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Our ref: MC\CER\LSCP

Legal Services Consumer Panel
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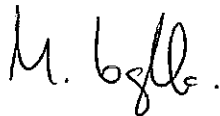
Dear Sirs

**LEGAL SERVICES CONSUMER PANEL –
INVESTIGATION INTO REFERRAL ARRANGEMENTS**

Please find enclosed our response to the above survey.

We look forward to hearing from you.

Yours faithfully



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LEGAL SERVICES CONSUMER PANEL – INVESTIGATION INTO REFERRAL ARRANGEMENTS

ATTACHMENT 1

Investigation Scope

The Consumer Panel is defining referral arrangements as any arrangement under which business is received from, or referred to, a third party. In the legal services sector, the third party may be another lawyer, but it may also involve introducers such as claims management companies, insurance companies and estate agents. Referral arrangements are often characterised by payment in return for referral of business, but fees do not need to be involved.

The Consumer Panel will be examining the use of referral arrangements by authorised persons across the whole legal profession, although we will prioritise areas that have the greatest consumer impact. In considering different types of referral arrangements, the Panel will be looking at both the payment and the receipt of referral fees by lawyers under a number of different models, as well as non-monetary arrangements that are linked to the introduction of clients, such as the provision of free or below-cost services in exchange for the referral of other business.

Keys Areas of Investigation

The Panel is specifically seeking views and evidence from stakeholders on the following topics:

- a) Demonstrable positive and negative outcomes for consumers due to referral arrangements, such as the impact on access to justice, consumer choice of lawyer, quality of legal advice and independence of legal advice.
- b) Feasibility and effectiveness of possible consumer safeguards, such as consumer education, disclosure, consent, standardised referral agreements or a cap on referral fees.
- c) The role of referral arrangements in driving or inhibiting competition in the legal services market.
- d) Degree to which referral fee size reflects equivalent marketing/other costs.
- e) Feasibility and effectiveness of alternatives to referral fees as a means of obtaining work, such as direct advertising by law firms, the establishment of legal firm marketing alliances, non-paid referral networks and/or quality assurance schemes.
- f) Risks and benefits for different stakeholders of a reintroduced ban on referral fees, including consumers, the legal profession, and non-legal stakeholders, such as claims management companies.
- g) Relevant parallels with referral and commission arrangements used in other sectors in relation to customer introduction.

We would also appreciate information on any other areas that we have not included, but which you consider would be relevant to our investigation.

RESPONSE TO

LEGAL SERVICES CONSUMER PANEL – INVESTIGATION INTO REFERRAL ARRANGEMENTS

Keys Areas of Investigation

a) (i) Access to justice

Referral fees paid to either a legal expense insurer or a claims management company, allow greater access to justice, as many of those whose injuries are not severe enough to merit them being off work for example, do not realize that they can genuinely pursue a claim for personal injury from a negligent third party, and would not bother to contact a solicitor, if they were not put in touch with one when a valid claim was spotted by either an insurer or a claims management company and referred to a solicitor for review.

(ii) Consumer choice of lawyer, quality of legal advice and independence of legal advice

The solicitor to whom the claimant is referred, does not “own” the claimant, and the claimant can of course decide to proceed with their own solicitor if they prefer, and enquiries are made of the claimant prior to a referral fee being paid in most cases. As to the quality of legal advice and the independence of the legal advice, respectable authorised referrers of work, actually look out for the interests of the claimant and ensure that the quality of legal advice is good. Only solicitors whose service levels are very good and provide high level legal advice are kept on the panel of these referrers, who are sought after because of the volume and quality of cases that they can refer to a solicitor. Only those solicitors who match their required standards can join the panels, whereas if the claimant were to contact the nearest solicitor to pursue a personal injury claim, then it is pure chance that will dictate whether or not the solicitor is truly experienced in providing legal advice for personal injury cases.

The referrer/legal expense insurer/provider of cases to solicitors, helps to ensure the quality of legal advice given to claimants rather than the reverse. As for the independence of the legal advice, the solicitor owes a duty of care to his client alone, to act in their best interests, and when dealing with a respected and well regulated supplier, conflicts of interest do not arise. It is those suppliers of work who tried to involve the solicitor in conflicts of interest such as deducting damages from the claimant's award and paying it to the supplier at the back end of the claim, that have already been weeded out by much closer regulation of

claims management companies, and there are severe penalties to be suffered by any claimant's solicitor who deals with a supplier of this nature, under law society rules.

b) (i) Feasibility and effectiveness of possible consumer safeguards, such as consumer education, disclosure, consent

The regulations are already in place to alert the claimant to the fact, under Law Society Rules, that a referral fee has been paid for the case and the amount of the referral fee that has been paid must be disclosed also at the present time. Thereafter the claimant is merely concerned about the quality of legal advice given to him/her, and as detailed above, is able to go to the referrer of work if unhappy with the level of service provided by the solicitor to whom the work was referred, in the first instance. In the years that I as a solicitor have dealt with disclosure of referral fee to claimants in this way, no claimant has ever complained about the fact that a referral fee has been paid as far as I am aware.

