formal retainer letter. In this regard, we envisage a document similar to that with which a consumer might be provided with before entering into a contract for the purchase of an FCA regulated product or service.

Information about how fees are distributed between intermediaries and other interested parties

In many financial services claims, there will be a number of intermediaries involved in addition to solicitors who will be entitled to a proportion of the fees charged. These may include referral firms, CMCs, funders and insurers.

In most cases the client will have little or no knowledge of how any fees are split between these third parties and consequently, how little of the fee they pay may refer to the delivery of legal services. This makes it difficult for a potential client to assess whether the service they will receive truly represents value for money.

In our view, SRA should consider imposing an additional disclosure duty upon law firms which would require it to provide such information to clients prior to entry into the retainer.

Information about adverse costs risks should a matter proceed to litigation

We suggest that there should be an additional express requirement in the rules that at the point a claim ceases to be subject to one of the fee restrictions and moves into the litigation process, the downside cost risks must be explained fully to the client.

Although draft rule 1.4 requires that a law firm to explain any additional fees which may be payable to it as a consequence of a fee restriction no longer applying, the rule could be made clearer in terms of requiring a full explanation of the litigation cost risks at the point of a matter moving from one of the statutory schemes to the court.

Because claimant law firms frequently advertise their services as "no win, no fee" it is not sufficient for firms to make such a disclosure at the outset of a retainer only when such adverse costs risks are only hypothetical because the claim at that stage is proceeding through one of the schemes.

16.
7) What areas do you think we should cover in guidance to support the introduction of the new rules?

We believe that any guidance should include the following.

1. A reminder of the professional obligations and rules which apply in addition to the new rules and a clear statement of the expectations of SRA for firms operating in this market.

2. Illustrative examples of when certain exemptions would apply, particularly those relating to the "novel, complex or important point of law" exemption in draft rule 2.5(e) and the "unusually complex or difficult nature" exemption in draft rule 2.5(f).

3. Guidance on the way required information disclosures are to be made to clients, including, if SRA thinks it appropriate, a standard form of "key information" document.

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

Yes, we agree that SRA has identified the right impacts. However, if such impacts are to be measured, it is important that an appropriate monitoring process is introduced, such as that identified in response to question 3.

On the consumer protection impact, there is a risk that mirroring the FCA's rules (at least in the respects contemplated by the rules) may unintentionally blur the distinction between the services provided by CMCs and solicitors firms. In that regard, there is scope within the draft rules to re-emphasise solicitor's existing obligations (particularly those of a fiduciary nature) which apply over and above those set out in the draft rules.

18. 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.

Sent by email only to Pavitri.Tailor-Bouri@sra.org.uk

24 July 2023

Consultation on protecting consumers from excessive charges in financial service claims.

The Legal Services Consumer Panel (Panel) welcomes the opportunity to comment on the Solicitors Regulation Authority's (SRA) consultation on protecting consumers from excessive charges in financial service claims.

As noted in the consultation paper, the Panel has previously responded to the SRA's discussion paper on this subject. We have also engaged in bilateral meetings on this matter, and we are pleased that the SRA has considered the points and issues we formerly raised.

We commend the quality of the SRA's engagement programme in this area. It has had a positive impact on the quality of the evidence gathered and presented. Overall, we believe the proposals are well evidenced, carefully balanced, and proportionate. The SRA has also explained where its knowledge needs to be strengthened and set out how it proposes to do this.

The Panel agrees that the SRA is using the right objectives as the basis for developing its rules and we have no further additions to the objectives.

We strongly agree that the SRA should replicate the FCA's banding framework for Claims Management Companies (CMC) 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, as such, we fully support the SRA's call for further evidence to enhance its understanding of complex cases. We also support the SRA's plan to enter further dialogue with existing statutory schemes so that it understands the types and nature of complex cases. This will enable the SRA to carve out exemptions effectively.

Finally, we support the proposal to ensure that charges outside of the banding model is reasonable. We therefore agree with the prescription of ‘reasonable’ and more importantly, we agree that ‘reasonable’ should be defined.

The brevity of our response is a testament to the SRA’s well-reasoned and evidence package. 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.

Should you have any questions pertaining to this consultation response, please contact Lola Bello, Consumer Panel Manager at Lola.Bello@legalservicesconsumerpanel.org.uk, with any enquiries.

Yours sincerely,

Sarah Chambers
Chair
Legal Services Consumer Panel

The following respondents asked to be published anonymously. There were also respondents who asked to be neither named nor published.

Protecting Consumers consultation

Response ID:14 Data

3. Consultation questions

11.
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.

It's all done by ChatGTP so costs are very low.

12.
2) Do you agree we are using the right objectives as the basis for developing our rules? If not, please explain why.

It's all done by ChatGTP so costs are very low.

13.
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

It's all done by ChatGTP so costs are very low.

14.
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.

It's all done by ChatGTP so costs are very low.

15.
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.

It's all done by ChatGTP so costs are very low.

16.
6) Do you have any comments about information transparency for consumers, and our proposed requirements and approach?

It's all done by ChatGTP so costs are very low.

17.
7) What areas do you think we should cover in guidance to support the introduction of the new rules?

It's all done by ChatGTP so costs are very low.

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

It's all done by ChatGTP so costs are very low.

19. 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?

It's all done by ChatGTP so costs are very low.

Response ID:20 Data

3. Consultation questions

11.

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.

No. Solicitors are already heavily regulated. It is almost the only, if not the only, profession whose fees are subject to review by others and not simply a matter of agreement between the client/customer and the supplier. In addition to providing a professional service solicitors run a business. If they cannot run it at a profit they become insolvent and go out of business; we have seen this with a number of firms (mainly ABS firms) entering into insolvency. If firms find work unprofitable they will not do it; this is evidenced by the number of "legal aid deserts". 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.

12.

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

No. CMCs are not regulated, solicitors are. There is no external control on what a CMC can charge and no one to complain to if they overcharge. Solicitors have the SRA and Legal Ombudsman. For the reasons set out at 1 above, solicitors should not be subject to any further control over what they can charge for this work. Whilst one may know what the claim is at the outset a solicitor will not know the figure at which the claim will be valued. One might accept instructions on the basis the claim will be worth £20,000 but find it is worth £1,500; clients do not always give correct or full instructions. Risk adverse solicitors will not take the risk of being inadequately remunerated leading to less firms accepting this work.

13.

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

No. The proposed rules risk restricting, rather than improving, access to justice by causing firms to refuse to undertake this work. This is partly recognised in the statement that [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" but your proposal will do just that and are thus contrary to, and not in compliance with, the SRA's obligations under the Legal Services Act 2007 regulatory objectives.

14.

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.

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. See also the answer to question 5.

15.

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.

This question is useful in that it indicates SRA thinking. The starting point of an experienced professional is that the SRA have decided the answer should be no and this colours an experienced solicitor's view of the likelihood of the SRA agreeing any other

exemption will, in practice be allowed. It further increases the risk that solicitors will not undertake this work.

16.

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

I wish the rules, guidance and operation (including board meetings) of the SRA was as transparent as the SRA wish solicitors to be. When dealing with contentious matters it is difficult to give clear guidance as to the cost of a matter. The risk with costs is that the solicitor will over estimate the cost of the work as he will be criticised if he seeks to increase the estimate. Whilst this work may not be strictly contentious it is in the nature of contentious work as there is a dispute, albeit it one not generally resolved through litigation.

17.

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

This pre-empts the question as to whether there should be any new rules. It is noticeable that the question is not framed to ask what guidance should be given if new rules are introduced. This in turn leads one to ask if the consultation is being carried out in good faith, or has it already been decided that new rules will be introduced and the consultation is a sham. Any guidance needs to be as clear and transparent as the SRA wish solicitors to be in their dealings with the public and with the SRA.

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

No. The SRA has completely failed to consider the risk, which I consider to be high, that solicitors will decline to undertake this work if the new rules are introduced and in consequence lead to a lack of competition, advice deserts, and be contrary to the SRA's obligation to improve access to justice.

19. 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?

No. I consider it is those from minority communities who are at greatest risk of being disadvantaged if the new rules are introduced due to (1) a greater proportion of ethnic minority solicitors being likely to take on this work as they tend to provide services to poorer members of the community and (2) minority communities and those who are disabled (particularly those mentally disabled) being more likely to need assistance with pursuing claims.

Response ID:21 Data

3. Consultation questions

11.

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.

No. 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.
All firms operating in this area will be approached by potential clients who have been the victim of novel investment scams – these are constantly developing – and should look to provide what service can be proportionately given to those they engage with.
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.

12.

