

Consultation Response

Charging Claims Management Companies and other Professional Representatives

July 2024

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Introduction

The Law Society of Scotland is the professional body for over 13,000 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.

The Consumer law sub-committee welcome the opportunity to consider and respond to the most recent Financial Ombudsman Service (**FOS**) consultation paper entitled *“Charging Claims Management Companies (**CMC’s**) and other Professional Representatives¹”* (**PR’s**) (**Second Consultation**).

Response and Remarks

We previously responded to the first FOS consultation entitled *“Our 2024/25 Plans and Budget”* in January 2024 (**First Response**)². This contained our views on the proposals to charge solicitors, CMC’s and other PR’s a fee for using the FOS’s service on behalf of their client (**Charging Proposals**).

We welcome the clarity that has been provided in the Second Consultation relating to certain aspects of the Charging Proposals, such as the detail on the £250 fee that will be payable in lodging a case with the FOS, reduced to £75 if the outcome is in favour of the consumer. We also note that further detail has been provided in relation to the three free cases per year offered to solicitors to use the FOS complaints service.

However, the additional clarity provided by the FOS has further compounded concerns that we raised in our First Response.

Firstly, we continue to have concerns that the Charging Proposals will affect those most vulnerable in society given that solicitors are likely to build these additional costs, however small, into their own fee regime. These fees, in turn, may then be passed onto the consumer to pay. Given that many potential complainants will be

¹ [Financial Ombudsman Consultation: Charging Claims Management Companies and other Professional Representatives – July 2024](#)

² [Consultation Response: Financial Ombudsman Service – Our 2024/25 Plans and Budget – Jan 24](#)

on limited means, any increase in fees charged to them may deter many from seeking legal advice or assistance in bringing a complaint. It is often the people of limited means who need an unfettered access to justice the most.

Secondly, we have concerns regarding a fee of £75 being charged to solicitors in cases where they have acted, and secured, an outcome in favour of the consumer. We note the FOS are not currently proposing that a mechanism is in place to recover this fee from a respondent where a determination is made against them as the wrongdoer. This contrasts with the position in other dispute resolution services, for example, Court fees recovered by the successful party against an unsuccessful party when determined by the Courts. We would therefore welcome clarity as to why this approach is not mirrored in cases that are determined by the FOS.

Thirdly, we remain of the view that these proposals are likely to affect the choice that is offered to consumers when seeking to appoint a solicitor to raise a complaint to the FOS. This stems from the issue of commercial viability of those firms pursuing a respondent for an amount that is equal to, or only slightly more than, the amount being charged by the FOS to use their service. We are concerned that the introduction of a fee may discourage solicitors to act in these types of cases and thus negatively impact consumers through a lack of choice in those available to act for them. We are also concerned that this lack of choice could lead to an increase in the overall waiting time for consumers to obtain the advice that they need.

In view of the foregoing, whilst we welcome that further clarity has been provided in this 2nd Consultation on the FOS's proposal to charge solicitors a fee to use their service, we believe that this has compounded many of the concerns we raised in our First Response. We therefore continue to have concerns as to the FOS's Charging Proposals and would welcome further clarity on the points we have raised.



For further information, please contact:

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