

## **Guidance**

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#### **Representing clients during claims for financial services or products**

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Published: 15 August 2024

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### **Status**

This guidance is to help you understand your obligations and how to comply with them. We will have regard to it when exercising our regulatory functions.

### **Who is this guidance for?**

Solicitors, firms and their employees that undertake claims management activities for financial services or products.

### **Purpose of this guidance**

This guidance will help you to understand what we expect when you represent clients during these claims. This includes our expectations for meeting your regulatory duties, including within the Code of Conduct for Solicitors, RELs and RFLs and within the SRA Claims Management Fees Rules 2024.

For the purposes of this guidance, the term 'solicitor' includes Registered European Lawyers (RELs) and Registered Foreign Lawyers (RFLs). References to 'clients' means any person who is a prospective, current or former client.

### **Information for your client before entering into a contract**

You must provide information about your services, your business and your fees to clients in-line with your duties under the Code of Conduct for Solicitors, RELs and RFLs.

This includes:



- paragraph 8.6 - you give clients information in a way they can understand. You ensure they are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them
- paragraph 8.7 - you ensure that clients receive the best possible information about how their matter will be priced and, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of the matter and any costs incurred.

The SRA Claims Management Fees Rules 2024 place specific additional duties on you. Before any person instructs you to represent them during a financial service claim, you must inform them about:

- their right to bring their claim themselves for free and without representation where it is within the scope of either the Financial Ombudsman Service (FOS), the Financial Service Compensation Scheme (FSCS) and/or the Pensions Ombudsman (TPO).
- all potential approaches available for proceeding with their claim, including where the maximum charges might or might not apply, and the reasons why you believe your recommended approach is in the client's best interests.
- your estimated and finalised charges, including any fixed fee you may offer, and the basis for these.
- the maximum charges specified in the Claims Management Fees Rules, unless you reasonably anticipate (and can evidence) that the entirety of the claim features one or more exempt circumstances.
- any actual or estimated charges that you anticipate being made outside the maximum charges.

You must be certain that all your clients are fully informed and understand this information before you agree to represent them.

## **Charges for representation on financial service claims**

All charges you make to your clients when you undertake any legal service must be fair and reasonable. If you make unreasonable charges to any client, you might fail to meet your regulatory duties, including:

- SRA Principle 7, that you act in the best interests of each client
- paragraph 1.2 of the Code of Conduct for Solicitors, RELs and RFLs, and paragraph 1.2 in the Code of Conduct for Firms, that you do not abuse your position by taking unfair advantage of clients or others.

If you represent a client during a claim relating to a financial service or product, your charges must additionally meet the requirements of the SRA Claims Management Fees Rules. During financial service claim representation, the Claims Management Fees Rules require your total charges, before VAT and including all expenses incurred as part of your legal representation, to be:



- reasonable and no greater than the relevant maximum percentage rate of charge, and the maximum total charge, specified in the Claims Management Fees Rules, or
- reasonable, if circumstances are such that the maximum rates are not applicable.

The maximum charges are stated in the Claims Management Fees Rules.

## **Reasonable charges**

The Claims Management Fees Rules specify certain exemptions. If an exemption applies, then all or some stages of your representation - and related charges for that representation - are exempt from the maximum charges. This is only the case if a claim's circumstances mean it is automatically exempt, or if we otherwise approve your application for a case to be exempt (please see below for further information on exempt circumstances).

If such circumstances apply during financial service claims, you are required instead to make only reasonable charges for your representation. It is important to remember your charges must be reasonable in all circumstances in any event, and that the presence of an exempt circumstance during a financial service claim does not remove this duty.

Where you consider that a claim on which you are providing representation is exempt from the maximum charges, you must make sure that you provide your client with enough information in a clear, understandable manner to enable them to make an informed decision about how they want to proceed. You must also be careful not to use work that is exempt from the maximum charges to increase your profits in ways that mean the charges are unreasonable or take unfair advantage of the client concerned.