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

Objective 1 - protect consumers from excessive fees during financial service
claims, and satisfy the FGCA's requirements in doing so
While protecting clients from excessive fees is important the measure of what constitutes an excessive fee is equally important. Some clients are happy to spend money in place of their time and some may feel particularly aggrieved and be willing to attribute an amount to a case that may appear disproportionate to another person.
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
This is not appropriate. Solicitors are not CMCs and have a myriad of regulatory obligations and other matters imposed on us. 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.
Additional complicated terms about work that is outside the scope of the fee cap will mean clients do not understand the service they are obtaining.
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
Representation is a matter of choice. Insurers and banks regularly instruct solicitors in small claims matters where costs are not recoverable and defence costs spend regularly exceeds values of claims.
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. Many banks and financial institutions use city firms for extremely low value work – we have seen Eversheds defending claims valued at less than £10,000.
Access to Justice requires that clients are able to source legal representation and that the representative be remunerated adequately.
Objective 4 - ensure consumers are empowered to choose, and are well-

informed about those choices, for pursuing financial service redress.
This is an important objective. Clients should be signposted to a range of options with a recommendation and enabled to make a valid choice.

13.

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

No. Any form of banding is dangerous and will lead to cases being judged solely on value. This will restrict access to justice.
It is often difficult to assess the value of a claim at the outset and expert evidence can be required. Few clients could afford the £5,000 needed to assess the value of a Defined Benefit Transfer claim at the commencement of the matter before liability was resolved.
A properly assessed contingency fee should provide for other risks to the firm and matters such as prospects of success, time and complexity.
Any provisions about taking matters outside the bands will be subject to satellite litigation. Furthermore work done in relation to investigating litigation will be necessary in many cases. That will not be recoverable in banded matters where a litigation option is explored and then not pursued – such will leave clients open to being charged additional fixed fees for such work even in the event of that aspect of the case not succeeding and will erode access to justice.

14.

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.

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.
Having additional potential charges will cause confusion for clients and add an additional layer of complexity and uncertainty to a retainer that is obviated by simply charging a percentage fee.

15.

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. The FOS and the FSCS are regularly subjected to Judicial Reviews of their decisions and matters such as the decision in Carey Pensions, Berkeley Burke and DRN-3157803 indicate that there are often extremely complicated areas of law where the financial institutions instruct expensive legal representation to deal with issues.
Such matter cannot however be ascertained at the outset and this creates a danger of continually updating the retainer and charging structure.
Fees outside the proposed caps can escalate quickly and agreeing a flat percentage at the outset provides certainty to clients and ensures them of affordable representation when the financial institutions engage representation.

16.

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

All competent solicitors will comply with 8.7. A flat percentage fee does this in a simple and easy to understand method. Such approach was endorsed by the Supreme Court in Belsner and allows clients to easily understand what their potential liabilities are.
Adding additional possibilities of litigation costs and investigations and additional charges for complex work adds uncertainty and is far from transparent given the number of possible options that need to be investigated when a client engages a solicitor.

17.

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

Examples of how clients can be advised of their options and the costs of those unknown when not all routes are known will be important. Similarly the SRA will need to provide templates for example retainers that specifically exclude advice on limitation, litigation and any options outside a statutory redress scheme such that solicitors that operate with the capped bands do not fall foul of the decision in Sequence Properties Ltd v Patel and can avoid being accused of professional negligence if they do not advise on areas outside the scope of the retainer such as limitation.

Case studies need to reflect clearly what will take a matter outside the bands and how additional charges for potential litigation work that now has to be dealt with not on a contingency basis can be charged and how that should be explained to a client who previously would simply have paid a percentage fee.

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

There are considerable impacts on access to Justice. We are regularly approached by people we investigate novel matters for and then determine there is unfortunately no route for redress.

As scams evolve clients will be subject to more varied and complex scams and it will be for solicitors to unwind those and target the guilty parties. Such work cannot be done without adequate potential redress for solicitors and the imposition of lower fees will mean that many solicitors are unable to explore novel areas and these clients are left without any representation at all.

You are correct to identify improper attempts to litigate matters but it remains that many cases can be litigated in a timescale far under the time taken for a FOS or TPO process. Where clients have lost their pensions it is often important to act swiftly and pursue the swiftest route to completion.

It remains that in line with the decision in Sequence Properties Ltd solicitors are obliged to consider litigation and alternative routes for cases and the only option now is the imposition of a fixed charge for litigation investigation services regardless of whether or not those services identify a route or redress is achieved by an alternative means.

19. 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?

Solicitors provide a vital service, our regulatory supervision eases clients concerns at a time where they have been done a disservice by an FCA regulated person. All clients should be considered vulnerable and the provision of simple, flat, fixed fee provides that clients know with certainty what they will be charged and solicitors can fully investigate all routes without the need to justify additional or complex charges.

Protecting Consumers consultation

Response ID:24 Data

3. Consultation questions

11.
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

12.
2) Do you agree we are using the right objectives as the basis for developing our rules? If not, please explain why.

Yes

13.
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

No. It would be too unfair to introduce banding.
We have to pay for PII, practising fees
And staff overheads. This is complex work that requires skill and experience.
We are not a like for like comparable to a CMC.

14.
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.

Should not be any banding at all

15.
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.

No

16.
6) Do you have any comments about information transparency for consumers, and our proposed requirements and approach?

No we are transparent always - website, initial call and within our client care documentation.
We always obtain informed consent and make clear that they could bring the claim themselves

17.
7) What areas do you think we should cover in guidance to support the introduction of the new rules?

None that I can think of

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

Impact on the profession - we have overheads to pay and keep people in jobs

19. 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?

Fine

Response ID:27 Data

3. Consultation questions

10.

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.

We agree to some extent with the analysis of claims management activities provided by law firms and solicitors, although we feel that this could be improved upon to ensure completeness and transparency and have therefore outlined a number of areas where we feel this would be improved:

Overall content of the assessment: The assessment outlined in the paper is particularly brief in terms of the details it provides and does not outline any compelling information to explain the concerns within this industry, the behaviours being demonstrated within the two claims management business models that are outlined or the specifics identified within the analysis that are driving the need for change. We note that the consultation paper does not provide a holistic and detailed view of claims management business models given that, for example, it does not reflect the fact that within the industry we are seeing some firms focus their business model on high volume templated complaints, sometimes driven by misleading social media campaigns. Although the consultation reflects that a range of stakeholders have been engaged to provide input and feedback to inform this paper, we note that this has not included, for example, the financial services firms that law firms and solicitors raise their claims against. This notable absence could potentially result in key stakeholder views not being considered.

Focus of the consultation: While we welcome the SRAs proposals to align fee structures with FCA regulated firms we feel that addressing this issue in isolation without completing a full review of claims management activity and identifying any key harms it is causing will naturally limit the impact and effectiveness of this consultation in improving outcomes. We believe that there are a number of wide-ranging matters that the SRA would benefit from addressing to ensure that all firms regulated by the SRA are conducting their activities in line with the requirements of the SRA and that consumers are receiving fair value. Ideally an assessment of fees would be one of a number of key areas covered by a review, rather than focusing on this as an isolated topic. 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, including the time spent on the case by the firm. Completing a full review of claims management related activities would ensure that firms across the industry are compliant and that customers are receiving fair outcomes, not just in financial terms but in overall quality of service.

Our experience of the sector: From our experience of liaising with law firms and solicitors under the SRA we have seen some cases of poor practice which cast doubt on whether customers are receiving a service that can be deemed fair value and where there is an opportunity to do more to provide fair outcomes and improve standards. We have seen clear evidence of high-volume templated complaints being submitted to us, at times receiving hundreds of complaints from one firm in one day. Once we commence our investigation, we have identified examples of poor or, indeed, non-existent due diligence and inaccurate information, suggesting that some complaints are opportunistic, speculative or vexatious. The complaints are often standard in content, providing little information that is specific to the customer. This supports our view that not all firms are meeting SRA standards, but are able to continue in business due to a lack of action or enforcement. We have also experienced many examples of complaints being raised without the customers' knowledge and numerous examples on social media of firms making false claims regarding the compensation that can be obtained.

In summary, while we support a cap on fees in line with the FCA's approach, we are disappointed that the SRA have not chosen to consider fees alongside other areas of concern in order to improve standards across the industry and address wider areas of poor practice to ensure customers receive a quality, transparent and compliant service.

11.

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

We agree that these are the right objectives to use as a basis for pursuing a fee structure in line with that of the FCA. We agree

that it was important that the objectives acknowledge the risk of firms moving between the FCA and SRA to avoid restrictions on fees and that the proposed actions should mitigate this risk going forward. We welcome regulatory arbitrage but would like to see this in place across the board and not just in relation to fees.

Restricting fees in line with the FCA will create more of a level playing field between SRA and FCA regulated firms, limiting firms moving to SRA regulation to avoid the fee caps. However, there is a risk of unintended consequences by restricting fees, which could be that this could potentially increase some of the poor practices we have seen, for example encouraging firms to focus even more than at present on high volume templated complaints on commission and irresponsible lending because margins have become even more challenging due to fee restrictions. If this were to occur this could have a significant impact on financial services firms, many of which are already struggling both operationally and financially to deal with the huge volume of complaints that legal services firms are driving. Any increase in this disreputable activity is only likely to create viability issues for some firms and could potentially increase financial exclusion further if we see more firms leave the market.