(ii) Standardised referral agreements or a cap on referral fees

The fact is that referral fees take the place in many solicitors firms such as ours, of marketing fees, and to get the number of referrals from direct marketing to the public, we would no doubt have to run major nationwide television and radio campaigns, in competition with a number of other bodies. If referral fees were banned, then the number of claimants overall would reduce, as many undervalue the level of their injuries, and would not pursue a claim. A cap on referral fees is obviously artificial, and would not necessarily reflect the true cost of replacing the volume of cases through referral fees with marketing costs. The level of £200 mentioned by Lord Justice Jackson, in my opinion massively underestimates the marketing cost per case to a firm like ourselves. If a cap on referral fees was put in place then claims management companies would not be able to afford to continue, and solicitors would have to expand their marketing budgets to try and maintain volume. The cost of this would be in all probability, be far more than the cost of paying referral fees, and may not work.

c) The role of referral arrangements in driving or inhibiting competition in the legal services market

Claims management companies and legal expense insurers who refer work to solicitors help to ensure that client care is maintained at a good level, otherwise the solicitor providing poor client care will receive complaints from the source, and the possibility of being replaced by firms eager to join the referral company's panel. The cost of referral agreements has increased over the last few years due to the number of firms that have been attempting to get on these panels, but it is only the firms that have maintained good service level that have managed to stay on these panels. The referral fee arrangement has no negative impact in my opinion upon the consumer, and relations have to be maintained with many different referrers, as a risk of being taken off any particular panel and thereby losing all ones work, is too great.

d) Degree to which referral fee size reflects equivalent marketing/other costs

Subject to gaining panel membership of a reputable supplier of work, the fact is that you are likely to receive very few cases where your initial investigations lead you to the opinion that the case will fail, and therefore needs to be rejected. Compare this to the massive costs involved in pursuing a plethora of cases after an advertising/marketing campaign. As shown within The Accident Group and TAG litigation, a huge number of cases that were accepted should have been rejected, showing the extent of work that needs to be undertaken to get to the point where you have a valid/good case that you are happy to pursue to a conclusion. If you operate properly then this massive cost has to be added on to your marketing fees, which in themselves would be huge. Our firm presently accept between three and four hundred personal injury cases per month, mainly arising out of road traffic accidents, and we have no idea what the marketing costs would be with a view to gaining approximately four thousand high grade quality cases per annum from advertising alone, but we believe it would equate if not exceed the amount that is paid in referral fees per annum. The referral fee process allows certainty to the solicitor, and benefits the claimant with a specialist practitioner dealing with their case.

e) Feasibility and effectiveness of alternatives to referral fees as a means to obtaining work

I would refer to paragraph d above. Furthermore, with the advent of "Tesco Law", solicitors would be relatively ineffective in the advertising market place compared to the spending power of supermarkets which already have huge marketing budgets. Banning referral fees, or even capping them will have the effect of allowing very large companies such as Tesco to dominate the market, and their extra spending power will obviously have a telling affect upon the effectiveness of advertising campaigns by law firms.

f) Risks and benefits for different stakeholders of a reintroduced ban on referral fees

(i) Consumers:

The risk is that many consumers would be unaware of their legal rights having suffered injury in an accident, and would not pursue a rightful claim, leading to a reduction in access to justice. In addition, they may not receive the specialist legal advice that we, and firms like us, provide.

(ii) The legal profession:

Many firms would be unable to maintain their current workforce due to the ban on referral fees and this would lead to large job cuts for those firms. A reduction in the number of firms with specialist expertise would lead to a reduction in quality of legal advice for the consumer.

(iii) Non legal stakeholders such as claims management companies:

Many claims management companies, no matter how well run and regulated, will have to leave the industry if referral fees were banned, or even capped at a very low level. This would benefit the insurance company shareholders, as there would be reduction in the number of people who would pursue a claim without the assistance of a claims management company from the outset. In my opinion, the insurance company shareholders would benefit at the expense of the general public's access to justice.

- g) One immediate comparison that springs to mind is that of insurance brokers introducing clients to insurance companies and insurance products, for which they are paid a commission by the insurance company. For the insurance industry to be lobbying against referral fees in the legal profession would therefore appear to be slightly hypocritical. Insurance brokers and their commission from insurance companies, and financial advisors referring work to banks and financial institutions, in return for referral fees/commission, are the two main examples of referral and commission arrangements working legitimately in other sectors. Insurance brokers and financial advisors would be in some difficulty if the government decided that commissions should not be paid by those to whom they refer clients. Both insurance brokers and financial advisors, employ a large number of people throughout the country, as do solicitors such as ourselves specialising in personal injury, and in times of recession, such as the country faces at the present time increasing the number of unemployed in such an arbitrary fashion as is proposed purely for the benefit of shareholders of insurance companies, (for that is who will ultimately benefit from the ban on referral fees that is being proposed) would not, in my opinion, be at all appropriate.

In the event that a referral fee ban is brought in then, logically, thought must be given to banning all referral fees in all commercial sectors. Such artificial and unnecessary regulatory impositions, would in my opinion, only serve to destroy jobs in the future.

Further points for consideration; Consumers/clients have to be informed of the amount of referral fees at present, just as brokers and financial advisors have to give details of their commission arrangements. From our personal experience, they/consumers are not concerned with the level of referral fee paid for their case, they just want the best level of service possible from the solicitor dealing with their claim. If they are unhappy with the level of service provided, they can complain to the referrer, as well as the solicitor, unlike a direct marketing situation, where the client is on his/her own and more reliant upon the solicitor dealing with their case, and the complaints procedure of that firm.

Essentially, the consumer will receive absolutely no additional benefits from

banning or capping referral fees and, as such, there is no good reason to take this step.

WORD\MC\RESPONSE TO LEGAL SERVICES CONSUMER PANEL – INVESTIGATION INTO REFERRAL ARRANGEMENTS