

Referral Fees – Access to Justice or Road to Hell?

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Abstract

The regulation of lawyers in England and Wales changed dramatically in 2010 with the introduction of a new oversight regulator. This paper considers the role of the oversight regulator focusing on the particular challenge of the regulatory treatment of referral fees. Drawing on recent qualitative and economic studies this paper analyses the key arguments for and against referral fees and considers their impact in different areas of the market for legal services. This paper brings together the evidence and highlights the role the Legal Services Board believes regulation has in determining the future use of referral fees.

Introduction

The Legal Services Board has eight Regulatory Objectives set out in the Legal Services Act 2007ⁱ. Among these objectives is improving access to justice. Our agenda seeks to ensure that whether through the traditional suppliers of legal services and judiciary or new innovative routes that help people deal with the legal problems they face, we should seek to improve consumers access to justice. In a market where consumers have little experience and where considerable expertise is common on the part of the supplier, consumers are faced with significant problems of information asymmetry.

A common way to address the problem of information asymmetry is to look for recommendations from trusted sources highlighting good quality suppliers. Formalising relationships to deliver these recommendations is common across most markets – whether delivered by private or public sector providers. In the absence of formalised arrangements behavioural economics finds that consumers rather than seeking out information to overcome their lack of knowledge, tend to fall back on heuristics or going along with what they did last time to make decisions. What we shouldn't imagine is that in the absence of referral fees informed consumers will suddenly emerge to shop around for the most suitable legal advice in the market.

Referral arrangements in the legal sector have been a feature of the market for as long as the market has existed, referrals are after all the cornerstone of the barristers' profession. Indeed, it is both appropriate and just for a solicitor to make a referral to a law centre where they identify a social welfare problem or equally for a solicitor to refer a client to a barrister where the client faces a serious criminal charge. As the world has changed from an environment where a case of wine or tickets to the cricket act as a message of thanks between friends, to a more commercial world where commercial agreements start to place rules and boundaries on relationships. It is in this increasingly commercialised world that referral fees have grown and a market solution to the problem of matching clients with suppliers has been developed.

The 2007 Act of Parliament made improving access to justice a central objective to the LSB's work, but they also gave equal weight to the seven other Regulatory Objectives. In considering the regulatory response to referral fees we have had to balance all of the desired outcomes for the legal services market together with the realisation that regulatory solutions impose costs on the end customer and must be enforceable to be effective.

Foundations of the debate

For most consumers of legal services the key issue is best summarised in the recent LSB report on referral fees *"...not finding a solicitor, but finding a good one."*ⁱⁱ The one-off nature of the relationship that most consumers have with legal services leaves few able to identify those best able to deliver a cost effective and high quality service. There are few independent indicators of quality in the market and no household 'brands' to help consumers take short-cuts to picking an appropriate source of legal help. Indeed it is not clear that even if consumers were to shop around that they would be able to identify useful comparators. While price is clearly important in a world of hourly pricing it is often difficult to make a direct comparison in this way nor would such a comparison necessarily provide any guidance to the quality of service likely to be delivered. In practice few consumers actually choose to shop aroundⁱⁱⁱ.

Instead the majority of consumers commonly rely on the recommendations of others – most commonly friends and family to select their legal adviser – consistent with the predications of the Behavioural Economics literature. This again should not be surprising or concerning, taking advantage of the additional experience of others is an effective way of revealing a measure of quality for the legal service provider. In the world of the internet the trend to review and reveal building a database of knowledge is common allowing individuals to quickly build expertise. Whether this is with smaller low cost purchases (e.g. Amazon) or expensive holiday's of a lifetime (e.g. TripAdvisor) increasingly we all rely on recommendations and referrals.

Referral fees offer a way in which the market allocates value to the information held by a third party. Once these arrangements would simply occur between trades e.g. the plumber buying the builder a drink for recommending these services. More recently they form the cornerstone of internet businesses such as Google where much of the income comes from referrals made through sponsored links. It is through the Google business model that perhaps the connection between referral fees and marketing is best illustrated. In this case, the firm chooses to advertise on Google with the agreement that they will pay per client. The alternative may be to pay a fixed fee to place an advert in Yellow Pages, the firm must choose which method they believe will offer the lowest cost for the highest number of clients or income. Lawyers face similar choices when they choose how to get clients, advertise? Hope for referrals? Or pay those people who know consumers with a need to refer the consumer?