We note that the paper reflects the intention for the SRA to use these objectives as reference points to monitor and evaluate the impact and that, to be fully effective in ensuring the objectives are achieved, this will require the implementation of an appropriate oversight framework. We agree that this is crucial to ensuring the objectives have been met, particularly that customers receive fair value and the quality of service they would expect for the fees they are asked to pay. It is our view that close monitoring of firms is required to ensure they are meeting SRA requirements and that where poor practice is identified related to these objectives, the SRA use their powers to take appropriate action to improve standards and remove firms that persistently breach the rules.

In addition, we agree with the objective for consumers to be better informed of the option to make a complaint free of charge, supporting more informed decision making by consumers. This will align the SRA rules to those of the FCA and improve standards of operation by ensuring firms are more transparent with consumers upfront, but again it will be important that the SRA make effective use of their enforcement powers to act in cases of non-compliance.

12.

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

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. This could have a significant impact on firms' ability to deal with complaints effectively and in a timely manner, particularly if a proportion of the complaints are opportunistic or, as we see in some cases, the customer did not have a product with the firm or did not instruct the claims management company to initiate a complaint.

Whilst we agree that it is important for there to be a number of circumstances where the banding framework does not apply, as this provides consumers with the range of legal options that are appropriate for various scenarios, this needs to be clear. The circumstances under which the banding framework do not apply need to be very clear within the rules and the implementation of the rules should be subject to appropriate oversight to ensure they are adhered to in order to avoid firms attempting to exploit loopholes.

13.

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.

The proposed exemptions are appropriate as they ensure that consumers are not excluded from taking legal action as a result of solicitors not wanting to take on their case due to the fee restrictions. We agree that in some circumstances a legal case can incur higher costs and that it is important to avoid a situation where consumers are dissuaded from or not able to pursue action as a result of fee restrictions. As noted in question 3 above, it will be vital that firms adhere to the rules in place and that the SRA monitor and act upon any instances of non-adherence.

14.

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.

We do not have any feedback on this matter.

15.

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

We agree with the proposal to signpost information to consumers to make them aware of the option to complain free of charge and also to outline clearly the fees, or possible fees, upfront. By making these improvements we believe this will support more informed decision making and bring the SRA rules into line with the FCA, creating a level playing field of requirements for firms in the same industry.

16.

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

In terms of the provision of guidance to support the implementation of the new rules this should include:

• Clear guidance and examples of scenarios in which to apply exemptions to the fee bandings
• Specific detail on the expectations for signposting so that firms can be supported in consistently meeting this expectation to better support informed decision making by consumers.
• This could also be an opportunity to remind firms of the need to ensure consumers are receiving a quality and transparent service that provides fair value.
• A reminder that the SRA will be undertaking monitoring and that they will take swift action where non-compliance is identified.

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

We agree that the paper outlines the impacts of the proposals, a key one being the empowerment of consumers to make good choices and benefit from increased protection. The annex within the paper containing the impacts only touches briefly on the consideration of future viability of firms regulated by the SRA and how the rules will impact this. This could be explored further to better understand whether the new rules heighten the risk of poor behaviours that we have seen from some firms that are SRA regulated. As per above, one of the key issues we have seen are firms driving high volumes of the same types of complaint using a standard template, with little or no evidence of due diligence and sometimes without the consumers' permission. We would like to understand the SRA's assessment of whether there is a risk of this business model increasing if fees are capped under the new rules and what impact this will have on consumers and the industry, in addition to how the SRA will address this. If this gap is not addressed as part of this consultation process, then there is a risk of unexpected outcomes, which will have a negative impact on consumers and on firms receiving complaints.

18. 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 do not have any feedback on this matter.

Response ID:44 Data

3. Consultation questions

11.

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. The majority of the assessment is accurate. However, in order to consider replicating the decision of the FCA to implement a limit on the fees CMCs could charge, it must follow that the Consultation itself was accurate and independent. We believe this is not the case and is flawed for the following reasons:

The data used and processed by the FCA is too old to be relevant. Fieldwork took place between 12th August and 5th September 2019 and all participants had made a claim that had closed between October 2018 and March 2019. To simply implement new rules based on this out-of-date information is unsuitable.

We believe the impact of the FCA fee cap on the Claims Management Company industry has been extremely negative, forcing many previously viable businesses to exit the market. This has undoubtedly resulted in many individuals being denied access to justice.

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.
There are numerous hurdles that face any potential claimant, including:

- Unaware who to complain to
- Unaware what to complain about
- Not holding information or documents
- No face to face or personal contact with organisation
- Online access only which discriminates against those who do not use computers, particularly elderly
- Detailed questionnaires
- Complex processes
- Interrogation by bank
- Unsure if decision of complaint is fair or reasonable
- Financial jargon
- Steps to take if complaint not upheld
- Representation to FOS
- Lengthy timescale

Even the simplest case taken on by AMK Legal involves the following process as a minimum:

- Initial discussion with potential clients responding to advertisements to go through an initial criteria fact find
- Passed on to more senior adviser who will establish if there is potential to help
- Client advised about the work we do and the relevant fee
- Correct paperwork issued to client including authorities to obtain investment information
- When relevant information from banks is received an analysis of products, taxation, level of risk etc is undertaken
- Detailed discussion of client circumstances around the time they took out their investment to establish any areas of potential mis-selling or unsuitable advice
- Complaint written to bank with personal explanation why advice was unsuitable, positioned to maximum client advantage
- Management of complaint from sending the initial complaint to decision issued, with regular update to customers

- Analysis of decision to ensure fair and reasonable and in line with FOS regulation
- Refer unfair decision to FOS adjudicator and ombudsman with supply of necessary information to support case
- Ongoing dialogue with FOS to ensure a swift and fair response and regular updates for the customers
- Only when this process is exhausted, or after a certain time when limitation may cause issues, do we seek to potentially litigate

Within the FCA Consultation Paper was the inference that CMCs provided administrative assistance and support only, with very little or no professional input. This is not true, particularly cases covering complex scenarios and involving pension transfers and investments.

It is agreed that there are two 'models' for SRA regulated law firms in the financial service claims management sector. It is fair that the work undertaken under 'Model B' should not fall within any fee cap due to the complex nature of the work undertaken.

It is also agreed that the SRA does need to make sure that their rules do not make complex work of this type unviable. AMK Legal will suffer financial pressures as a result of any fee cap introduced. To cut fees at the same time as inflation increases and professional costs (PII) rise, will limit our ability to take on complex cases. This will ensure that, contrary to SRA Objective 3 below, the SRA will not be promoting access to justice for members of the public who wish to have professional representation for a financial services claim.

12.

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

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'.

The FCA implemented around 99% of their proposals included in the Consultation Paper despite significant alternative views from those CMCs involved in more technical and complex cases. These views were almost universally ignored, and the 'consultation' was merely a box ticking exercise before implementing the desired outcome of the FCA of removing CMCs from the market.

We believe the SRA does have a differing starting point and that they 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.

13.

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.

The work required for financial claims regarding pension transfers and investment mis-selling is complex and time consuming. Utilising the services of FOS or the FSCS can take anything from 6 months to over 2 years. Clearly, the number of hours spent on the case incurs substantial costs which themselves could surpass the fee cap. It is acceptable that high volume, low value and simple financial claims should be subject to any fee cap. However, cases involving pension transfers and investment mis-selling should be outside the banding model.

EXAMPLE CASE A

We were approached by client in November 2021
Due diligence completed to substantiate merit of claim
Particulars of Claim sent to Lloyds Bank
January 2022 received decision letter confirming Lloyds not upholding complaint
Reviewed decision and case referred to FOS May 2022

May 2022 received FOS acknowledgement
September 2022 FOS advice case allocated to adjudicator
October 2022 case declined by FOS adjudicator
October 2022 reviewed adjudicator decision and referred case to Ombudsman
October 2022 FOS adjudicator disputed reasoning for referral
October 2022 detailed response to FOS clearly explaining reasons why adjudicator's decision not acceptable
March 2023 response from FOS requesting further information
March 2023 discussed questions with client and responded to FOS
April 2023 Ombudsman provisional decision received upholding case
April 2023 Ombudsman final decision received upholding case
May 2023 Lloyds agree to pay client £8606.12
May 2023 Client pays fees of £4130.94

Under the FCA fee cap the maximum the client would have paid is limited to £2500.00 for over 18 months' work. This work would not be viable under the proposed fee cap even with a successful outcome. If the case would have resulted in a decline decision, we would be unable to charge any fee for our work.

At the start of any case the length of time it may take to be concluded is unknown. In this example, as the start date of the investment was in 2005, it was critical to consider the implications of limitation and that any decision enter into litigation would have to be considered during the timeframe of the FOS investigation.

14.
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.

15.
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.

