



Referral Fees

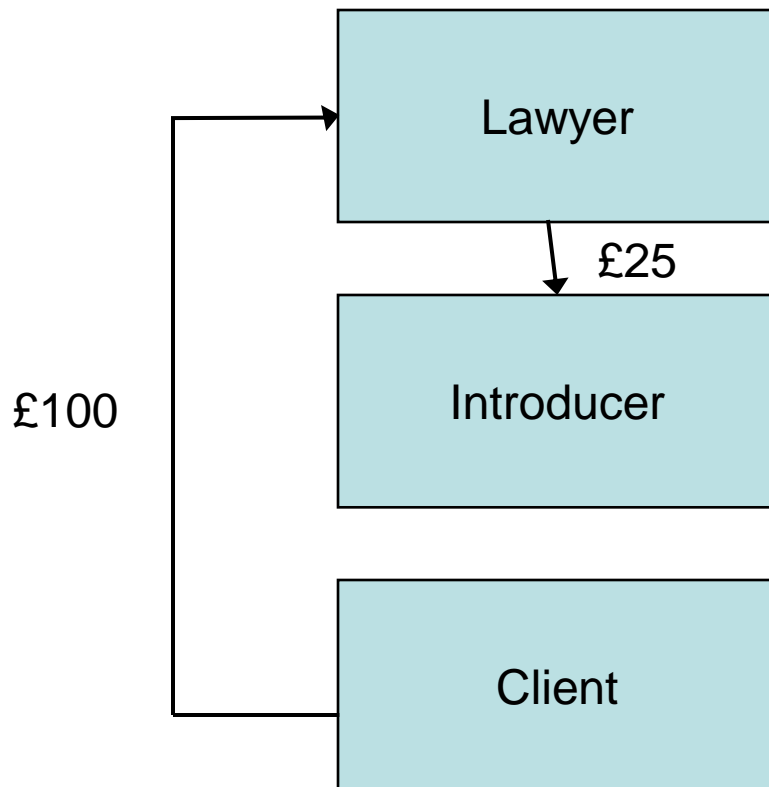
– Access to Justice or Road to Hell

Crispin Passmore, Strategy Director, LSB

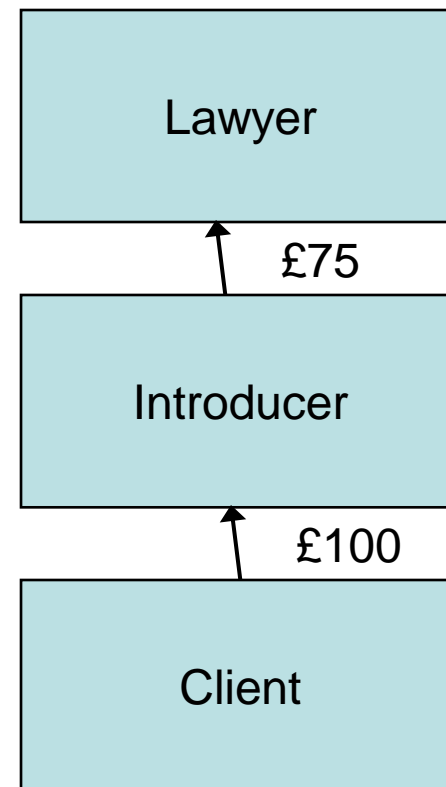
Alex Roy, Research Manager, LSB

What are referral fees?