So referrals themselves are widely experienced and demanded by consumers, indeed as research has shown they are both widely experienced by consumers of legal services and ensure access to justice. From an economic perspective they are a highly efficient form of marketing, matching consumers with a need directly to those supplying the services. But for many the concerns arise once valuable and necessary referrals are formalised into arrangements, then accompanied by

payments. Is it as Lord Justice Jackson stated “offensive and wrong in principle for personal injury claimants to be treated as a commodity”^{iv}? Or are referral fees simply an inevitable development of the market to best match consumers and suppliers of legal services?

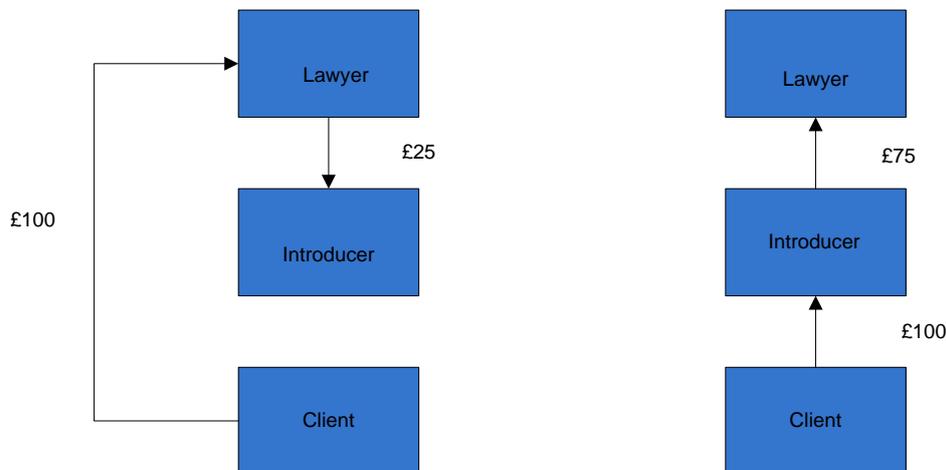
Perhaps the greatest challenge in any discussion of referral fees is drawing clean lines between the various arrangements that might exist, when does a simple recommendation become a referral arrangements, when does buying the referrer a drink become a fee? If we have concerns about the impact on the market where do we draw the line?

In essence it is difficult to argue that referrals do not provide a valuable market service, but once the arrangements are formalised does inevitably will change the relationship between the parties? Whether this involves a financial transaction or simply an exchange of payment in kind or services the relationship has fundamentally changed from one where the recommendation is made on a purely altruistic basis.

What are referral fees?

For the purposes of this article it is perhaps helpful to distinguish between referral fees and referral arrangements before considering current rules in the legal profession governing such fees.

Figure 1: Distinction between example payment flows in a referral fee (LHS) and referral arrangement (RHS)



The headline difference between the two is that in the referral arrangement the client is dealing with the introducer directly and pays the introducer the full amount. The introducer then arranges for the service to take place and deals with all the cash flows. In the case of referral fees the client originally approaches the introducer who recommends a lawyer. Once the client has paid the lawyer part of this money is given to the introducer by the lawyer. The economic effect is the same – the client pays £100, the lawyer gets £75 and the introducer gets £25.

The rules governing the use of referral arrangements, like the arrangements themselves, are varied. Referrals between lawyers are allowed by each of the Approved Regulators – though payment for

the referrals are not allowed by barristers, though fee sharing arrangements are allowed. From 2004 The Law Society decided to permit payments for referrals, though in recent months has decided that they would like to reverse this decision – though by this stage decisions on regulation of solicitors had passed to the Solicitors Regulation Authority. Existing rules for solicitors require them to disclose that a financial arrangement has been made with the introducer and the amount paid. The rules also require solicitors to ensure that this information is also disclosed by the introducer up front to the client. A summary of the rules for each of the Approved Regulator is included in Table 1 below.