EXAMPLE CASE A would also fit this scenario.

It is a simple case of economics that the fee cap would result in decisions from Law firms that certain cases cannot be accommodated. There would not be any certainty that fees would be generated and, even if they were, the level would be below the costs incurred. There is no doubt that consumers would face harm in that there would be no avenue available for them to seek justice.

Firms would be forced to 'estimate' the value of each case and this would result in the decision not to represent clients if there is any doubt about the viability of the case. As such, we believe that by excluding two types of financial claims – Pension Transfers and Investment – firms specialising in these areas would be able to continue to assist clients without having to withdraw their representation when fees reach the limit of the proposed cap.

EXAMPLE CASE B

Approached by client September 2021
Due diligence to evaluate merits of case
November 2021 Particulars of Claim sent to Lloyds Bank
December 2021 Decision letter from Lloyds reviewed
March 2022 Reviewed decision and referred case to FOS
May 2022 Acknowledgement from FOS
May 2022 Responded to questions raised by FOS
June 2022 Decline decision received from FOS adjudicator

June 2022 Reviewed adjudicator decision. Disagreed and referred to Ombudsman
December 2022 Replied to questions raised by Ombudsman
December 2022 Ombudsman issued provisional decision and upholds complaint in favour of client
January 2023 Ombudsman issued final decision upholding complaint
March 2023 Lloyds agree to pay client £5517.08
March 2023 client pays fees of £2648.20

As in EXAMPLE CASE A, this case would not have been financially viable for AMK Legal to take on. Under the fee cap the maximum amount we could charge for 18 months' work would amount to £741.50.

16.
6) Do you have any comments about information transparency for consumers, and our proposed requirements and approach?

We agree that consumers should be provided with clear and transparent information when considering using professional representation. However, the value of any particular case and the subsequent fees is extremely difficult to quantify.

As we do currently, we suggest providing examples of any potential fee at several illustrative levels does provide transparency.

17.
7) What areas do you think we should cover in guidance to support the introduction of the new rules?

We agree that clear signaling of activity which is exempt from the banding model, such as claims involving pension transfers and investments.
Providing relevant case studies will be beneficial.

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

Consumer empowerment – we agree that allowing certain charges to be exempt from the banding model where circumstances of their claim are complex and involve considerable technical work.
Consumer protection – we agree it is correct that maximum charges within the banding framework apply for high volume and low value legal work in the claims management area.
Routes to redress – we agree that consumers should have the choice of the way their case progresses and not simply directed towards the most profitable route.
Access to justice – we agree the proposed rules do ensure a continued viable market for law firms, particularly within complex claims.
Regulatory arbitrage – we agree that the proposed rules will not increase this risk.

19. 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 believe all considerations have been covered.

Protecting Consumers consultation

Response ID:49 Data

3. Consultation questions

11.

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.

SRA view to apply the fee cap to all financial claims
It appears that the SRA has not taken time to consider the individual type of claims and has instead followed the FCA approach in considering them all the same in terms of process and complexity.

We are of the strong view this approach is wrong and that each type of claim should be considered. It is quite easy from some simple research to discern that pension and investment claims are very different in terms of complexity and time taken to finalise.

The table below shows some of the data we have been able to ascertain, unfortunately the FSCS have stopped publishing the data. Even with the missing data, it is clear that Pension and Investment claims take the longest and are worth the highest amount of compensation.

The SRA should have undertaken similar research in considering the different claims and fee caps.

Average Compensation Length of time case FSCS Length of time case FOS
PPI £2000 BBC https://www.bbc.co.uk/news/business-49356255 2 Months No data
Mortgages advice £19,330.00 4 months No data
Pensions £74,945 (FSCS figures) 10 Months No data
Investments £30,315.00 9 Months No data
General or Life Insurance £4,217.00/£1,214.00 5 months No data
Mortgage Endowment No data 9 months No data
Whole of Life Insurance £25,982.00 2 months No data

FOS and FSCS view of complex claims
We are not alone in understanding the complexity and therefore skill and knowledge of pension claims. The FOS and the FSCS agree.

The FSCS' recent Plan and Budget 2021/22 specifically makes multiple references to the complexity of pension and pension-investment related cases and the increased costs they bring. The FSCS requires a larger budget because complex pension claims demonstrably require more work on their side – they are "costlier to process" because the FSCS has had to hire more experienced and knowledgeable staff to ensure it can adequately process them.

Or, in its own words (emphasis added):

Processing and assessing complex pension claims made to FSCS is a technical endeavour requiring a unique set of knowledge and skills. It is not simply an administrative or claim-handling exercise.

The FOS supports this experience – in its comments relating to its plans and budget for 2021/22, the complexity of the cases it is handling post-PPI are a major focus (emphasis added):

We're seeing a growing proportion of complaints in our wider casework involving complex circumstances. Reflecting the broad trend toward complexity that we're seeing across our casework, many of these

complaints are hard-fought, subject to ongoing legal action, and in some cases involving firms that have gone into liquidation. The consequence is a need for an increased investment in the people it hires to handle those claims.

Primarily, this is because it can be significantly impacted by factors outside our control, such as the complexity of our casework, and it also disguises differences in the cost of handling different types of complaints.

As we've explained, we've already been seeing increasing complexity in our non-PPI casework. This shift will continue to influence the types of knowledge, skills and approaches we'll need to invest in, both during 2020/21 and further ahead."

Complaints about investments and pensions can be some of our most challenging cases, often involving large sums of money. On average, these cases take the longest to resolve.

It appears that the organisations handling financial compensation claims day in and day out recognise and posit the complexity of different types of claims – and, as such, are allocated increased budgets to ensure that its staff are well trained and knowledgeable in order to deal with that complexity.

This is a clear indication of the knowledge and skill needed for some claims, particularly pension and investments.

12.

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

SRA proposal to follow the FCA fee Cap

Lack of Evidence from FCA
An underlying objection we have to the proposals in this consultation stem from our concerns regarding the FCA's original proposal and the evidence base it used to arrive at its fee cap structure. By basing its proposed fee structure on the FCA's, we consider that the SRA is relying on faulty assumptions and problematic evidence.

We have set out here only a summary of our concerns. We would be very happy to provide further detail should the SRA wish.

1. There was no evidence that consumers believed they had been subject to excessive charging prior to the fee cap. The FCA based its fee cap structure on a historical issue regarding firms offering payment protection insurance (PPI) claims management services and projected similar levels of complaints going forward, even after PPI had come to an end. The forecasted levels of complaints against CMCs have never come to pass, even before the fee cap was implemented.

2. The FCA presented surprisingly little data to support its fee cap:

a. The largest and most referred to piece of research in the FCA's proposal was a survey of 599 customers (only 159 of which had pension claims) who had used claims management companies. Note, none of the research involved solicitor's firms.

As per the agreed methodology, all the customers surveyed had claims that finished in the first six months of 2018. The FCA took over regulation of CMCs in April 2019 and brought in new and stricter regulations, particularly around the need for CMCs to inform clients they could apply for compensation directly themselves and banning cold calling. Self-evidently, none of customers surveyed had worked with CMCs subject to the new regime of regulation.

Inexplicably, the FCA then relied on this out-of-date research to arrive at the justification for the level of its fee cap.

b. The FCA relied heavily upon its own guesstimates of the time and effort a client not using a CMC might spend on handling a claim through the redress system. It carried out no actual research with customers who had this experience, despite having access via the FSCS and FOS of customers who had gone without representation. The FCA provides no basis for the

guesstimates and, in our own experience, they are often wide off the mark.

3. The FCA's fee cap proposal demonstrated a concerning lack of familiarity with the redress system it purports to regulate, particularly with regards to the complexity and combative nature of pension/Investment claims.

To lay out it's ostensible thought process:

I. It insists that the redress system works in the way it was designed – namely that all a customer has to do is "express dissatisfaction' and the redress system will take it from there. The SRA appear to acknowledge this but have not distinguished it from the FCA's proposal
II. It uses this to support its conviction that CMCs (and, by extension, solicitors) therefore only really provide an administrative/time-saving function through the system.
III. It then values the services provided by CMCs and solicitors on that limited and erroneous basis.
IV. It then calculated its fee cap based on that misperception of the value provided by CMCs and solicitors.

This simply isn't true. From the problems and delays within the FSCS or the FOS to the (mostly) ignored unscrupulous behaviour of large financial services firms, the UK redress system is seriously and systematically flawed.

