Minster Law is a leading law firm specialising in personal injury work particularly on behalf of victims of road traffic accidents. Minster Law advises and represents Claimants injured in road traffic accidents. It currently handles approximately 50,000 personal injury claims per annum and therefore has approximately 10% of the market share for these types of claims.

Minster law is a Private Limited Company and has a corporate structure unlike most law firms having a non-legally qualified Chief Executive and a non-legally qualified Chief Finance Officer. Both have been recruited from outside the legal profession, as has the Chief Information Officer. They all provide a wealth of business experience and corporate leadership that promotes the efficient running of the company and supplements and enhances the experience of the legally qualified Directors of the company. Minster Law is a dual regulated law firm regulated by both the Solicitors Regulatory Authority (SRA) and the Financial Services Authority (FSA).

It operates a 200 seat UK based call centre undertaking first notification of loss activity (FNOL). Consequently Minster Law performs the services traditionally performed by an insurer when a policy holder wishes to report an accident, theft or vehicle damage under their policy.

Minster Law pays referral fees and complies with Rule 9 of the Solicitors Code of Conduct in its entirety. Minster law advocates and supports the continued policy of allowing the payment of referral fees in addition to supporting the industry in ensuring that referral fees are duly regulated, and further believes that referral fees are in the interest of both the consumer and access to justice.
Executive Summary

i. In March 2001, following a review of the restrictions in the professions the Office of Fair Trading (OFT) published its report “Competition in the Professions.” This report recognised that lawyers are entrusted with the delivery of services of considerable public importance and that as such it was in the interests of consumers to ensure that competitive conditions exist within the market place.

ii. The OFT identified the prohibition on paying referral fees as anti competitive and to the detriment of consumers as a whole.

iii. Despite their protestations most solicitors and nearly all personal injury solicitors enter into financial arrangements with introducers of work, whether these arrangements are termed as being “marketing fees” paid to collective marketing firms, or whether they provide help lines, discounts or other ancillary services, to the referrers in return for introductions.

iv. Solicitors who oppose referral fees particularly in personal injury cases are more likely to be opposing the transparency and accountability requirements of Rule 9 of the Code of Conduct, a consequence of their inability to attract volume arrangements because of a lack of infrastructure or their lack of financial and service credentials.

v. Referral fees have since the early 1990’s been paid by lawyers in one form or another and will continue to be paid in one form or another should a prohibition be re introduced.

vi. The main representative bodies of personal injury lawyers APIL and MASS oppose referral fees and yet the majority of them enter into financial arrangements with either BTE insurers, claims management companies, or Trade Unions to secure introductions.

vii. Referral fees fund an entire claims and accident management infrastructure which in itself provides access to a wealth of services otherwise beyond the reach of the consumer.
viii. An introducer must manage its suppliers in accordance with its own services proposition. It is entirely usual for the costs of service provision and supply management to be met by the supply chain. For example in retail the costs of a supplier of goods or services to ASDA in accordance with the ASDA service proposition would be born by the supplier of services.

ix. Minster Law has direct evidence that volume referrals secure the best possible terms and service for the consumer at the lowest possible cost.

x. Volume arrangements allow economies of scale to bring about efficiencies and improvements within law firms which in turn allows for investment in IT and service architecture other lower volume solicitors are not capable of delivering an example being the client having access to services 24 hours a day.

xi. Modern consumers make purchase decisions based on brand recognition. Consumers using brands such as Marks and Spencer, Post Office, the AA, Direct Line and Tesco expect that the entire supply chain (including any solicitor) are affiliated with the brands own service provision and culture. Those brands are very protective of the “brand” and as such demand high standards of client care, generally far above that given by standard high street practices.

xii. Since the lifting of the prohibition in 2004 referral arrangements are now more sophisticated than ever before. In volume arrangements they contain many consumer safeguards including service level agreements, quality control and audit requirements, disaster recovery and often complex practice management and service delivery requirements.

xiii. The competition to join the supply chain legal panels and attract volume introductions drives each Law Firm who aspires to become a panel member to be responsive to the needs of the consumer and thereby the consumer benefits from increased competition.
xiv. Competition on price has never been fiercer within legal services, and is enhanced by the presence of intermediaries attracting consumers to their proposition and driving down prices.

