



Law Society
of Scotland

Consultation Response

Financial Ombudsman Service- Our 2024/25 Plans and Budget

January 2024



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

We welcome the opportunity to consider and respond to the Financial Ombudsman Service (FOS) consultation: *Our 2024/25 Plans and Budget*.¹ We have the following comments to put forward for consideration.

We have restricted our response to questions 14- 21 only (Charging Professional Representatives). We have no comments on the other aspects of the consultation paper.

Charging professional representatives

14. Do you consider that FOS should exercise the power given to charge professional representatives? If not, why not?

We are concerned that this proposal may have the potential to discourage complainants from engaging a solicitor to assist them with a complaint to the FOS, may discourage solicitor firms from offering their services to assist complainants with such complaints, and ultimately may create a barrier to access to justice for consumers who have experienced a detriment.

Whilst we recognise that many complainants will complain directly to the FOS, there may be a range of reasons why a complainant may wish to engage a solicitor to assist them in the process. That should be a matter of choice for the complaint.

Scottish solicitors are subject to robust regulation by the Law Society of Scotland, and must act in accordance with our rules and guidance. In particular, Scottish solicitors must act in their client's best interest, and fees charged by solicitors must be fair and reasonable.² Where these standards are not met, regulatory action may be appropriate.

¹ [Financial Ombudsman Service - Plans and Budget Consultation 2024-25 \(financial-ombudsman.org.uk\)](https://www.financial-ombudsman.org.uk/consultation/2024-25-plans-and-budget)

² See: [Standards for solicitors | Law Society of Scotland \(lawsociety.org.uk\)](https://www.lawsociety.org.uk/standards-for-solicitors)

We note that the consultation paper states that “Over the past two years, approximately 20% of our cases have been brought by professional representatives, though they do not pay a fee for using our service from which they can gain economic benefit.”³ Solicitors gain economic benefit from remuneration for the services they provide to their clients.

We do note that the consultation paper proposes to offer “three free cases” to professional representatives and indicates that the proposal is intended to mainly apply to “commercial entities working at scale in the complaints ecosystem”.⁴ We also note that the FOS anticipates that “most law firms would not incur a fee under this approach”.⁵ Whilst we welcome these mitigations, we note the potential for arbitrary barriers for complainants to be created where a firm is approached for advice but has already exhausted its “three free cases”.

Whilst we recognise some of the challenges for the FOS arising from poor practice by professional representatives,⁶ we do not consider that these proposals are an appropriate or proportionate response. Whilst we recognise that only a very small number of our members- if any- will be directly affected by the proposals, we have significant concerns regarding the principle of charging professional representatives.

In conclusion, any fees that are levied on solicitors, such as those consulted upon, will be passed onto consumers, the users of legal services, who will ultimately bare this additional cost burden. One of the main factors that consumers consider when seeking legal advice or representation is cost. Research suggests that this is a crucial factor which can be a barrier to accessing legal services, particularly affecting vulnerable consumers.

15.If this power is exercised, what is your view of the likely impact of a fee for professional representatives on overall complaint volumes and types submitted to the Financial Ombudsman Service?

See our comments above regarding access to legal services.

16.If this power is exercised, to help shape our Equality Impact Assessment, do you think there are any potential impacts of charging professional representatives on different groups of complainants, for example vulnerable groups and those with protected characteristics? If so, how do you think these could be mitigated?

³ Consultation paper, page 24

⁴ *Ibid*

⁵ *Ibid*

⁶ Consultation paper, page 25

Yes. The proposed introduction of fees will undoubtedly affect vulnerable consumers. As stated above, these will be directly passed on by legal representatives, to their client on whose behalf they act in relation to the complaint. Many potential complainants will be on limited means and increased fees may deter many from seeking legal advice or assistance and bringing a complaint.

See our comments above at question 14.

17. If this power is exercised, how do you think the regulatory system could address/avoid professional representatives passing on the fee to consumers?

It is normal practice for outlays (fees paid to third parties) to be paid by the client alongside but separate to the solicitor's fee. Solicitors must be able to recover the cost of outlays reasonably and properly incurred from their clients in order to operate on an economically viable basis.

We have published Price Transparency Guidance for our members to promote price transparency and encourage practice units to proactively take steps to publish price information in a way that is easily accessible, prominent and understandable for consumers.⁷

It would not be appropriate to prevent fees which have legitimately arisen being passed on to consumers. To impose such a restriction may result in representatives declining to provide advice, assistance and representation in these matters. In addition, this would not be practicable- it would be open to representatives to legitimately increase their fees to recoup the fees.

18.If this power is exercised, what other factors should we consider when evaluating charging professional representatives?

We have no further comments.

19.If this power is exercised, do you agree with our initial thoughts to provide the same level of free cases (three) as for respondent firms?

See our comments above, at question 14. We have no further comments.

20.If this power is exercised, what do you think of the potential pricing options, or

⁷ [Division G: Price Transparency | Law Society of Scotland \(lawscot.org.uk\)](https://www.lawscot.org.uk/division-g-price-transparency)

the proposed fees, for charging professional representatives?

We have no further comments.

21.If this power is exercised, what preparations will professional representatives need to make? And what is the timescale that it will take to implement such preparations?

We have not had an opportunity to survey our members to ascertain the extent to which they may be impacted by these proposals.

BUSINESS

For further information, please contact:

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