Examples of some problems of the redress system, by no means exhaustive, include:

• Backlog: The FOS has a significant backlog of cases, leading to delays in resolving disputes, with some delays taking several years.
• Skills and Knowledge: The FOS operates with limited resources, including funding and staff which impacts skill and understanding of complex cases. Concerns have been raised regarding the consistency and fairness of decisions, as well as the level of communication and information provided to consumers throughout the process.
• "Closed" FSCS cases: When the FSCS is handling a pension claim, it requires a good deal of historical information to be gathered from large pension companies. Often, whether through obstinacy or administrative failings, pension companies do not respond to these information requests. The FSCS has a policy that it will write out for information three times – if the information does not arrive within 21 days of the final chasing letter, it will decide the case is inactive and will 'close' the case. If a client is unrepresented, the FSCS will send them a letter saying that the case is 'closed'. The client does then have the option to try to get the information themselves in order to get the FSCS to reopen their claim. However, from anecdotal reports, due to the language used by the FSCS, many clients simply believe that their claim has been unsuccessful and take it no further.
• Calculations: The calculation methodology used by the FSCS can be very complex for pension claims and it can get its calculations wrong. This is particularly the case when the methodology has changed, but the FSCS has not applied the new methodology to a claim. See further comments on methodology below.
• Reassignment of Rights: If a client has had a successful claim at the FSCS, the client must agree to pass over to the FSCS all legal right to pursue any other related claim, to ensure it has locus standi to pursue the relevant legal avenues to reclaim funds. If the client would like to make any other related claim, the client must go to the FSCS and request a "Reassignment of Rights". If they don't do so, FOS and firms can reject claims on the basis of locus standi. The only time the client is informed of this is when they submit an FSCS claim, as it is referred to within the terms and conditions they must agree to. To be clear, a client cannot submit a claim to the FSCS without agreeing to these terms. As one can easily see by reading the terms, the need for a client to understand the implications of what they are agreeing to go above and beyond a simple 'expression of dissatisfaction'.
• Transfer Values: If a client has a successful FSCS claim against an IFA and has received the maximum amount that the FSCS is allowed to award, we know we must ensure that the award is not based upon the original transfer value of their pension. Using a transfer value is easier for the FSCS, because it means that it is not required to get the notional or hypothetical value from an historical pension provider (many pension providers actively resist providing this information). If the client is going to receive the maximum award anyway, the FSCS sees no need to gain accurate figures, despite the loss calculated by the FSCS including mostly investment losses.
However, where a client has a subsequent potential claim, such as against a pension provider, and the claims will be made to the FSCS, we know that the FSCS will only base the damages on investment losses. Therefore, we know it is vital to have the notional pension values so that the IFA award can be recalculated to include the full pension losses, thereby maximising the investment losses that may be attributable to the pension provider.
In our extensive knowledge of the FSCS, it has never independently sought out notional pension values on the first claim in

order to maximise the second claim.
• Firm's inaccurate calculations: If FOS finds in favour of a client who has brought a pension case, the firm found at fault must calculate the compensation due to that client. FOS has no mandate to provide the calculation itself, nor will it check that the calculation the firm has done is correct. It is up to a client to employ someone to check the methodology of the calculation or provide a full calculation (which can cost as much as £4,000 on complex cases), as we have had confirmed in writing by the FOS many times. Furthermore, the FOS has no powers to have the firm provide a copy of details of how they reached the calculated amount of redress. See examples of this below.
The FCA doesn't appear to have an authentic understanding of how the redress system works in everyday reality. In its consultation, it relies heavily on its 'own experience of the redress system' as supporting its proposals. However, it is unclear where this experience derives, given it had only recently taken over the regulation of CMCs, and it did not provide any evidence of any internal expertise whatsoever. The SRA have not commented much on their views on the redress system, the problems and impact this has on fee capping.
4. The FCA's fee cap is based on its principle that the work of a CMC or a solicitor's firm has no bearing on the outcome of a claim. In its view, whether a client goes through the redress system on their own or using a CMC or solicitor, there will be no difference to the end result – the only benefit the client receives is saving time and administrative help with their claim.

As such, the fee cap has been based on the very low hourly cost of £6.10 per hour as the value to the client (it even dismissed using the £19 used in self-represented litigants in civil court proceedings).

In its fee cap proposal, the total evidence that the FCA gives to support its claim that there is no bearing on the outcome of a claim is the following:

1) That's the way the redress system was designed
2) The FOS says so on its website (note, the FOS does not provide any supporting evidence, it is a simple statement)
3) No CMC challenged the FCA on this point when the FCA took over their regulation (e.g., when CMCs had to apply to the FCA to continue working in the area)

However, the FCA's own data (released only in part and the day before its own consultation closed) suggested this is simply not a sustainable position; the data suggested there is a significantly higher uphold rate for represented clients versus those that go on their own.

Moreover, a genuine understanding of the redress system recognises that a simple yes/no uphold rate doesn't provide the full picture. Given the complexity of the issues (particularly around pensions) the combative nature of financial services claims, and the behaviour of financial services firms, a vital part of the role played by solicitors is to ensure that a client actually receives the amount of compensation they are entitled to receive. This can be a highly complex process and firms – and regulatory bodies – often get it wrong. This fact was entirely ignored by the FCA in setting out its fee cap proposals.

13.

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

The high value of pension and investment claims
The SRA seem to have ignored the fact of the quantum of the type of claims.

PPI claims were a simple process with compensation often totalling approximately £2,000, or equivalent to the small claims court.

The average FSCS pension claim was £74,000, akin to a case in the multi-track due to its value. In our experience, pension claims tend to be between £50,000- £150,000.

As the SRA are aware, multi-track cases are allowed more costs by the Court due to the value of the claims and complexity. A majority of the cases would fall within the new intermediate track, which again allow substantially more costs than the fee cap is

proposing.

For example, a case of Complexity Band 4 (which professional negligence falls within) at S1, just for the investigation to Defence would be £9,300 plus up to 8% of the damages. So, for an £80,000 case, the solicitor would receive £15,700.00 (Table 14: Rule 45.50 CPR).

When advising in a solicitor's firm, a majority of the work involved in pension cases will need to go through most of that stage in order to decide whether litigation or a redress route is appropriate.

With that type of value of claim comes complexity around quantum. This is particularly relevant in pension/investments claims. We refer you to examples below.

The SRA's assertion that 'many law firms and CMCs are operationally similar both in terms of categories of financial services claims being progressed and services they provide to consumers'. Objective 2 – Page 11

The premise of this objective that law firms and CMCs have a similar operational basis is incorrect. Law firms operate in an entirely different way due to the regulations they have to abide pursuant to the SRA rules and regulations.

Law Firms CMCs
PI Insurance One of the biggest spends of a law firm is the PI Insurance, particularly in the claims/litigation arena. Our PII insurance is £60K Not needed
Qualifications Solicitors have to be qualified and train for a number of years No qualifications needed
Practicing Certificates Solicitors have to renew PC every year at an expense of £316.00 Not needed
Continuing Development Solicitors have to undertake the necessary CPD every year to ensure knowledge and skills are kept up to date. Not required
Duties to Client To act in client's best interest Only now being introduced
Duty of Care Legal obligations to undertake work to a reasonable standard Regulatory obligation only
Supervision Ensure staff and work is supervised to ensure standards Not required
Knowledge In depth understanding of case law.
Ability to provide advice, draft legal documents
Represent in Court
Negotiate CMCs may have some knowledge and experience in handling claims, but they often focus on the administrative and procedural aspect of managing claims.

Regulatory Oversight Lawyers have to consider professional conduct, ethical obligations, client confidentiality and maintain a high level of competence and accountability.
SRA Accounting Rules Strict rules

Furthermore, due to the higher level of duty of care provided by Solicitors there are marked differences from the inception of files and stages of a pension case compared to CMCs.

An example of a case based on generic information for the purposes of seeing differences in approach and set up of file between a solicitors' firm and a CMC.

A client telephones to advise they think they have lost money in their pension in a straightforward Pension Case

Solicitors' Firm CMC
1 Take instructions to obtain overview
Initial interview with client

2 Undertake conflict check
Send contract to client

3 Undertake file risk assessment
Approach relevant parties for paperwork

4 Consider funding options
Full case review just considering redress system

5 Send out client care letter
If a valid claim, legal argument drafted

6 Prepare a case plan, information needed to prove case.

Obtain the information
If FSCS, open clients claim on portal. If FOS, send forms for client
7 Analyse the information
Await response
8 Consider Advice to client
1. Limitations
2. Potential parties to claim
3. Potential quantum
4. Routes available
4.1 Redress Routes
4.2 Court (ATE, Court fees, Counsel fees)
5. Advantages and disadvantages of routes
6. Cost to be incurred by routes
7. Fees expected by routes
8. Time it will take
9. Depending on route then preparing claim submission documents.
10. Consider decision and look at calculations
11. Give advice on an appeal

It is quite apparent that an SRA firm must undertake many more steps than a CMC and has very different obligations to clients in terms of advice. Moreover, an SRA firm are also more likely to be presented with a negligence claim and/or be criticised by the SRA if they did not follow all the correct steps and reviewed each decision carefully.

14.
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.

see below

15.
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.

Pension and Investment Claim Considerations
Here are just a few examples of the difficulties with Pension and Investment with the FOS and FSCS:

• If a firm has been acquired since the event happened, as is very common in pension cases, it can take a good deal of time and effort to simply identify the target of the claim.

