

Solicitors Regulation Authority  
Regulation and Education Team  
The Cube  
199 Wharfside Street  
Birmingham  
B1 1RN

The logo for the Legal Services Consumer Panel is located in the top right corner. It consists of a large blue circle on the left, and a blue rectangular area on the right containing the text "LEGAL SERVICES CONSUMER PANEL" in white, uppercase letters. The text is arranged in four lines: "LEGAL", "SERVICES", "CONSUMER", and "PANEL".

LEGAL  
SERVICES  
CONSUMER  
PANEL

11 June 2015

Dear Sir/Madam,

### **Improving regulation: proportionate and targeted measures**

The Panel would like to make a brief response to this consultation, focussing primarily on the proposals relating to alternatives to client accounts (questions 10 and 11) and on fee sharing and referrals (question 19). The remainder of the proposals on which the SRA is consulting do not raise specific concerns for the Panel, as such we have no further comment on these.

#### **Alternatives to client accounts**

As you will be aware, in 2012-13 the Consumer Panel reviewed the approved regulators' financial protection arrangements, in which we encouraged regulators to continue to explore options to slim down the need for lawyers to hold client money. This included encouraging the use of escrow schemes which could make things less risky for consumers.

Holding client money carries inherent risks. Theft of client money, failure to account for client money, and other dishonesty were some of the risks identified by stakeholders at the time, each with potentially serious ramifications for the consumer.

Overall we support the SRA in its move to approve third party managed accounts. The Panel appreciates that the costs of regulation can feed through to the prices that consumers pay for legal services. The proposal is one way of potentially reducing those costs. However it is essential that any changes do not create barriers to efficiency, particularly where it is important that money is transferred quickly, such as when buying a house. Disruption to the consumer should be minimised.

We recognise that the shift from using client accounts to third party managed accounts will be a gradual one. If the SRA is to allow the use of third party accounts as a means of bettering consumer protection, then firms need to be encouraged to use these over client accounts.

## **Fee sharing and referrals**

The SRA has posed an interesting question around whether or not referral fees in publicly funded and criminal cases should be permitted, with a view to initiating further debate in this area. The Panel recognises the importance of opening up these issues, questioning the assumptions on which past policies have been made, and challenging whether or not the status quo should be maintained or disrupted.

In 2010 the Panel produced a report that looked at referral fees in the personal injury market. In this instance we favoured a three stage approach – reveal, regulate and retain – stating “The Consumer Panel is committed to the availability of quality, reasonably priced legal advice, and access to justice. If referral fees can assist this, while retaining the independence of legal advice, then there is no reason why they should not remain part of the legal provision scene”.

In considering the SRA proposal we are very aware that our former report was confined to a specific section of the market. We have not therefore drawn on past findings here focussing instead on using the consumer interest principles to see what the potential impact of this rule change might be, and identify the arguments for and against.

### *Arguments in favour of referral fees*

The leading argument for allowing referral fees in criminal and publicly funded cases is the potential for it to broaden consumer choice, in turn leading to increased access to justice. For example, although a solicitor may pay a marketing agency a fixed fee per month to have their services advertised, they cannot pay on a per referral basis. If they could pay, there is the potential for improved commercial viability in this area and this could encourage more participation from legal services providers. The result could be more choice for consumers.

The Panel is of course supportive of steps which can lead to increasing access. However if these come with a trade-off – for example, reduced quality or increased unfairness - then on balance it may not be an appropriate approach.

The difficulty in answering the SRA’s question comes down to the fact that it is binary, a simple yes or no to referral fees with no real business case to support allowing them. In theory, with sufficient requirements on transparency and safeguards, there is potential that permitting referral fees could indeed be a positive step – but without sight of any supporting framework it is difficult to simply agree.

### *Arguments against referral fees*

One of the most compelling arguments against removing the ban is the protection of vulnerable consumers.

The cases affected by this proposal – criminal and publicly funded – are by their nature most likely to involve the most vulnerable of consumers. In our 2014 report on Vulnerable Consumers, we identified 20 individual risk factors in legal services. People with learning disabilities for example are statistically more likely to come into contact with lawyers than the general population because they are more likely to suffer harassment or bullying or be victims of crime. And vulnerabilities can occur by transitory situations, which are not necessarily obvious at first glance. Fluctuating characteristics include English as a second language, and in our research on immigration and asylum services, for example, we identified asylum seekers as a particularly at-risk group. Any negative developments that occur as a result of removing the ban would therefore have a disproportionate effect on the more vulnerable of legal services users.

There is also the potential impact on legal aid funding. The perceived risk identified 15 years ago was that the availability of referral fees would spur criminal and other publicly funded cases which would otherwise not have been brought, thus costing the taxpayer more. Even at a time when legal aid funding was, by comparison to today, easier to come by, it was perceived to be too much of a threat to allow referral fees. In today's context, the risks are amplified by the increasingly limited access to legal aid.

A further consideration here is the increasingly blurred boundaries between the professions, now that barristers can offer direct access, and solicitors can act as advocates. Allowing referral fees for SRA regulated professionals while barristers remain subject to a prohibition on referral fees risks causing market imbalance by creating an unfair playing field between the different professions in the provision of publicly funded legal representation and advice. Any distortion of the market is undesirable, and so without codified support from the BSB and the Legal Aid Agency we would not recommend that the SRA proceeds with any plans to remove the rule.

We would also add that even with support from the BSB and the Legal Aid Agency, we would heed caution. Consumers face very particular challenges when it comes to exercising choice in this area of law. While we recognise and welcome the growing trend of self-lawyering, we are very aware that this is not suitable for all consumers and, in these often specialist cases, more support is needed to help consumers assess the quality of the services being offered.

### *Conclusions*

While we recognise the SRA is seeking at this stage only to initiate a debate, the Panel would urge careful thought and consideration if it intends to take it any further. Our ultimate recommendation would be to retain the ban on paying referral fees in respect of criminal or publicly funded cases, given the potential detriment.

I hope these comments are helpful. Please contact Stephanie Chapman, Consumer Panel Associate, with any enquiries.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Elisabeth Davies', with a long horizontal flourish extending to the right.

Elisabeth Davies  
**Chair**