

Allianz Insurance PLC response to the Sept 2010 LSB consultation paper concerning referral fees, referral arrangements and fee sharing

Introduction

- Allianz is a major general insurer in the UK. We are part of Allianz SE, the world's largest Property and Casualty insurer.
- We have a substantial book of motor business, generating about 30,000 personal injury claims annually
- Allianz Legal Protection is a part of Allianz Insurance PLC and a major provider of Legal Expenses Insurance in the UK.
- Our response is solely in relation to personal injury claims, not conveyancing or criminal advocacy

The Allianz response

1. Allianz supports a total ban on referral fees, and does not consider that it will have any impact upon access to justice, particularly so far as genuine claims are concerned. Referral fees are driving up the number of fraudulent personal injury claims, through over zealous forwarding of leads, by those whose focus is toward lucrative fee income without financial risk.
2. The majority of personal injury insurance claims, where a referral fee is paid, relate to whiplash injury. In 2007 Allianz saw an increase in whiplash claims of 16%; 2008 24%, and in 2009 just 2%. However, indications for 2010 show a 9% rise. This is all against a background of reducing numbers of road accidents and safer cars. Allianz believes that the attraction of referral fees is fuelling fraudulent claims activity. Across the UK, there are now more than 400,000 new whiplash claims annually. At a total cost of £2bn, these are staggering numbers which significantly affect the average level of motor insurance premiums. Bringing an end to referral fees would have a significant affect on the cost of these claims, thereby reducing average motor insurance premiums. This is very much in the public interest.
3. Referral fees can be as high as £1000; significant referral fees are paid even on low value routine claims falling within the new MOJ process. In addition, solicitors continue to pursue expensive advertising campaigns. Given the level of fixed costs payable in low value PI claims process there is a clear indication that a good level of profit can be earned. But costs continue to be disproportionate and particularly in the lower range of PI claims which must be addressed as outlined by Jackson LJ in his well considered report. Banning of referral fees presents an ideal opportunity to reduce claimant costs to a sensible and proportionate level. Again, this should help reduce average premiums, which is more in the public interest than ever before

4. The LSB consultation, perhaps understandably, concentrates on the dynamics of the process as between solicitors and introducers but has largely overlooked the claimant's role. This is fundamental. In personal injury actions the claimant has no liability for the payment of a referral fee and hitherto has had no interest in its value. Often the claimant is unaware that their cause of action is being marketed. They have no influence in the process or awareness that additional cost is being incurred with marginal value overall, and it is one from which they derive no direct benefit whatever.. The consumer's view must be recognised and taken account of.
5. The work of Lord Justice Jackson must not be overlooked. This was one of the most comprehensive reports ever seen, and after extensive consultation with all stakeholders he came to the conclusion that referral fees should be banned. He would not have reached that conclusion lightly, and he did so by balancing the range of competing interests. Having asked Jackson LJ to undertake this task, his recommendations should be accepted, unless there are very clear policy reasons in the alternative. We do not consider there to be any and to deal with referral fees in isolation from Jackson is plainly wrong.
6. If the full extent of the pernicious effect referral fees have become generally known, we are in no doubt there would be a public outcry and demand for action. Against the backdrop of Jackson's recommendations this would be understandable.
7. There is no evidence that referral fees exist on the continent, nor that their absence is detrimental to access to justice
8. The emergence of referral fees has created unhealthy competition as between claimant solicitors. There is now an inevitable commitment towards paying fees to help secure new business, whereas, if fees were banned this would create a level playing field. Allianz understands that solicitors would prefer not to incur these fees.
9. A view is taken by the LSB that customer detriment has not been made out. With respect, approaching the issue from the consumer and cultural angle there is clear evidence of detriment. Solicitors do not need them and access to justice will not be impeded by their absence. For all of the above reasons Allianz sees a complete ban of referral fees as the way forward, and most certainly in the public interest

Consultation Questions

1. Do you agree with our analysis of the operation of referral fees and arrangements?

No. The LSB consultation has not sufficiently considered the overall effect of referral fees and the unsavoury behaviours they drive. They create a feeding frenzy at a time of misfortune which, on close analysis, is completely unnecessary and delivers no real added value. Nor has there been sufficient

consideration of Alternative Business Structures and the regulatory framework/oversight in which they might operate. It is not difficult to envisage referral fees being hived off to a non-regulated connected entity to avoid the regulation envisaged by LSB.

2. Do you have additional evidence about the operation of referral fees and arrangements that should be considered by the LSB?

Yes. We often find ourselves frustrated when trying to proactively help our policyholders and innocent third parties post accident. Despite our processes demanding early telephone contact, we frequently discover that other parties are already taking control, not because of any desire to help, but to secure payment of fees. There is a great deal we can do to help, but are prevented from doing so. This adversely affects our ability to deliver good service to customers and ensure interests are properly protected at proportionate cost.

- 3,4,5. Not relevant to Allianz' business

6. Will the proposals assist in improving disclosure to customers?

Yes, provided steps are taken to ensure standards are being fully adhered to. It is in the public interest for a solicitor to disclose to a client that a fee has been paid and the amount involved

7. Are there any other options for disclosure that AR's should consider?

Full transparency should include written consent from a claimant agreeing to their cause of action being marketed with full disclosure of the fee being 'earned'. For example, insurance clients should know if their brokers are earning fee income or if frontline services are capitalising upon their misfortune.

8. What are the issues relating to the disclosure of referral contracts by firms to approved regulators and their publication by approved regulators?

Extreme caution is needed before placing such information in the public domain, and DPA law considerations will undoubtedly arise. We believe it is sufficient to require disclosure to the SRA/FSA

9. How should these issues be addressed?

The debate surrounding disclosure issues is surely further evidence that significant unease exists. Passing information into the public domain will certainly cause an unfavourable reaction

10. Will the proposals assist in improving compliance and enforcement of referral fee rules?

Yes, as long as they are properly enforced. However, that is likely to be a challenging task which will require a substantial investment in resource and technology.

11. What measures should be the subject of key performance indicators or targets?

There can be no half measures. The rules must be fully met in every case

12. What metrics should be used to measure consumer confidence?

Continuation of referral fees at any level will not only require rigorous observation of agreed controls, but also harsh sanctions for those who transgress.

Allianz Insurance PLC. Guildford. December 21st 2010.