• What if a client was misadvised into opening a SIPP and buying some worthless storage units? They might know they could complain to the person that advised them and they hopefully can bring a successful FSCS claim themselves. But, if they're not

being assisted by a Solicitor, did anyone tell them that, only following a good deal of legal wrangling, they could also make a claim about their SIPP provider? Does the redress system take on that responsibility?

• Is the average customer able to identify a regulated activity? Let's imagine that a client had a Defined Benefit Occupational Scheme and, in 2012, was advised by a financial advisor regulated by the FCA to move it to another Defined Contributions Occupational Scheme. Do they have a claim? What if it happened in 2016? Would that make a difference? Would they know?

• An issue in advising clients on FOS pension claims, is the way the redress system is set up. If a client comes for advice and has losses against an IFA, SIPP Provider and DMF then they could have 3 separate claims if the case were taken to Court. If a case is submitted to the FOS they will only look at one party. It will say that the IFA is liable for all the losses up to the applicable compensation limit. Once paid out that amount then they will not be able to submit further claims for any unrecovered losses.

Therefore, if a client has lost over £450K it will be necessary to undertake a clear and detailed advice to a client on the two options available. This will involve considering losses in detail, working out Court costs, ATE, etc. The case itself could then take 2-3 years to conclude at the FOS, with all the necessary updates to the client.

• What about a customer's understanding of the complex and arcane world of Principals and Appointed Representatives? Do they know the distinction? Do they know what to do when they make a complaint against the Principal and the Principal washes its hand of it? Are they keeping up to date with recent case law in this area, such as Anderson v Sense Network?

• Identifying the current defined benefit scheme administrators can take considerable time to determine.

For many clients, these are the sort of issues that must be investigated and understood before any claim – be it straightforward or complex – can be made. It is important to note that the neither the FOS nor the FSCS are designed to help clients in the above situation.

Further Examples of the complexity of Pension and Investment Claims

1. Determining the target of a claim
Example 1: Mr L transferred his benefits in the British Steel Pension Scheme to a personal pension with "Life Assurance Company A". Mr L was unsure who advised him on the transfer. A firm was identified on the pension transfer documentation as the selling agent. The firm was either registered or trading as "Firm G" Scotland. A firm registered by that name was unable to be located on Companies House. An ink stamp was identified on a piece of paperwork which showed "Firm G" Scotland had an address in Glasgow. Using this information, a London Gazette notice from June 1995 was located which indicates that a firm called "Firm G" Limited operated at the same address. A Companies House search of that firm revealed an active company, "Firm F" Ltd, registered in the relevant period under the name "Firm G" Ltd. A search of the companies accounts in the late 1990s and early 2000s revealed that the firm had provision for its Pension Transfer and Opt Out Business conducted during the Pension Review Period.

Example 2: Mr M transferred his benefits in the Contract Chemicals Ltd Pension & Life Assurance Plan to a Buyout Bond with "Life Assurance Company B" in 2002. The firm appearing on the paperwork in relation to sale of the policy was a firm registered as "Firm B" Ltd. A Companies House search discovered a dissolved firm by that name registered within the period. A search of the FSCS default list did not reveal that the firm had been declared in default by the FSCS and the FSCS was not accepting applications for the firm. A review of the company's accounts revealed that "Firm B" Ltd had ceased trading in 2004 and that in 2014 its business and assets were sold to "Firm A" Holdings Ltd and "Firm A" Financial Services Ltd. A search of the FCA register revealed that "Firm A" Financial Services Ltd was no longer authorised. A Companies House search revealed that the company was still Active. A review of the companies' Accounts revealed that "Firm A" Holdings Ltd, the holding company of "Firm A" Financial Services Ltd, was acquired by "Firm C" Ltd in 2017 and the trade, assets and liabilities were transferred to "Firm D" Ltd, a fellow group company.

2. Requesting third party information and dealing with barriers put in place by the financial services industry to get client data.

Regardless of their obligations, many regulated firms actively make it difficult to request and receive DSARs. They can decide

they want certified IDS from clients, ignore the DSAR completely. The ICO has a long wait list for complaints, and they know this.

Further when the FSCS needs information from a claimant's former pension provider, it writes to the pension indicated, reportedly using an internal drop-down list to choose where to address any letters. As the SRA knows, the pension industry is incredibly organisationally complex, with any one firm administering different historical schemes from separate offices around the UK – if the wrong office is selected (as happens repeatedly), the firm will not respond to the FSCS. If the firm does not respond after three letters, the FSCS 'closes' the claim and writes out to the claimant to tell them so. A client managing their own claim is unlikely to know that the FSCS has written to the wrong office and the letter from the FSCS gives no indication of how the client can seek the information themselves and get the claim to be reopened.

Because we do know, we monitor the FSCS' letters – if we see that two have been sent without a response, we immediately chase the firm ourselves – first, to ensure that the FSCS has written to the correct firm at the correct address and second, to ensure that the firm will reply.

The FSCS will be able to provide the SRA with the data on how many claimants are currently "closed" due to the lack of response from a third-party, and what percentage of those represent themselves versus clients represented by Solicitor firms.

Unfortunately, the FSCS is not always fully aware of the true complexity of the pensions industry, particularly with regards to when mergers and scheme administration changes mean that different firms hold the historical information for a single client. In these situations, it is only our intervention that means that the FSCS will receive the information that it needs to calculate a client's claim accurately.

3. Calculations of Pension Issues

A solicitor has either worked to receive the notional pension values ourselves or we have requested that the FSCS send a chase request to pension providers. We appreciate that the FSCS is not designed to deal with this type of problem.

However, as we raise below, it would be of interest to see the data held by the FSCS that shows how many clients represented by Solicitors have had this problem rectified versus clients who approached the FSCS directly.

The calculation methodology used by the FSCS can be very complex for pension claims and it can get its calculations wrong. This is particularly the case when the methodology has changed, but the FSCS has not applied the new methodology to a claim. Because we always keep up to date with the current methodologies, we are able to see when the wrong methodology has been applied.

If the FSCS makes an error in the calculation methodology of a claim, it is not necessarily isolated to that claim – the error can be repeated across similar claims from other, unrelated, claimants. But, if an appeal on a single claim is successful, the FSCS does not in our experience actively review which other claims it might have made that same error. A claimant must submit an appeal to have the FSCS reopen their case and apply the correct calculation methodology. The FSCS will not alert claimants in this situation.

Because of the nature of pension and investment claims, the full loss suffered by a successful claimant is not always clear at the time they are awarded on their claim. This might be because the value of an investment has not yet crystallised. If the investment does eventually crystallise, meaning that the claimant is entitled to further compensation, it is the claimant's responsibility to inform the FSCS of the change.

4. Methodologies
We have also already discussed the issue of changing methodologies regarding calculating the amount of compensation due. Again, the FCA in its fee capping response seem to be of the view that a claimant is responsible for being aware when it has released new guidance in this area and when it might apply to their own calculation as the FSCS is not responsible for telling them. This is another clear example that the redress system requires much more from a client than merely an 'expression of dissatisfaction'. We would hope that the SRA can acknowledge that a general member of the public would not read FCA press releases and would also have very limited pension knowledge.

5. Firm's lack of compliance
A very common situation is firms simply not paying the redress they owe clients or continuing to delay, despite the FOS finding them liable to pay compensation. The FOS has no involvement in this process and indeed there appears to be a gap in regulations to deal with this common problem (which large firms are exploiting). This can lead to the only option getting a Court Order.

6. Checking Compensation: As a Solicitor, once an offer is made, we have an obligation to probe the calculation methodology. As outlined above, the FSCS can unwittingly fail in its calculation methodology, thereby negatively affecting the amount of compensation a client receives. However, perhaps more cynically, firms appear to more often make "mistakes" or simply make an offer that clearly does not follow the guidance provided by the FCA and FOS (see below "the behaviour of firms"). It is not surprising; these are exceedingly complex and sophisticated actuarial calculations – but how many clients who complain on their own check the calculations provided to them by the firms? We suggest not many – which raises the obvious question of how many unrepresented clients have unknowingly received less compensation than they were due?

7. The behaviour of regulated firms: The FCA seems to have forgotten in its proposal that the firms it regulates do not behave perfectly – in fact, they often behave directly against the spirit of the redress system. Despite industry press from previous CMC and law firms attempts to call attention to it, we know of no real penalty that these firms face. We consistently experience firms making offers to our clients that are not based on the redress calculation they have been ordered to do by FOS, but on how much they think they can get away with offering. They will often place strict time limits to any offer on a client, putting clients under undue pressure to accept quickly. We are able to discuss with our clients why the offer is not a good one and help them negotiate a better outcome for themselves. FOS will not involve itself.

Would a claimant on their own in the redress system be treated fairly by a firm in a similar situation?

