

REFERRAL FEES, REFERRAL ARRANGEMENTS AND FEE SHARING CONSULTATION.

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

In the main, the only comment we would make is with regard to paragraph 5.16 in that we would dispute that referral fees mean the work only goes to large firms, in fact in our view it makes it easier for small firms, who may not have a large marketing budget, to get work and so compete with the larger firms.

We agree with your analysis in paragraph 5.20, with regard to the introduction of ABS' and in view of that it would seem to be premature to try to make any changes to referrers and referral fees until ABS' are in place and their effects are known. It is possible that the requirement for referral fees may diminish considerably when Claims Management Companies are allowed to become part of law firms and vice versa.

We also agree with your analysis in paragraph 5.22 and 5.25, that referral fees do not compromise lawyer independence. In view of that we fail to see why greater regulation is necessary.

There is no evidence that referral fees increase costs, costs are heavily regulated by the courts so cannot be inflated to cover referral payments.

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

None

3. Do you agree with our analysis of the operation of referral fees or fee sharing arrangements in criminal advocacy?

Criminal practitioners do not operate referral fees, but only a fee-sharing arrangements, which has never been unlawful or in breach of Law Society, or SRA regulations.

4. Do you have additional evidence about the operation of referral fees or fee sharing arrangements that should be considered by the LSB?

None

5. In particular, do you have evidence about the impact of referral fees or fee sharing arrangements on the quality of criminal advocacy

We have not been presented with any evidence that the quality of advocacy is impaired, or that there is any detriment to consumers, so we cannot see a need for regulation.

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

The current regulations already provide for disclosure of referral fees to clients,

and as the clients not paying them they are unlikely to have any real interest in the amount paid for the fee, they are only interested in how much they themselves will be paying for the work. We do not consider that providing details of payments of marketing fees that are not broken down into amounts for individual cases would assist consumers, in some cases it may damage consumer confidence as some of these fees are very large on an annual basis.

The current regulations are all that is needed, the only issue is compliance, and it is up to the SRA to deal with this. It could be said that Rule 9 covers all aspects of client care and client advice that is needed

7. Are there other options for disclosure that ARs should consider?

None required

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

We consider that the current rules on disclosure are adequate. We do not agree that publication of all referral agreements and contracts between organisations would assist consumers, it would be very difficult to manage and very expensive to run. Contracts are often amended on a regular basis and it would be costly in time and resources to continually update them. Some of the larger conveyancing firms may have thousands of referrers, some of which may refer only a few cases per year, and the costs of reporting and publication would be hugely disproportionate.

9. How should these issues be addressed

We do not consider that there is any need to address these issues at this time at all. There are potentially huge changes about to take place in the legal world, as well as the introduction of ABS there are the potential changes to costs and funding that have been proposed. In our view any changes in referral fee regulation should wait for a few years until the new systems settle down.

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

Not necessary. In particular as they concentrate only on regulating the paying party, so are very one-sided. No solicitor would object to transparency and disclosure but there is great difficulty in solicitors ensuring that the third parties comply.

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

None

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

None