Table 1: Summary of the Regulation of Referral Fees by Approved Regulators

Type of Authorised Person	Regulating body	Permissibility of Referral Fees
Solicitor	SRA	<ul style="list-style-type: none"> ▪ Referral fees between lawyers permitted ▪ Referral fees between lawyers and non-lawyers permitted, subject to Rule 9 of the SRA code and guidance ▪ Fee-sharing permitted between lawyers, subject to Rule X of the SRA Code ▪ Law Society has called for a ban on referral fees
Barrister	BSB	<ul style="list-style-type: none"> ▪ Referral fees banned under Rule 307 of the Code of Conduct. ▪ Public access barristers can pay to advertise on a website, provided potential clients generated by the website contact the barrister directly. Clients can also pay a company to be introduced to a public access barrister, provided no money changes hands between the public access barrister and the referral company.
Conveyancer	CLC	<ul style="list-style-type: none"> ▪ Referral arrangements (payment and receipt) permitted subject to rule 5.2 and guidance 6
Legal Executive	ILEX Professional Standards	<ul style="list-style-type: none"> ▪ Referral fees appear to be permitted, subject to compliance with SRA rules on this matter.
Trade Mark and Patent attorney's	IPREG	<ul style="list-style-type: none"> ▪ There does not appear to be anything specific about referrals/introductions in the Code of Conduct that would either allow or ban referral arrangements.

Law Cost Draftsmen	ALCD	<ul style="list-style-type: none"> ▪ No specific reference in rules. ALCD has advised that “To date there has been no restriction upon the basis of charging structure of the membership owing to the fact that this was considered to reflect restrictive practice”
Notaries	Faculty Office	<ul style="list-style-type: none"> ▪ Referral fees permitted under Practice Rule 13.

Recent developments in Referral Fees

The recent history of debate over referral fees has, as suggested above with reference to the Jackson Report, been somewhat controversial. The most recent debate has its origins in the 2001 report by The Office for Fair Trading looking at competition in the professions^v. This report noted that the ban on Referral Fees was:

“...hampering both the development of an online market-place (for example, payment to an intermediary firm that ‘introduces’ clients and suppliers over the internet) and the ability of solicitors to compete with non-legally qualified practitioners.”

Following this report The Law Society removed the ban on referral fees in 2004, introducing instead the rules outlined in Table 1 above. This led to significant changes in the deliver of legal services, particularly for Personal Injury where combined with the earlier introduction of no-win no-fee arrangements (in 1995) new third-party introducers were emerging and advertising heavily for clients. Changes in conveyancing were perhaps equally as important if less visible with unseen arrangements between solicitors and estate agents replaced by formal panels and agreements.

The Law Society and Solicitors Regulation Authority through practitioner research have explored in some detail how the introduction of formal referral fees had affected the market e.g. Referral Fees and Legal Services Research Report^{vi}. The research found that the majority of firms engaging in Personal Injury work were paying referral fees. For conveyancing the picture was more mixed, but those firms that did pay referral fees were *“...conducting five times as many cases as those firms who were not paying referral fees.”*

In November 2009 the Law Society Council voted to reverse their previous position and call for referral fees to be banned by regulation believing that they had the potential to *“...limit access to justice and reduce the quality of legal service.”*^{vii} This policy change was shortly followed by the report from Lord Justice Jackson while he recognised the arguments set out in the original OFT report, he noted that:

“The normal effects of competition are distorted in the context of personal injuries litigation, because the clients generally do not pay the costs.”

In conclusion, he also called for the banning of referral fees or if this was not possible, the capping of the amount that could be paid at £200 based on his view of a modest figure. In practice Jackson actually found very little evidence of harm though the use of referral fees though he also noted that

if his recommendations were accepted further work would be desirable to consider whether referral fees should be banned or capped in other areas of litigation.

Most recently in February 2010 the OFT report on Estate Agency^{viii} the OFT concluded in looking at referral fees that the:

“Government [should] consider further whether the potential for conflicts of interest should be removed, including a ban on such payments.”

While the OFT noted that the Government should consider the impact of referral fees in more detail, it found little beyond a theoretical concern that referral fees were actually causing detriment to the end consumer.