8. FSCS Calculation errors: The FSCS can also make significant errors in calculating compensation due to a client. We have found that it is only due to our intervention within the FSCS's appeals process that sheds light on these errors and the correct calculation made.

9. Working Example
On 19 December 2017, the FSCS upheld a claim in relation to advice of an IFA. The FSCS assessed the losses at £100,402.72 and paid compensation of the maximum £50,000 allowed.

On 27 February 2020, the FSCS upheld a claim in relation to the SIPP provider in respect of the investments made in the SIPP. The FSCS assessed her loss as £33,360.27 (including the investment of £31,500 and £1,184.28 in respect of SIPP fees paid since 19 December 2017) and paid compensation of £33,360.27.

On 23 June 2020, the FSCS upheld another, related claim in relation to another involved IFA. The FSCS assessed the client's

losses as £17,042.45 (after having deducted the compensation paid under the two previous claims) and paid compensation of £17,042.45. After reviewing the uphold, and associated calculation, it was discovered that the FSCS had not recalculated the client's defined benefit transfer originally calculated in relation to the first claim's decision issued on 19 December 2017. This was, despite the FSCS claiming it had used the "Financial Conduct Authority-approved method", based on current obligations that the defined benefit valuation should be recalculated. On 24 June 2020, an appeal was made to the FSCS in relation to a re-calculation on the above basis. The FSCS upheld the appeal and committed to re-calculating the claim. On 8 October 2020, the FSCS assessed the loss associated with the claim as £51,162.30, after having recalculated the defined benefit pension in line with current methodologies. The FSCS paid the person a further compensation of £32,957.55 (£50,000 less the previous compensation in relation to the decision on 23 June 2020).

10. SERPS
For a number of years CMC and law firms have been questioning the FSCS regarding its calculations on SERPS adjustment. The question posed to them has been 'how can the revalue of my pension nominal value be less than the amount transferred'. The FSCS have reverted only in the last month, saying they are reviewing a handful of cases and incorrectly valued them. We are aware of one that has been recalculated at further £69,000 loss.

With fee capping firms will not be able to pursue these points.

11. Legal Status of Investments
Unfortunately, it is not always a straightforward matter of the FSCS accepting a change in an investment value. It can require us to provide to the FSCS a good deal of technical evidence for it to accept that a client is due further compensation. Due to the murky world of some of the investments our clients have been sold, we sometimes must establish this evidence ourselves through investigating the circumstances, including seeking legal opinion, and providing this to the FSCS.

A. As an example, a hotel "investment" in Turkey called Harmony Bay. Our research indicated that it had been having problems for some years, as it was not paying returns despite being operating. It was owned by UK registered companies, and in April 2018 the only director who was a natural person resigned. In February 2019 Companies House recorded the first notice of compulsory strike-off. From our own research it was clear that no one was paying for the maintenance of the companies, and nor was there a reasonable chance of anyone doing so. A legal opinion was sought about the position, based on the contracts signed, of pension investors, in the event of the companies being struck off. The opinion was that investor were likely to receive nothing.

This information was provided to the FSCS, but it refused to accept that the claimant's investment had now failed and, in its opinion, the hotel had been sold to an international hotel brand (Wyndam Hotel and Resorts) because it had found a website where the hotel was being marketed under that name. The FSCS's legal team did not appear to understand that the company through which our clients had held their investment no longer existed and, as such, the clients no longer held the investment. It took weeks of explanation including providing information about Wyndham's business model and how hotel branding agreements function – for the FSCS to accept the reality of the situation.

In June 2019, the FSCS agreed that they would pay further compensation to the investors if pension statements could be provided showing that the claimant's pension had not received a distribution from any sale of the hotel, and for clients to confirm, on recorded phone calls, that they had also not received any form of payments directly.

For some of these clients it meant that the losses attributable to the IFA failures were greater than the FSCS limit. Therefore, we were able to inform the client that they may have a claim against the pension provider that allowed the investment, ensuring that our clients received back more of the compensation they were due.
B. Another example of problems with investment calculation was The Resort Group. It was in investment recommended by a number of regulated advisors. Many people invested through a self-invested personal pension. The Resort Group was founded in 2007 by CEO, Rob Jarrett, a former banker and financial consultant at Prudential. It owned four luxury resorts in Tortuga, Dunas Beach, Llana and White Sands. It offered overseas property investments, which were to build resorts and hotel, in Cape Verde off the coast of Africa. However, it was a relatively unfortunate time to set up a company of this nature, with the crash of the financial markets in 2008. To keep investment money coming in, The Resort Group set up a convoluted system of organisations which seemed to point towards investing into their company. This included a call centre called Lifetime

Connections and a pension review company called First Review Pension Services, which were both heavily linked to The Resort Group.
A 2008 marketing brochure for The Resort Group, issued by an independent partner Kayden Estates, spoke about 20 per cent annual returns on the apartments. Many people were convinced to invest their personal pension fund into the scheme. Investors bought an interest in the hotel resort with each person owning a fraction of the entire property.
Although many people had claims against their advisors the FSCS would not value the investment as nil value as the Resort Group was still active and they would say the investment hadn't failed and could still have a value. Firms had to instruct agents in Cape Verde one of the resorts to ascertain that the land was not in the names of the company, instruct agents to prove that no work was being undertaken and it hadn't been delayed. Even with some of this evidence the FSCS still would not pay out. Firms had to constantly write to the FSCS updating that no returns had been obtained from clients.
12. Working Example – Client S
Client S entered into a contract with a firm on 04/08/2017. She received her first award for loss on 20/08/2017. This did not account for the TRG investment. It was not until 30/05/2023 that the FSCS corresponded to say Dunas Breach was valued at nil. That is nearly 6 years from the start of a claim.

There is no way a person unrepresented would have known what to do and further there is no way a law firm would have taken on this work under a fee cap.
13. Pension Review Cases
These types of claims raise extremely complex issues, as the requirements placed on firms in the Pension Review changed often from 1995 onwards. This means that when firms reject the complaint, which is the norm, and provide very scant information as to why, it is up to the complainant to understand the very specific requirements that were placed on the firm in the past in order to prepare the claim for FOS.

A. Example of Mr K
Client signed DBA on 20/04/2022. He is vulnerable aged 70 and is in remission from cancer and is housebound.

Mr K is a Pension Review period client. We are investigating whether Reassure Limited adequately met its obligations under the Pension Review. In order to undertake this work DSARs had to be requested from 4 different pension companies totalling 271 pages. This evidence had to be reviewed and then advice given to the client as to the options they could pursue, including Court.

Pension Review work is a specialist area due to the time period that has elapsed since the review between 1988 and 1994. Limitation is an area that must be explored carefully, because at the moment FOS do not apply limitation rules to these claims. This is not something the public would know. It is also potentially possible to run the case to Court based on concealment/deceit/fraud. Although this is an untested area at present for pension review, a client under SRA rules should be made aware of the fact it is an option and the difficulties with those options. Therefore, a lengthy advice was given to the client.

A complaint was submitted to Reassure on the 25/05/2022, after an initial rejection by the firm and further correspondence from us the matter was upheld around September 2022. The case did have to be submitted to FOS but was closed by the FOS when the complaint was upheld.

However, despite that uphold no financial settlement has been received by the client from Reassure to date. Once Reassure upheld the complaint it employed Capita (an actuary firm) to undertake a Defined Benefit loss calculation. Around April 2023, we were advised they couldn't complete the calculation as they were awaiting new software. We have had to continue chasing monthly. In July 2023 they verbally confirmed there was no loss. We questioned the methodology having come across this scenario in another case.

The FCA finalised guidance for firms on how to calculate redress for unsuitable DB pension transfers in 2017, which was updated in March 2022.

'Where a firm or adviser has failed to give compliant and proper advice, or has committed some other breach of the relevant requirements, the basic objective of redress is to put the customer, so far as possible, into the position they would have been in

if the non-compliant or unsuitable advice had not been given or the breach had not occurred. While each case should be assessed individually, in many cases this advice is likely to have resulted in the complainant transferring accrued benefits from a DB pension scheme to a personal pension scheme. This is what underpins the standard approach to redress'.

It further states:

This guidance should also be used to determine appropriate redress where a respondent upholds a complaint received after 3 August 2016 about a pension transfer between 29 April 1988 and 30 June 1994 in circumstances where either:
11.1. the firm did not review the relevant pension transaction in accordance with the regulatory standards or requirements applicable for the review of the transaction at the time4; or
11.2. the particular circumstances of the case were not addressed by those standards.

Reassure seek to rely on 11.1 that they did undertake the pension review and sent out the letters and therefore they can use the calculation methodology at the time.

We have raised that we consider this is incorrect and unjust and against FG17/9. After further conversations we have been advised for this client that they have asked the group Phoenix Life as to the approach. Should they be 'undertaking calculations using original methodology or FG17/9'.

This case is being further reviewed by them and we are told if the case is calculated under current assumptions it will result in a loss.

The work and specialisation needed for this type of case is far more than a CMC would have offered. The time that elapses and work involve means it would not be viable for £5,000.