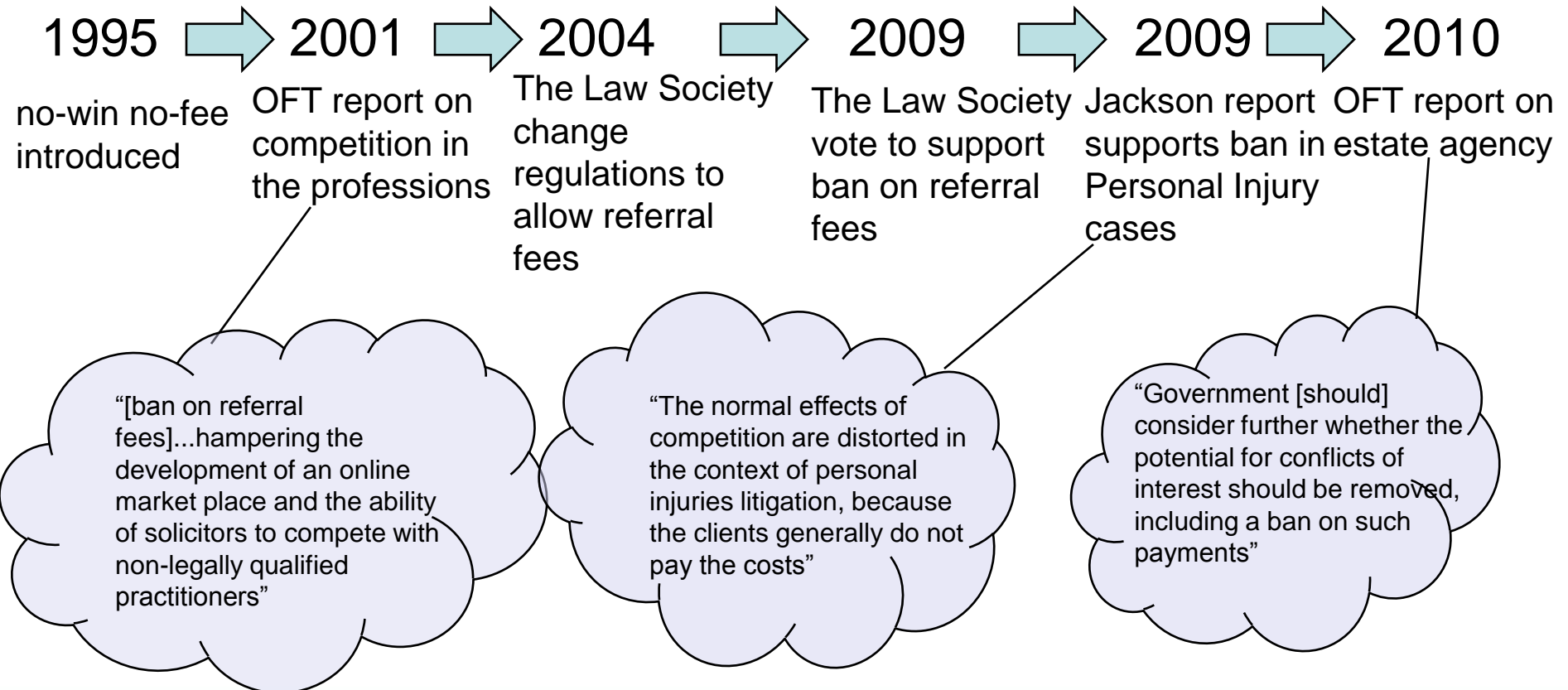
Referral fee



Fee sharing arrangement



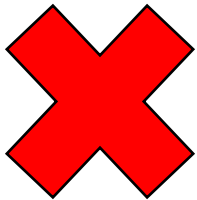
A history of referral debates



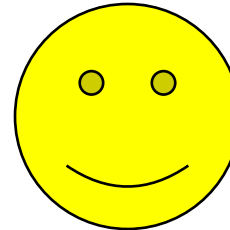
The Critique

1. They undermine the independence of advice by creating a financial relationship between the lawyer and referrer that could lead to the needs of the referrer being placed above those of the client.
2. They add unnecessary costs to legal advice as the market power of the referrers allows them to charge above the economically efficient rate for the referral.
3. They lead to lower quality advice as lawyers are forced to cut corners to deliver the advice or take on work (because of their financial relationship with the referrer) that they are not qualified to do.
4. They discourage choice by pushing consumers to use the referred lawyer, increasing barriers to entry to the market and leading to choice based on referral and not quality.
5. The lack of common regulatory approach leads to distortions in the market where some can receive referral fees and some can't.

Consumer views



"We're all kind of sceptical about estate agents and lawyers because we don't understand it. So it seems a bit sordid if they keep recommending each other and you don't know what's going on." 18-34, ABC1, Stafford



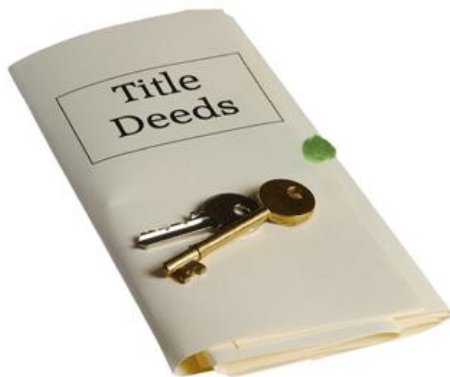
The guy who fitted my kitchen bought me a couple of pints as my friend also used him - it's the same thing." 18-34, ABC1, Bridgend