xv. Market conditions regulate the payment and level of referral fees, and when fixed costs regimes are in place referral fees promote competition based on price and cost and service levels.

xvi. The proportion of referral fees paid out to income received by a law firm should not be of relevance. If an organisation chooses to operate on a high volume low margin basis then it should be allowed to do so unless there is evidence of consumer detriment.

xvii. The current regulatory landscape in respect of the payment of referral fees is unfair and weighted against some members of the legal profession. Solicitors are more tightly regulated than other providers of legal services in respect of referral fees and as a consequence suffer a competitive disadvantage.

xviii. BTE arrangements where solicitors are obliged to deal with all cases referred regardless of financial limits or jurisdictional issues provide access to justice to hundreds of thousands of policyholders seeking compensation or redress who would otherwise not gain access to representation. These non cost bearing cases are loss leaders and lawyers provide services to them purely in return for beneficial panel terms. Removing those terms would require someone to pay for access to those services.

xix. The true cost of “Before the Event” insurance which is common (BTE) cover for in these circumstances would be in excess of £250 should these arrangements be prohibited. Presently most BTE policies cost less than £30 per policy.

xx. There is no logic in singling out referral fees paid by solicitors from other overheads such as marketing costs, or professional indemnity insurance. The costs of any overhead drive the performance of the business.
xxi. The success of any marketing activity employed by a solicitor is ultimately measured by the cost per acquisition of a client. Fixing this cost per acquisition and by reference to referral arrangements is nothing short of good business planning.

xxii. Marketing alliances already exist and the price per acquisition is no less when these are utilised than in referral arrangements.

xxiii. The extent of regulatory focus on referral fees provides adequate safeguards to the consumers. More focus should be exerted on other regulatory issues which impact on the consumer such as client care and accessibility, commissions retained by the profession, and practice management standards.

xxiv. The recent clamour for the abolition of referral fees by insurance industry, the Law Society and more notably Lord Jackson is directed overwhelmingly to referral arrangements that are characterised by a monetary payment in return for the introduction of clients. There is no such clamour to regulate profit shares or the provision of other services in return for introductions. The acquisition cost of a new business for a growing Firm is a hidden cost. With referral fees, that cost is transparent allowing for the building of proper business models.

xxv. The context of any change to the regulation of the legal profession must be the changing of the future legal landscape as provided for under the provisions of the Legal Services Act 2007. This Act provides the framework for multi disciplinary law firms, non lawyer owners and managers, external investment in law firms from other industries and new entrants into the legal services market.

xxvi. Licensed conveyancers are not as strictly regulated and will writers are not regulated in any way whatsoever, in terms of referral fees, the introduction of capital from non lawyers and profit sharing and it is widely recognised that their services can be offered cheaper
than that of solicitors. The prohibition on referral fees is one small example of how competition is being restricted within the market place.

Introduction

The LSB Consumer 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 and insurers.

g) Relevant parallels with referral and commission arrangements used in other sectors in relation to customer introduction.
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.

Minster Law’s initial proposition is that there is no evidence that there is any detriment to consumers by having referral arrangements. Referral arrangements have by themselves been in existence for some considerable time yet only since 2004 legitimised and regulated. It is difficult to gauge the reasons for why there is opposition to referral arrangements on the basis of consumer detriment. Most of the opposition is levelled by insurers citing increasing claims costs. The following reasons are commonly cited by the legal profession as being objections to referral arrangements:-

1. The financial arrangements may restrict a referrer’s arrangements for dealing with conflicts of interests by entering into arrangements with only one supplier of legal services.
2. The solicitor’s judgement would be impaired by the financial arrangement and the importance that a solicitor places on a referrer such that the consumer would not receive full and proper independent advice.
3. The quality of legal advice is a secondary consideration to a referrer, the price obtained in referral fees is of primary concern. Thereby quality of advice suffers as a result.

There is no evidence to support the above three objections and can be dealt with in this order:-

1. In most referral arrangements benchmarking suppliers on quality and price is a commonplace. That is to say a firm is rarely appointed exclusively to deliver services and benchmark solicitor(s) are utilised to ensure that service levels are maintained, in addition to ensuring that conflict of interests can be dealt with. Where this is not the case regulation could ensure that adequate arrangements need to be put in place to deal with conflicts of interests. This would of course be in addition to the Solicitors Regulation Authority’s own safeguards and professional conduct regime in respect of conflicts of interests.
2. In practice referral arrangements are a separate to functional and operational performance. The advice provided to a lay client is in no way influenced by the volume of referrals. In companies with scale there is a strict dichotomy between account management and commercial management of relationships to that of execution of service. In firms without scale this is not the case and the two functions are often fused.

