



To: consultations@legalservicesboard.org.uk

Input from **UNION OF SHOP, DISTRIBUTIVE AND ALLIED WORKERS** to the **LEGAL SERVICES BOARD**'s discussion document: "**Referral fees, referral arrangements and fee sharing**"

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Introduction

1. Usdaw is a trade union with 399,000 members, mainly working in retail, distributive, food processing and manufacturing, laundries, catering, chemical processing, pharmaceutical, home shopping, warehouses, as insurance agents, clerical workers, on milk rounds in dairy processes, and call centres.

2. The provision of legal services is a core Union benefit and approximately 1 in 27 of our members seek legal assistance in any one year. Union legal services are of paramount importance to our members. Our relationship with our members is ongoing and encompasses a broad range of activity, engagement, communication, services, benefits, negotiation and representation of which our core legal service is one aspect, that relationship is very different from that of others who refer legal work and who are only in the business of claims capture.

3. The Trade Union Movement has been a committed provider of quality legal services for over 100 years and remains the best source of legal assistance for working people. Usdaw, together with the other trade unions, historically underpinned the state legal aid system – union members were considered to have alternative funding and did not rely on state legal aid. We bore the financial burden and risk. We were often the only means of accessing justice that working people had, given that many fell outside the eligibility criteria of state legal aid. However, in the light of changes over the last decade, we cannot turn back the

clock to the 80's, or even the 70's, any more than anyone else and hope to maintain access to justice.

4. The Trade Union Movement and Usdaw has sustained this legal service provision not in pursuit of profit, but in pursuit of fair compensation for injured workers and their families and a wider goal of accident and disease prevention and health and safety. *Prevention is a higher priority.* We have pursued cases to advance health and safety standards in our industries.

5. Usdaw has had a responsible approach to litigation and our Panel of Solicitors is charged with seeking settlement whenever possible and we succeed in reaching settlement in the overwhelming majority of cases. We do not accept the general assertion by some, including Sir Rupert Jackson, that the claimant must have more stake in the outcome. Even in cases not backed by unions, the lawyers do not get paid for taking cases without merit. It is not in their interests to pursue fruitless argument.

6. Our legal service would cease to be viable if costs recovery were to be eroded, particularly in cases of lower monetary value. There is every possibility that the referral fee issue could produce this result, even though *Usdaw has never required a referral fee.*

7. Usdaw and other unions are non profit making associations concerned about issues affecting working people and their families and social issues throughout the world.

8. In light of this we do not want referral fees banned, particularly if this is directly linked to a reduction in hourly rates and fixed fees, as the liability insurers insist, as this would damage access to justice for injured people throughout Britain.

Discussion Document Questions

PERSONAL INJURY AND CONVEYANCING

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

9. Usdaw agrees that there is insufficient evidence to support the contention that referral fees should be banned. We note the distinction in the document between referral fees and referral arrangements.

10. Usdaw panel law firms are expected to comply with their obligations, including those in Rule 9 of the SRA Code of Conduct. We assist them in that regard, when requested to do so. In addition we comply with the Code of Practice for the provision of Regulated Claims Management Services by Trade Unions referred to at paragraph 2.34 of the discussion document. (There are good reasons why trade unions are not regulated, which we can explain further is required to do so, but the reasons include the nature of the relationship between union members and their representatives and the activities of union representatives in this context).

11. It causes us no difficulty to explain the nature of our referral arrangements to our members, as required. We do not believe there is any evidence that trade unions are failing to comply with their obligations in this regard, nor any evidence of adverse consequences to union members (or others) from the current situation affecting trade unions.

12. Nevertheless, we note that “a recent report to the Claims Management Regulator suggests that compliance by introducers with their contractual arrangements with solicitors is low” (paragraph 8.11). We agree that it is desirable to redress this and make further comment on the recommendations below.

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

13. Usdaw has no additional evidence for consideration by the Board, but refer back to that submitted to the Consumer Panel and orally to Charles River Associates earlier in 2010.

CONCLUSIONS – CRIMINAL ADVOCACY

Questions 3, 4 & 5

14. Usdaw has insufficient knowledge to assist the Board.

RECOMMENDATIONS FOR IMPROVING TRANSPARENCY AND DISCLOSURE

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

15. We agree with the recommendations for improving transparency and disclosure for consumers such that: “The legal provider should disclose to their clients the key facts about referral fees:

- whom the referral fee is paid to and for what services
- the value of the referral fee in pounds
- the consumer’s right to shop around for an alternative legal services provider.”

(paragraph 1.18)

16. Usdaw believes that consumers informed by accurate and understandable information would invariably chose union legal services if that option was available to them. This includes family members of trade unionists, who are injured on the roads. Those who can call on Usdaw will have a service second to none and which is “no fee – win or lose” and not just “no win – no fee”.

17. Further, whilst we agree that “All agreements for referral arrangements should be in writing”, we can foresee significant problems, if “Approved regulators [ARs] are obliged to “...collect and publish all agreements between introducers and lawyers.” Usdaw is perhaps less concerned about commercial sensitivity and competition issues than most, but logistically it would be extremely difficult to operate and enforce.

18. Usdaw agrees that: “

- Where compliance with referral fee rules is low, approved regulators should have targets for improved compliance
- Approved regulators should have rules which are, where appropriate, consistent across areas of law with other approved regulators.” (paragraph 1.21).

19. However, in relation to the latter requirement “where appropriate” should permit factoring in distinctive features of different types of organisation, such as those which lead to

the formal exemption for trade unions from claims management regulation (referred to above).

20. We note the reference to insurers at paragraph 2.33 that “There are no specific requirements relating to the receipt of referral payments from legal service providers.” Usdaw believes that there should be more effective regulation of the activities of insurers in this area.

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

21. Usdaw has no suggestions for other options.

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

22. We have referred to these briefly above.

Question 9. How should these issues be addressed?

23. Usdaw has no additional comment to make.

RECOMMENDATIONS FOR DELIVERING ACTIVE REGULATION

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

24. Usdaw has no additional comment to make.

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

25. Usdaw notes the apt comments in the discussion document in this regard.

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

26. Please see answer to question 11 above.

Concluding remarks

27. Usdaw took the opportunity earlier in the year to respond to the Consumer Panel and we contributed to the investigation by Charles River Associates on behalf of the Board. We also appreciate the opportunity to consider the Board's discussion of the issues at this time. If there is any additional assistance we can provide, please let us know

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