Given these concerns and the rising stakeholder interest in referral fees, the Legal Services Board decided in its first year of operation to consider its own policy response to the use of referral fees.

Referral Fees – the critique

Given the strength of feeling in legal services over the use of referral fees it is often difficult to articulate the actual concerns, beyond a general impression that they are a bad thing. From our discussions with stakeholders we believe that the key arguments against referral fees break down into the following five critiques of referral fees:

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.

In considering the impact of referral fees and the most appropriate regulatory treatment the LSB was in effect testing these critiques.

Legal Services Board – an approach to referral fees

The impact of Referral Fees on the provision of legal services cuts across many of the regulatory objectives for the LSB set out in the Legal Services Act 2007. Given this and the representations made to the LSB to provide regulatory certainty on the issue, the LSB made the decision to gather evidence with the intention of providing a clear regulatory view on its view on the appropriate regulatory treatment of referral fees.

To help develop the evidence base to support the development of a policy view, the LSB asked the Legal Services Consumer Panel (LSCP) to look at the use of referral fees with particular focus on the risks and benefits for consumers. To support this analysis, the LSCP commissioned Vanilla Research to undertake focus groups with people who had used legal services to explore their views on referral fees. The LSB in turn commissioned Charles River Associates (CRA) to analyse the economic impact of referral fees on the legal market.

Following the publication at the LSCP's evidence^{ix} and the CRA report^x the LSB has been considering this evidence together with evidence from submissions from stakeholders to the LSCP and from meetings held with stakeholders. The LSB will be discussing the evidence with its Board in the summer before publishing a paper outlining the next steps in developing an evidence based approach to referral fees.

A consumer perspective of referral fees

The LSCP published a call for evidence in December 2009 and received a variety of responses of which 45 are available on the LSCP's website^{xi}. As well as seeking views from stakeholders the LSCP commissioned Vanilla Research to explore consumers' views of referral fees. Vanilla Research held ten focus groups with groups of consumers who had had personal experience of using legal services in the past two years or who expected to use legal services in the next year and ten depth interviews with people who had made personal injury claims.

The research with consumers^{xii} found that few consumers considered it a problem finding a solicitor, though knowing whether they had found a good solicitor was a much more significant challenge. For this reason, there was a real reliance on personal recommendations to choose a lawyer with little shopping around despite the perception that charges for legal advice were too high. Consumers were generally unaware that referral fees might be paid to facilitate these recommendations. When told they were genuinely shocked that lawyers would pay referral fees, though once they were aware of the regulation of referral fees consumers were less concerned about their use so long as they were informed.

The LSCP in considering this research and other evidence concluded principally that the LSB should ensure that the regulations on the disclosure of referral fees were strengthened. Alongside this the LSCP proposed a number of other measures to reduce the cost pressures from referral fees and improve the regulation of markets operating referral models with legal services.

An economic approach to considering referral fees

The economic report focused on understanding the economic factors at work in the provision of legal services and considered the evidence that referral fees would lead to detrimental impacts on consumers. In the presence of such concerns a number of policy options (from levelling existing regulations to greater disclosure of information to bans on the use of referral fees) were tested to consider whether they would be likely to improve outcomes. The research concentrated on three market segments: conveyancing, criminal advocacy and personal injury. The research was conducted through five segments of work described below.

Assessment of existing research: The initial literature review brought together the range of reports related to the use of referral fees to help inform the wider study.

Initial interviews to understand the range of concern regarding referral fees: CRA undertook a series of initial interviews with the approved regulatory bodies and industry representative bodies. The purpose of these interviews was to understand how the different markets work, and whether referral fees were used and whether these were currently a cause of concern.

Interview programme with market participants: An extensive interview programme of 40 interviews was undertaken with a cross-section of different types of legal service providers and intermediaries that had referred arrangements with legal services providers. The objective was to understand how referral arrangements worked in practice, how these have changed over time and what would happen under the different policy scenarios. The breakdown of interviews is set out in Table 2 below.