3. In most cases referral fees fund a service proposition which in itself provides access to a wealth of services otherwise beyond the reach of the consumer. Whether referrers of personal injury claims, conveyancing services or other legal services these organisations have service at the heart of their propositions and as such the referrer must manage all of its supply chain in accordance with that service proposition in order to be successful. This requires significant resources on the part of the referrer which must be paid for. It is entirely usual for the costs of service provision and supply management to be met by the supply chain.

Furthermore arrangements with a restricted panel give rise to volume which in turn allows economies of scale to bring about efficiencies and improvements within law firms. These efficiencies promote innovation which again compliments service. A prime example of this are accessibility in which volume solicitors provide 24 hour help lines, opening hours beyond usual office hours, on line fulfilment and communications portals to name the most obvious of services. Some of the major client focussed innovations that are now appearing in Law Firms are as a result of referral arrangements.

Modern consumers make purchase decisions based on brand recognition. Consumers using brands such as M&S, Post Office, the AA, Direct Line and Tesco expect that the entire supply chain are affiliated with the brands own service provision and culture. Before being accepted onto a referral arrangement solicitors firms are required to have undergone enhanced due diligence of a financial and service nature in order to win these contracts. Whilst regulators such as the SRA cover basic client care requirements (it is their job to ensure minimum standard compliance) within their codes of conduct, rarely is good service provision monitored to the extent that brands monitor and enforce their own...
service standards. The Solicitors Regulation Authority ("SRA") own code of conduct is viewed by much of the profession from a compliance perspective rather than a service proposition perspective. Referral arrangements and the service levels incorporated into arrangements deliver and ensure the best possible service for clients.

_feasibility and effectiveness of possible consumer safeguards, such as consumer education, disclosure, consent, standardised referral agreements or a cap on referral fees._

The premise here is that consumer safeguards are needed beyond those that are already present for the industry. In order to answer this question therefore we feel that an overview of the safeguards which exist at present is required. Firstly, it is worth noting that the SRA regulate referral arrangements between solicitors and introducers of work. Their rules provide for the transparent arrangements between introducers and clients, introducers and solicitors and also introducers and clients. In addition to the transparency provisions solicitors are required to comply with their other professional obligations and also ensure that others comply in respect of cold calling, publicity, and the receipt of commissions and as mentioned above conflicts of interests.

In addition the Ministry of Justice also regulates the introduction of work to solicitors where there is a potential for consumer detriment, and has identified claims management as an area where regulation is required. The Ministry of Justice continues to perform this regulatory function.

It is Minster Law's contention that properly executed referral arrangements with solicitors needs no further regulation other than that which currently exists. Indeed it is the case that in some cases solicitors may already be disadvantaged by their strict regulatory requirements where other non lawyer competitors are not required to comply with these conduct rules. It is likely that the advent of alternative business structures will compound this disparity and thereby damage competition within the market place.
Solicitors who oppose referral fees particularly in personal injury cases are more likely to be opposing the transparency and accountability requirements of Rule 9 of the Code of Conduct or be opposing the consequences of their inability to attract volume arrangements because usually because of a lack of infrastructure or financial and service credentials. They are failing to adapt to current market conditions and are failing to modernise their business practices.

Referral fees have since the early 1990’s been paid by lawyers in one form or another and will continue to be paid in one form or another should a prohibition be reintroduced. This is an incontrovertible fact.

The main representative bodies of personal injury lawyers APIL and MASS’s opposition to referral arrangements is hypocritical as the majority of their membership enter into financial arrangements with BTE insurers, claims management companies, or Trade Unions to secure introductions. Similarly the opposition to referral fees by insurers is hypothetical as Referral Fees paid to insurers by solicitors in effect takes funds from lawyers and places those funds in the hands of insurers. Those funds, in the absence of referral fees being paid, because of the fixed costs regime would in the absence of referral arrangements reside in the pockets of solicitors rather than insurers. Referral arrangements should lower premiums. A cap on referral arrangements in our view logically fails on the same basis that a prohibition fails.