B. Example of Mr B
Mr B submitted the case to the FOS on/around 15/03/2017, which upheld the complaint against Partnership A on 05/02/2019. The letters to the FOS from the defendant were from the Company C who had taken over the Partnership A.

The company went into insolvency on 03/12/2020. The case was submitted to the FSCS on 07/01/2021.

The FSCS said that the claim was not eligible as the Partnership A was liable, not the Company C.

An application was made to the Court to turn the FOS decision into a Judgment. Court Order was granted and then served on the partners of the old Partnership A.

The partners instructed lawyers who said that the liabilities had been transferred from Partnership A to the Company C and the case should be with the FSCS.

Lengthy correspondence was entered into with the FSCS on this point, due to the company being a successor practice and having taken over the liabilities of Partnership A. The FSCS maintained its position. We attempted to make contact with the FCA to see what was on record. They had no record of a deed of novation to the fact they didn't keep records at that stage.

Therefore the only option was to enforce against the partners. A Charging Order has been applied for and in the Court process.

The two partners are now proposing to enter an IVA and seek to drawn down equity. However, a condition of this will be not to apply for a full Charging Order.

If the IVA or ultimately bankruptcy do not reach the necessary liabilities, then no doubt the case will then revert to the FSCS.

This case started in 2017 and is yet to conclude. No law firm will take a case such as this under a fee cap.

There is an element of litigation by way of the Charging Order that could be paid for as an extra by the client.

However, a client in this situation that is still working as they have lost their pension does not have means. They are not likely to pursue these types of matters. In turn the government will be paying out more to help people such as these in retirement.

C. Example of Mr A
Client was engaged on 17/07/2019 for a pension review case against Legal and General, but taken on by Reassure (as a company that has taken over the work of Legal and General. A letter of complaint was made on 03/08/2020. The complaint was rejected on 17/03/2020. The case was referred to FOS on 03/08/2020 and rejected by a FOS investigator on 07/12/2020. The rejection was based on time barring. It transpired that the FOS investigator had had conversation with the client and time barred him on the basis of the conversation. A copy of the call/transcript was requested and reviewed. It was inconclusive as to whether the correct question had been asked to the client.

Further evidence was obtained from HMRC to confirm the address history of Mr A. This lead to a further positive decision by FOS on 02/02/2021 on the jurisdiction of the complaint.

In light of the above Reassure provide a further response on 25.03.2021, advising they would do a pension review in line with the FCA guidelines, upheld.

An offer was made by Reassure on 17/08/2021 –offering a annuity which was not accepted. A revised claim offer was issued 02/11/2021 for a cash lump sum. On reviewing this offer it stated it had made the calculation using pension review methodology. Following this correspondence was entered into regarding what pension review methodology. On pressing this point, they confirmed using old methodology.

Mr A instruct his own actuarial report via TCC (at a cost of £4,213.50) – this showed a greater loss as had used current methodology.

In between the above being undertaken the matter was referred back to FOS advising dissatisfaction with the offer from Reassure. After several emails trying to explain the difference assumption that had been made. FOS response to this was to say it was not in their jurisdiction. Mr A asked for referred to Ombudsman for a final decision.

In the meantime, the firm has been in contact to suggest that it might look at the calculation differently now after consulting with the group on the assumption or correct methodology.

Two years on from the original complaint and nothing has been resolved and an elderly, vulnerable person is waiting.

How many other cases have been potentially calculated on the wrong assumption. This is not something an individual could have done on their own without expert knowledge. It is also not sustainable for a solicitor to run such a file on a fixed fee of £5000 over years.

Group cases
We were considering with another firm a group of about 200 clients who had pension and investment claims. Indications had been given of FCA involvement and in the press that the company did not have PI insurance or an appropriate reserve. Some cases were submitted to the FOS, but no payment was forthcoming.

The FSCS were contacted about whether the company had means to pay. There were Investment claims and other IFA claims but the FSCS would not consider the clients other claims whilst Company A was still trading. There were potentially 3 regulated companies that were responsible for different areas of loss.

The only way to proceed the cases was to issue Court proceedings, which would either mean the company paid or, more likely, Judgment was obtained and the FSCS would then put the company in default and open the claims. That sounds simple but to get to that stage took an immense amount of work and correspondence with the FSCS.

In order to consider that course of action, the following had to be explored: -

1. Group Litigation Order
2. Lead cases
3. Potential damages for lead cases
4. Funding arrangements
5. Counsel advice
6. ATE insurance if it was litigated.
7. Agreement by clients
8. Letter Before Claim (LBC) drafted
9. Other claims LBC drafted and submitted to FOS (to prevent limitation issues)

Eventually as proceeding were going to be issued the company went into insolvency. The FSCS declared them in default. It was then necessary to submit 3 claims per client to the FSCS, carefully consider the potential losses and implications of FG19.

According to the proposals put forward by the SRA then the first or lead cases for this would either have to pay privately to start the legal work or enter into a DBA. However, no law firm is going to enter a DBA that is going to be capped at 5%.

If the first lead cases are not capped as they are complex, how does a firm deal with clients with similar cases paying very different legal fees?

The two and three claims when submitted eventually involve less work at that stage but only because substantial investigations have been made prior to the submissions.

In a situation like this that involves substantial work upfront and investigations into various companies cannot fall into a fee cap. The fact there is several cases makes it more difficult.

The SRA would need to provide guidance on how you deal with the subsequent cases, do all fall outside of the fee cap? If they don't how do you choice a lead client and deal with conflicts of interest that one client will be liable for more fees?

16.

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

Advising a client on costs
How do the SRA propose firms are going to deal with advising the client on costs at the outset when the firm itself cannot know if a case will fall in or outside of a fee cap (if one is imposed)? At that stage it may not know if it is even a redress case or a court case.

CMCs do not have the same obligations as SRA firms to advise on costs.

We already advise clients carefully on costs, such as that they can do it themselves, pay privately and give an estimation and also the option of a funding agreement.

Disbursements
The SRA have stayed silent on the issue of any disbursements and whether they will be part of a fee cap or an extra. It is quite clear that methodology calculations disbursements would take nearly all of the fee cap if included. The SRA should specify which disbursements would be included. In our view, Counsel's fees (if ever required) and expert fees to deal with breach of duty and loss should not be included in the fee cap.

Inflation
There is no mention as to how the fee cap will deal with the issues of Inflation, which has increased 20% amount since the time the FCA proposed the fee cap to now. The economy is in a very different position now than when the fee cap was set.

17.
7) What areas do you think we should cover in guidance to support the introduction of the new rules?

If you were to include pension and investment claims, then how to deal with fee structure for group cases.

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

Access to Justice
It is clear from the above examples that there is a major concern that member of the public will not be able to access justice appropriately if fee capping for pension/investment is enforced.

By setting the fee cap at the present levels it will discourage solicitors from taking on financially demanding cases, particularly of untested areas of law. This will leave individuals with legitimate claims without proper representation and hinder their ability to pursue justice effectively.

Individuals with lower income levels struggle to afford legal representation, court fees and other associated costs already limiting their ability to pursue justice.

There will be less firms undertaking this work.

A recent decision from the FOS highlights

"I think it's likely Mr F only became aware of having a possible reason to complain when he engaged a claims management company which has experience in this area. Upon realising, he then made a complaint well within the three years allowed."

This client would not have submitted a claim, as he wouldn't have known who/which party to submit the claim against. The FOS would have simply rejected it had it be submitted against the wrong party.

For many years, people who had been mis sold SIPPs were told by their SIPP providers that the SIPP providers were not at fault. If they had 'expressed dissatisfaction' to their SIPP provider, the SIPP provider would have rejected their complaint, not on the facts of their individual complaint, but on the wider legal opinion that the SIPP provider was not liable. The customer would have then had six months to take their complaint to FOS. We know of some individual clients who did so, who then had their complaints sit at FOS for years while the legal questions of liability were debated. However, we know of many others who did not, as they took the SIPP provider's response at face value. Those clients are now time
barred from taking action against their SIPP providers.

Conclusion
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.

Fee capping at the levels set for pension/investment cases will impact on the quality of the legal services. It will discourage investment in professional development, advance technology, specialist staff and inadvertently lead to firms prioritizing quantity over quality.

It will have a substantial impact on access to justice, as less firms will undertake this work and none of the claims mentioned above would have been worked under a fee cap. The public will lose out on money rightfully owed to them and the government in turn will be funding more people into retirement.

The SRA have based their consultation on faulty assumptions and have not considered the wider implications and moreover the impact of access to justice.

We would recommend that instead of implementing a fee cap on pension/investment claims the SRA look more into fee levels

and transparency, increasing audits of firms undertaking work in these areas to ensure pricing is correct and consummate to the complex work undertaken.

Attempting to do it the other way via examples will put further pressure on firms, increase costs and not assist with the access to justice issues.

19. 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?

as above