Failures in this area could amount to breaches of our regulatory requirements, in particular, paragraphs 1.2, 1.4 and 8.6 of the Code of Conduct for Solicitors, RELs and RFLs.

## **What are reasonable charges?**

A reasonable charge in a financial service claim will depend on a range of circumstances, including levels of work undertaken on behalf of a client, and market rates for that representation.

As confirmed above you must only make fair and reasonable charges to your clients during any legal service. We expect you to be able to provide evidence to us (if requested) regarding the calculation of your charges, case by case and be able to demonstrate that the charges were reasonable.



If, for example, as the result of a complaint made to us, we assess the reasonableness of your charges for financial service claim representation, we might request information from you and consider factors such as:

- your hourly rate and/or success fee
- the extent of claims management activity that was provided, recorded, and agreed with a client, and grades of fee-earners involved in the work
- steps taken to make certain a client was adequately informed, and provided consent, to charges.

You must also ensure that you meet your duties at paragraph 8.7 of the Code of Conduct for Solicitors, RELs and RFLs and provide the best possible information to your client about your charges, appropriately throughout their claim. If you fail to do so, and/or we determine that your charges are unreasonable you will fail to meet your regulatory duties. The Legal Ombudsman may also consider complaints about your charges.

### **When do a claim's circumstances mean charges are exempt from the maximum charges framework?**

A financial service claim, and your related charges for representation, is exempt from the maximum charges if any one or more of six circumstances can be evidenced. These circumstances are set out below. Where any of circumstances 1-5 apply, the claim is automatically exempt from the maximum charges. You must make sure that you have provided clear information to your client about this and that they have given informed consent for you to continue. Where you believe that circumstance 6 applies, you must [apply to, and receive approval from, the SRA](https://higher-rights.sra.org.uk/solicitors/resources/all-other-topics/apply-waiver/) [https://higher-rights.sra.org.uk/solicitors/resources/all-other-topics/apply-waiver/] in order for the claim to be exempt from the maximum charges.

#### **Circumstance 1: You undertake a reserved legal activity for your client**

This may be any [reserved legal activity](https://legalservicesboard.org.uk/enquiries/frequently-asked-questions/reserved-legal-activities/) [https://legalservicesboard.org.uk/enquiries/frequently-asked-questions/reserved-legal-activities/].

For a claim, this is most likely to be the conduct of litigation. There might be good reason for agreeing with your client that litigation is the most appropriate, or in some cases the only viable, route for progressing their financial service claim.

Your charges for representation on financial service claims that are progressed entirely through to an outcome through litigation are not subject to the maximum charges but must still be reasonable.



If one or more stages of the claim involves litigation, but other (perhaps initial) stages are delivered in ways that are subject to the maximum charges, you must make this clear to your client, and explain this clearly in your final bill. For example, this might be where a claim is progressed through one or more statutory redress scheme initially but is then directed to the courts.

(See also the exemption below for actual or anticipated court proceedings).

**Circumstance 2: Your client instructed you to pursue their claim before 26 July 2024**

If you have signed instruction and informed consent from your client to represent them on their claim before the introduction of the Claims Management Fees Rules, the maximum charges stated in the rules are not applicable. Your charges for these claims must still be reasonable.

**Circumstance 3: Your client has not been, or is not expected to be, awarded monetary redress**

Some financial service claims do not result in a monetary award. For example, this might be an order from a statutory redress scheme to reinstate your client back into their original pension scheme.

The maximum charges stated in the Claims Management Fees Rules are determined by monetary redress awarded, and so cannot apply to claims where monetary redress is not awarded. Your charges in these circumstances must still be reasonable.

**Circumstance 4: Your client's claim is not in scope for consideration by a statutory scheme**

If a client's claim from the outset does not meet the criteria for financial service complaints resolution, and/or rules set by a redress scheme operator, it may be ineligible to progress through statutory redress schemes. In those circumstances your charges must still be reasonable if you represent the client through other routes.