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

Minster Law does not consider that referral arrangements inhibit competition though it is accepted that volume referrers do operate rigorous procurement processes to ensure that their chosen suppliers fit their often stringent criteria, and this usually means that solicitors who do not have the infrastructure which allows them to meet this criteria are usually unsuccessful. This however should not be confused with inhibition of competition and in fact the competition to meet these expectations drives each competitor to be responsive to the needs of consumers and thereby flourish.
The explosion of marketing of legal services online through intermediaries and via the provision of legal expenses policies together with the mainstream marketing strategies employed by the profession now provides a wealth of information to enable consumers to make informed choices about the provision of services. In respect of insurance panels the consumer’s freedom of choice remains intact by virtue of the Legal Expense Insurance Regulations 1990.

Competition on price within the legal profession has never been fiercer. To take conveyancing as an example, the increases in competition to win business whether direct or through referral arrangements has led to a massive reduction in cost to consumers thereby benefitting consumers as a whole and resulting in some of the lowest costs worldwide and certainly throughout Europe. The same can be said for increased competition with the Wills and Probate sectors and the increasing advent of fixed fee Administration and Probate services. This competition is enhanced by the presence of referrer intermediaries attracting consumers to their own proposition and fixing prices in accordance with their agreements not inhibited by it.

**Degree to which referral fee size reflects equivalent marketing/other costs.**

The insurance industry has made great play of the costs of referral fees driving up the costs of litigation and the Oxcera report on referral fees commissioned by the ABI cites the relevant costs of marketing for Mars bars as a proxy in order to establish that referral fees paid by solicitors to obtain work are out of proportion to all other costs and as such exacerbate rising costs to consumers.

In the first instance the Association of British Insurers commissioned the report by Oxcera and as such in our view the partiality this report is questionable. In any event the report focuses solely on the rising claims costs of personal injury litigation. It does not comment authoritatively in respect of non personal injury work and the figures recited in this report are greatly exaggerated as a consequence is a one dimensional report.

In respect of litigation the most predominant referral fee model is that of volume BTE road traffic accident cases. Referral fees in this area are varied and dependant on a number of
factors including the volume of cases which are being referred. The higher the volume the greater the referral fee which can be paid. Minster Law’s assertion is merely that the size of the referral fee is of no relevance particularly in a market where costs are fixed. If an organisation chooses to operate on a high volume low margin basis then the costs of acquisition will increase and indeed be seemingly disproportionate. This is however simply the price elasticity of demand where higher referral fees attract more volume. Minster’s assertion is that this is acceptable and common business practice and the legal world should not be any different. The size of referral fee should not be of any relevance unless there is evidence of consumer detriment – which there is not.

There is no logic in singling out referral fees paid by solicitors from other overheads such as marketing costs, or professional indemnity insurance. The costs of any overhead drive the performance of the business.

In the case of litigation the courts are capable of regulating whether litigation is justified. In addition fixed costs apply in road traffic accident cases and thus become the focus of insurer’s attention. In respect of other legal services (conveyancing and probate for example) competition on price regulates the proportion of fees paid as referral fees, and is subject to the same price volume considerations.

**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.**

The premise that referral fees are far higher than the costs of acquiring clients by private advertising is rather condescending to both solicitors and referrers and suggests that neither of them have made an assessment of what a fair price for referral arrangements are in comparison to advertising directly. The success of any marketing activity employed by a solicitor is ultimately measured by the cost per acquisition of a client. Fixing this cost per acquisition and by reference to referral arrangements is nothing short of good business planning and makes for transparent costing as advertising is difficult to cost on a price per client model.
There is inevitably a trade off between a marginally higher price per acquisition and that of long term certainty of outgoing expenditure and return on investment. This allows solicitors to compile business plans (in Minster Law’s case up to 5 years in advance) benefitting all stakeholders not least of all being consumers and employees.

Marketing alliances with solicitors already exist. Minster Law has experience of these and the acquisition costs of clients under such arrangements are similar. Often as marketing expertise and administration of these organisations must be funded this increases the costs per client acquisition. Neither does this solution address the failings of competitors having been required to pool funds, and act in the common interests of each other. It assumes that all members of the pool are equal in terms of client service, have the same cultures and values and are driven by similar goals and objectives. This is not the case and is simply not a commercial reality.