Table 2: Interviews conducted

	Conveyancing	Criminal advocacy	Personal injury	Across all markets
(Approved) Regulator	1	1	1	3
Barristers		2		
Introducers	3 (1 estate agent, 2 mortgage providers)		8 (2 insurers, 4 Claims Management Companies, 2 trade unions)	
Solicitors (or licensed conveyancers)	7	2	2	
Trade associations	2	2	4	1
Other (Judiciary and Legal Services Commission)		3		
Total	13	10	15	4

Source: CRA

A quantitative survey of estate agents: An electronic survey was conducted of estate agents that were members of National Federation of Property Professionals. This resulted in 179 responses to a set of questions regarding the use of conveyancing and referral fees. The survey was conducted during late February and early March 2010.

Policy assessment: The final step was to draw together the different sections of the analysis to understand the different competitive forces that are operating, the reasons behind the development of referral arrangements in some parts of the legal services market and any detriment they cause. This section then considered the cost and benefits of the alternative policy scenarios.

What is the impact of referral fees?

In developing a policy response to any area of legal services regulation the LSB has a duty to consider its impact against each of the eight regulatory objectives set out in the Legal Services Act 2007. There is no hierarchy set out in the Act as to which of the objectives should take precedence therefore each must be given equal weight in considering the impact of policy options. No single objective can determine the best policy response yet each individually can provide a very important insight in determining the optimal form of regulation. Our research approach so far considers referral fees in particular from the perspectives of the consumer, access to justice and competition. In discussion with the LSB's Board we will have to draw in all of the regulatory objectives to create a balanced view when responding to this challenge.

From an economics perspective referral fees could impact on three different features of the market – the price of services, the quantity of service bought or the quality of service offered. The impact on each of these three measures could differ significantly in the different areas of legal services. In the first instance our research has focused on the three most significant markets (in terms of the strength of critique and size of the use of referral fees): conveyancing, criminal advocacy and personal injury. Even within these markets there could be a significantly different impact in different areas, depending on the complexity of the type or work, location etc. Where possible it is indicated below where such concerns are relatively more significant.

Conveyancing

Referrals are fairly commonly used in conveyancing (whether to solicitors or licensed conveyancers), most commonly with referrals from estate agents. A recent OFT survey found that around 20% of buyers used a conveyancer recommended by the estate agent^{xiii}, moreover in total 44% of buyers were given a referral. While the penetration of referrals in this area of legal services is quite high this is perhaps a reflection on the feature of the service itself. The vast majority of consumers buying/selling a house use an estate agent and conveyancing must be undertaken by all, giving estate agents a valuable list of potential clients for solicitors and conveyancers. The conveyancing service itself can benefit from significant new efficiencies that have been facilitated by the growth of IT and the internet. Together these features make this an attractive market for the use of referrals.

In looking first at the impact of referrals on the independence of conveyancers, it is difficult to see how they would undermine the independence of the legal advice. All parties involved have a stake in the speedy completion of the transaction, though equally given their legal liability conveyancers have a clear incentive to ensure that the work is done accurately and professionally. In fact it is in all parties interest to ensure a smooth progress of the sale and purchase.

In 2004 when regulations were changed to allow referral fees, evidence from interviews found that the average referral fee was around £50-£100, this has since risen to £250-£400. Despite this, referral fees appear to have had little impact on the price of the service. CRA found that since 2004 the cost of conveyancing has remained broadly constant in nominal terms, falling in real terms. Furthermore, the average cost of conveyancing was lower among those estate agents taking referral fees (£543) than among those not taking referral fees (£687). CRA believed this to be a result of greater efficiency of processes among lawyers those using referral fees. This is consistent with many of the examples given in the Moulton Hall commissioned by The Law Society in 2007.

It is this push for greater efficiency of provision that has led many to question whether referral fees lower the quality of the services provided by lawyers. In their interviews though, CRA found little evidence that referral fees had led to a decline in the quality of conveyancing whether measured by transaction outcomes or complaints.

Despite (or perhaps because of) the prominence of referrals in conveyancing there was also little evidence that referral fees had led to a reduction in choice for consumers. Consumers are actually much more likely to shop around for a conveyancer than for other legal services. The OFT study found that 50% of both buyers and sellers shop around, while the LSB found that only 14% of consumers shop around when they choose a lawyer across all legal services^{xiv}. The survey of estate agents carried out as part of CRA's study did find that estate agents had seen an increase in the use of national conveyancers (42%) than those who had seen a decline (26%) though given the historical distribution of legal firms, some national consolidation should be expected.