**Circumstance 5: Your client's claim can only be progressed through court proceedings**

Further to circumstance 1 above, you may also make reasonable charges for claims that may only be progressed further through the courts, where:

- the limitation period for issuing court proceedings on behalf of your client expires imminently.



- one or more relevant statutory redress scheme has determined, and provided reasoning, that it cannot, or should not, consider your client's claim.
- the claim's anticipated value is reasonably considered to exceed maximum redress that may be awarded from one or more relevant redress schemes.
- your client's claim features novel, complex or important points of law - with potential wider ramifications - that mean representative or group action in court is in your client's best interests.

In those circumstances your charges must still be reasonable.

**Circumstance 6: Your client's claim has exceptional circumstances that mean the reasonable costs of representing them will likely exceed the maximum total charges**

The rules also recognise that there may be exceptional circumstances present in some claims that are eligible for progression through one or more statutory redress schemes (in addition to those exempt circumstances highlighted above) that make the claim particularly novel and complex. This might mean that your representation is reasonably expected to exceed the maximum permitted charges.

The circumstances might be apparent from the outset, or become apparent as your client's claim progresses. If, as a result, you have reasonable grounds to believe that your ongoing representation to the client is unviable within the maximum charges, you may make an application to us to seek our approval to be exempt from the maximum charges and instead commence or continue your representation using reasonable charges.

We will consider these applications on a case-by-case basis to assess whether or not we are satisfied that your representation should require charges that are above the maximum levels specified in the banding framework.

You will need to evidence the exceptional circumstances and reasons why you believe you cannot otherwise provide the services required by the client within the parameters of the maximum charges. Factors that we will consider are (but are not limited to):

- claims that move across more than one statutory redress scheme, or that are reasonably expected to.
- claims expected to be - or that are actually - prolonged significantly beyond average case-determination timeframes for the FOS, TPO, and or the FSCS.
- claims involving multiple parties.
- claims with international elements.
- certain pension cases involving authorised representatives.



For the avoidance of doubt, we will not approve applications for an exemption on the basis that you are unable to provide representation within the maximum charges unless you can demonstrate that the claim is particularly novel or complex.

[Download SRA Claims Management Fees Rules exemption form](https://higher-rights.sra.org.uk/solicitors/resources/all-other-topics/apply-waiver/#fees)  
[<https://higher-rights.sra.org.uk/solicitors/resources/all-other-topics/apply-waiver/#fees>]

## **Calculating your total charges**

Some financial service claims take place over prolonged time periods or have case-specific complicating factors.

You may advise your client at the outset of their claim, for example, that their claim appears to be straightforward with a clear and identifiable roadmap for seeking redress through a statutory scheme, and that therefore your representation will be no greater cost than the maximum charges in the rules. Your client may instruct you to begin work on that basis.

However circumstances might change. If their claim subsequently triggers any circumstances confirmed above, you must seek approval from your client (and also us if circumstance 6 applies) if you consider that you need to make reasonable charges over and above the maximum charges specified in the rules from that point onwards in their claim.

Your calculation of total charges at the conclusion of your client's claim must be reasonable and be made:

- entirely within the maximum charges, or
- entirely with reasonable charges from the outset if exempt circumstances exist or you are permitted to do so by the SRA, or
- with specific stages of your representation charged within the maximum charges, and other stages using reasonable charges if exempt circumstances become apparent or you are otherwise permitted to do so by the SRA.

In all cases you are reminded that you must meet your duties to:

- provide the best possible information to your client about your charges, at appropriate intervals throughout their claim (paragraph 8.7 of the Code of Conduct for Solicitors, RELs and RFLs)
- not abuse your position by taking unfair advantage of clients (paragraph 1.2 of the Code of Conduct for Solicitors, RELs and RFLs, and paragraph 1.2 in the Code of Conduct for Firms).

## **Further help**

If you require further assistance please contact the [Professional Ethics helpline](https://higher-rights.sra.org.uk/contactus) [<https://higher-rights.sra.org.uk/contactus>].