Should volume referral arrangements be successfully prohibited then the costs all of the ancillary services currently provided by solicitors and often non cost bearing (operation of help lines, dealing with small claims, servicing other legal products at highly discounted fees) would need to be met. The true cost of before the event insurance policies currently sold for £20 would increase and likely be in excess of £250 - £300.

**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.**

The current regulatory landscape in respect of the payment of referral fees is unfair and weighted against some members of the legal services profession. Solicitors are more tightly regulated than other providers of legal services in respect of referral fees and as a consequence suffer a competitive disadvantage. A benefit of the referral fee prohibition would be to allow non solicitors, some of whom are not regulated in any way whatsoever, to continue to enter into referral arrangements.
There would be a huge detriment to consumers who would, in the absence of volume referral arrangements, be unable to access the services provided by solicitors currently provided in return for referrals such as those discussed above. One can use Minster Law’s 10% market share as a yardstick with which to identify this detriment and thus illustrate that at Minster alone we act for some 100,000 claimants involved in road accidents who would in the absence of referral arrangements not receive access to a lawyer because their cases fail to attract legal costs (they fall below the current small claims arbitration threshold). In addition Minster Law services the needs of up to 250,000 policy holders who receive access to justice on employment law issues, neighbourhood disputes and low value consumer issues who would once again be unable to secure legal representation without having to pay for this in full from their own pockets. Lord Jackson’s considers that these services would not diminish were referral fees abolished but fails to recognise that these services are provided for in return for volume cost bearing cases. Remove the incentive for the provision of these services then lawyers will fail to provide them and the costs of provision will fall to either consumers themselves, or society as a whole through the Legal Aid system. If Lord Jackson or the LSB considers that that it is acceptable to offer discounted legal fees or ancillary services in return for referrals of business then the logic of any review of current referral arrangements is questionable.

Minster does not believe that referral fees increase claims costs. It is irresponsible file handling practices on the part of overly aggressive and unreasonable solicitors and inefficiencies on the part of insurers which is responsible for this.

Irresponsible file handling practices can be dealt with adequately by the courts system and reform of the law as in the case of the Ministry of Justice claims reforms.

**Relevant parallels with referral and commission arrangements used in other sectors in relation to customer introduction.**

If one accepts that referral arrangements can be distinguished from any other form of marketing and acquisition costs, then there are also numerous parallels with referral
arrangements in other industries and free markets which are successful. There are also examples of arrangements which are entirely unregulated.

A great proportion of insurance business in the UK is attracted by brokers who the insurance underwriters pay commission to in order to attract clients. Often the commissions payable to brokers will be significant, and in some cases large Brokers will actually subsidise rates provided by underwriters in order to secure business at a loss with a view to releasing profit over a longer period of time in reliance on renewal income. This is in no way different to referral fees. Broker commissions are an established model in attracting insurance business.

The financial sector is driven by commissions paid to brokers and financial advisers to secure clients. On average most financial advisors / brokers receive a commission equal to 40% of the revenue they generate.

**Conclusion**

It is too tempting to look at the issue of referral fees based upon the populist opinion, however influential, of disaffected sections of a particular market, or sections of the legal profession that wish to maintain a monopoly on the provision of services. It has long since been established by the Office of Fair Trading, Clementi and Ministry of justice that consumers have for too long suffered poor service, inadequate access to legal services and poor competition on price.

There are of course referrers of business and referral arrangements in place which are purely commercial and may even be unsavoury but these are very much the exception. On the whole referral arrangements are a necessary and thoroughly entrenched part of the provision of legal services.

Quite apart from the fact that there is no evidence that referral arrangements have any adverse impact on consumers the prohibition on referral fees paid by the legal professional will only serve to drive referral arrangements underground where they will not be regulated, or provide unregulated non legal professionals with a huge competitive advantage.
The Legal Service Act continues apace laying the foundations for external ownership and investment in law firms by non lawyers and private industry. Alternative Business Structures will arguably not require the sophistries of referral fee arrangements having instead the ability to co-own or profit share. A referral fee prohibition will only serve to prevent lawyers from competing with Alternative Business Structures, non lawyers and non regulated professions.

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