While there are some minor differences in the regulatory treatment of referral fees between licensed conveyancers and solicitors, in practice these differences are small. Both require the lawyer to disclose the referral fee to the client, though not in the same format. It is unlikely that these differences cause any detriment to consumers.

Criminal advocacy

Criminal advocates can be either solicitor advocates or barristers (where barristers can be self-employed or employed), in both cases referral fees are banned, but fee sharing arrangements are prevalent. The main concern in this area of the market is that the difference in regulation between self-employed barristers, and solicitor advocates and employed barristers leads to lower quality advocacy and reduces fair choice. As the total price of legal advocacy is fixed by the Legal Services Commission, there is no concern that referral arrangements affect the total cost of the service provided.

Currently among self-employed advocates the Bar Protocol sets out fee sharing arrangements so that the lead advocate must share the total income from the case at standard rates with other advocates used. The concern from critics arises as solicitor advocates and employed advocates do not have to follow the Bar Protocol and so can keep a greater share of the total case income. As there is currently no quality measure of advocacy this could potentially lead to lower quality advocates accepting the work from solicitor advocates who act as lead advocates.

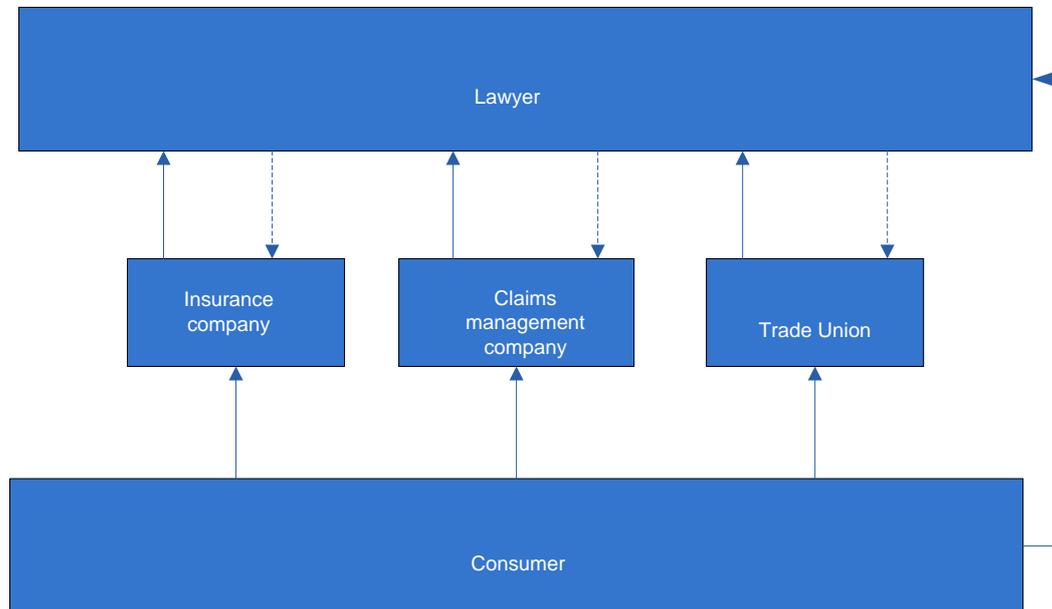
While there was no evidence of this effect in practice, economic analysis does suggest that this outcome is possible. Fortunately with the introduction of Quality Assurance for Advocates (QAA) in 2011 a benchmark quality measure will be introduced. This should address concerns that competition in the market is leading to a reduction of quality and could remove the need for the Bar Protocol.

Personal Injury

Personal injury cases can arise from a number of different circumstances, though around three-quarters are from Road Traffic Accidents (RTA). In such cases Claims Management Companies or insurers are commonly the first point of contact for claimants and so often receive fees from lawyers for client referrals. As with conveyancing the referral fees have been accused of undermining the

independence of the lawyers by creating long-term financial relationships between the lawyer and referrer. Usually referrers operate panels of solicitors who by signing up to standard fees, terms and conditions, as well as quality standards, receive referrals.