- Objections often more a function of indignation than an evaluation of likely consumer detriment
- Some examples of detrimental behaviour by third parties
 - Estate agents getting 'shirty' if use own solicitor
 - PI lawyer 'holding onto claim' even when out of their area
- But no consistent evidence of link between referrals and quality of service provided
- Good and bad examples on both sides

LSB Market Study

- Commissioned Charles River Associates to consider Cost/Benefit case for referral fees
 - Assessment of existing research
 - Interviews
 - Quantitative survey of estate agents
 - Policy assessment
- Three market segments considered

Conveyancing



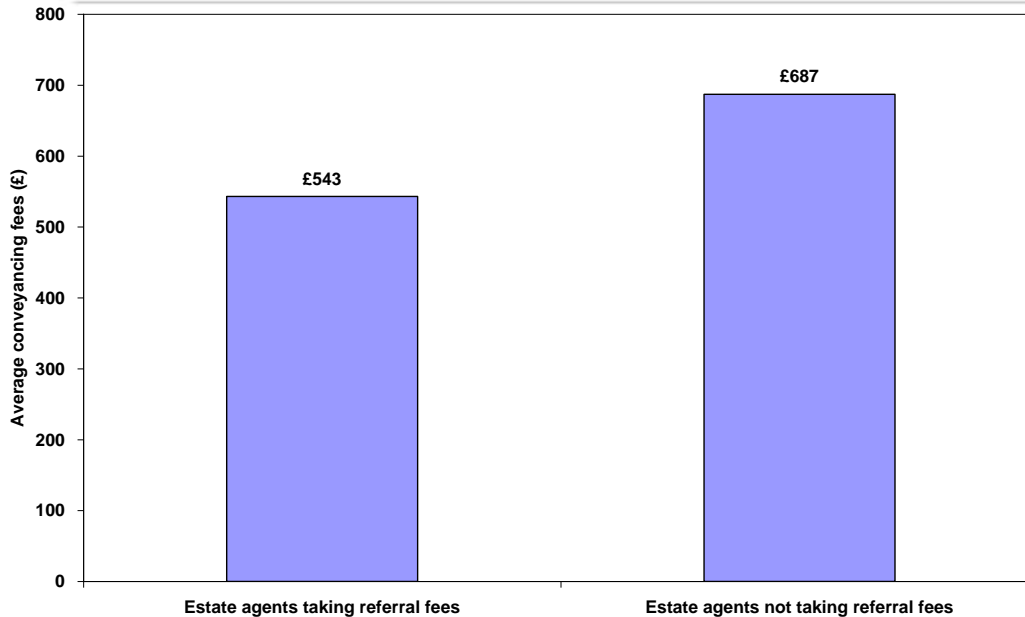
Criminal Advocacy



Personal Injury



Impact of referral fees on conveyancing



Cost

Quality

- No evidence that referral fees have led to a decline in quality
 - No evidence of problems related to title
 - Automation and use of non-qualified staff leads to remote / non face-to-face service but no evidence this reduces quality on average
 - Complaints are low
 - Customer satisfaction is high among those who use referrals
 - Estate agents requiring customer survey indicates they care about quality

Choice

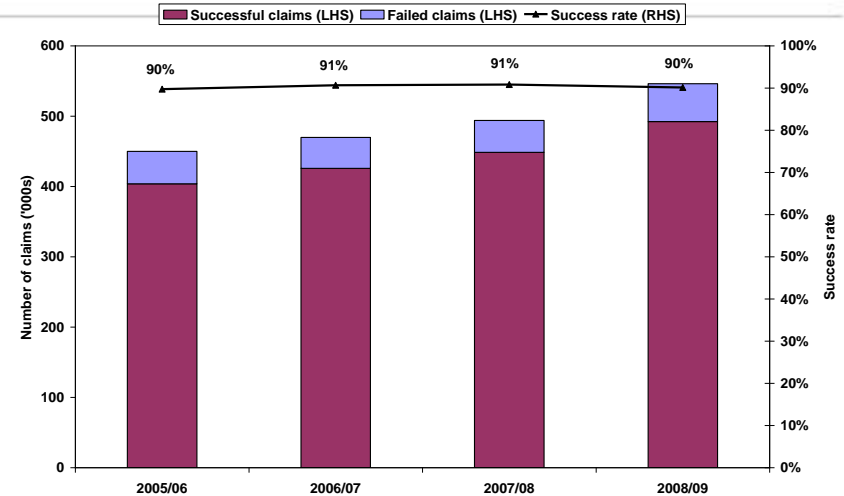
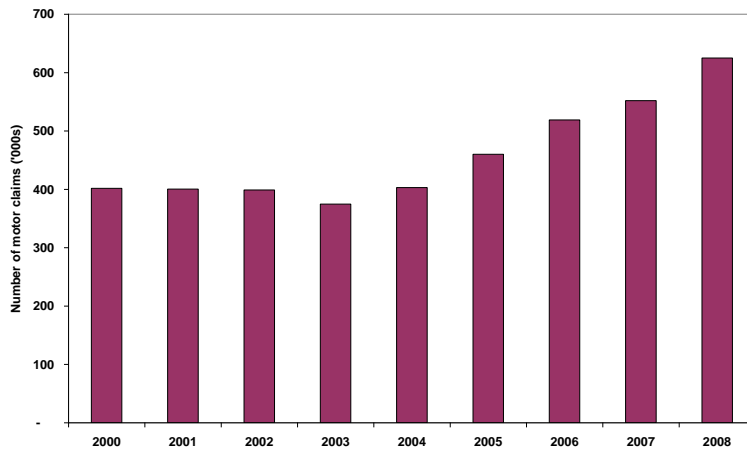
- 50% of consumers shop around
- Price an important element of competition

Criminal Advocacy - referral arrangements banned, but...

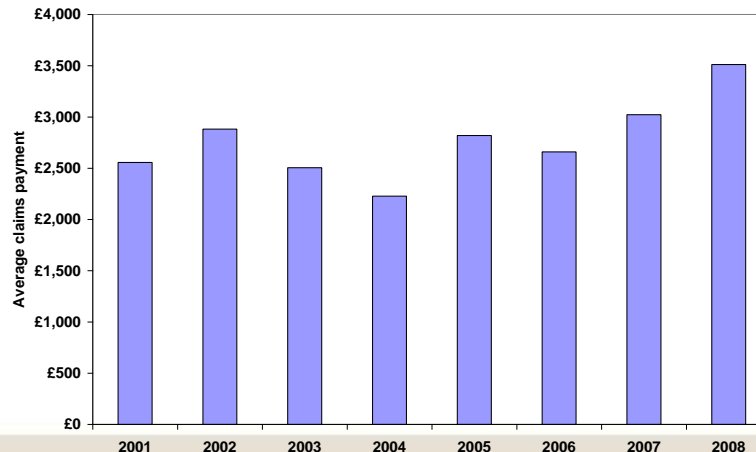
- Increased use of solicitor advocates
 - Driven by Advocate Graduated Fee Scheme (AGFS)
 - Can not conclude this reduces quality
- Increase in use of in-house advocates for part (e.g. guilty pleas) or all of advocacy
 - Driven by AGFS / Litigator Graduated Fee Scheme but quantitative data not available
 - Concerns profitability focus leads to advocates appointed for cases beyond competency but no quality assurance scheme to prevent or assess detriment
- Use of “straw” in-house juniors
 - Driven by profitability concerns although some pre-date AGFS changes
- Impact on clients mitigated by actions of leading advocate but resources wasted
- Appointment of external advocates on the basis of fee sharing
 - Prefer solicitor advocates to barristers to avoid the Bar Protocol
 - Prefer solicitor advocates who will accept non-Protocol fees
- Common for non-Protocol fee sharing arrangements to be set at 80% of the fees that might otherwise have been expected
 - No evidence that 80% fee-sharing is itself reducing quality
 - Bar Protocol can lead to examples of 80% of fees received in other cases
 - No immediate benefits to either client or LSC from non-Protocol arrangements
- Concern profitability focus causes solicitor advocates to be appointed for cases beyond their competency
 - No quality assurance scheme to prevent or assess detriment
 - Greatest impact observed on less complex cases

Personal injury – a case of increasing access to justice?

Number of RTA claims have risen...



...while success rates have remained constant...



...and amounts paid to the client have risen.

In summary

No evidence that referral fees undermine independence

They do not appear to increase the cost to consumers

No evidence that they have reduced quality

No evidence that they discourage choice by consumers

There may be benefits from more consistent disclosure

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