Figure 2: Supply of legal services in personal injury



Source: CRA

The incentives created by this model, and the fact that lawyers pay up front for a referral and are not paid until the claim is settled, would suggest that if not acting independently lawyers would prefer early settlement of cases, even if this gave the claimant a lower settlement. CRA did find that the average time to settle claims had declined (in the case of one major solicitor), though average claims payment for bodily injury in motor claims had risen. While not conclusive this did not suggest that the presence of referral fees had undermined independence.

As in the case of conveyancing CRA did find evidence that referral fees had increased since 2004. Though they also found evidence that the size of the referral fee was linked to the services offered by the referrer. In cases where the referrer did more to prepare the clients case, the referral fee was higher. Overall the average claims payout had risen for bodily injury in motor claims suggesting that the referral fee was not having an impact on the end consumer.

There was also no evidence that the quality of work from the lawyer had declined. Looking at success rates as a proxy for quality CRA found that success rates had remained constant for RTA claims and until 2008 had remained constant for employer liability claims. While quality has remained constant, the evidence suggests that referral fees have actually increased access to justice with more claims made despite a shrinking number of RTAs. In this area it appears referral fees have not only not damaged the market, they have actually made the market work better.

There remains a concern that the presence of referral fees could discourage choice among legal service providers. Inevitably national claims management companies, insurers and trade-unions look for national law firms that are able to service their clients across the country. Putting in place

the systems and processes to deal with the large volumes of business can be expensive and requires significant investment. There is a concern that this type of investment may be beyond the means of smaller law firms thus excluding them from the market and potentially raising barriers to entry in the market.

Alternative Business Structures and the realities of linked businesses

In October 2011, the LSB will introduce a significant change in the regulation of referral fees that may make discussions over the future of referral fees irrelevant. Alternative Business Structures (ABS) will allow non-lawyers to own law firms. We cannot know in advance the types of firms that will emerge, but for the first time mixed firms helping consumers from start to finish with legal issues may emerge. For example, funeral firms may employ solicitors to allow them to offer a full service to the bereaved; solicitors, accountants and financial advisers may merge to offer full service solutions to their clients.

In addition, estate agents could employ licensed conveyancers; claims management companies could employ solicitors. These potential models could change forever the way that we view referral fees. There will no longer be a referral fee passed between the introducer and the lawyer, the customer will be dealing with a single firm with a single aim – meeting their needs, efficiently and effectively. The customer will choose the firm they want to do business with and expect that firm to deal with all their needs both legal and non-legal.

Even where businesses are not part of a single company how referral fees impact on the consumer may not be as simple as it at first seems. As the research found despite referral fees rising, the cost of the legal service had not risen. But what happens to the referral fee? In many cases the consumer will end up benefiting from the fee itself as prices for other services decline. Garages benefiting from referral fees may lower the cost of car repairs, insurers use the income to lower insurance premiums. The reality of pricing in a complex and competitive market of linked businesses is not always what it might seem at first sight. The more competitive the market generating the referrals, the more likely that any referral fee will simply be passed back to the consumer in lower prices.

Access to justice or road to hell?

Earlier five critiques of legal services were set out; does the research provide a satisfactory answer against each of these critiques and what challenges remain?

Do referral fees undermine independence?

There is no evidence that referral fees undermine the independence of lawyers.

Do referral fees increase unnecessarily the costs of legal services?

Referral fees do not appear to increase the cost of legal services to consumers. In all likelihood the change in regulation in 2004 to allow referral fees has simply legitimised marketing spend that was

already taking place. As referral fees have increased this seems to have led legal firms to increase the efficiency of their business models with the savings captured by the introducers through referral fees.

Have referral fees reduced the quality of the legal services provided?

In markets where proxies for quality exist there is no evidence that referral fees have reduced the quality of legal services. There remains a concern that fee sharing arrangements in criminal advocacy could, in the absence of QAA and/or the Bar Protocol, lead to a reduction in quality. Given QAA is due to be introduced next year, once this has bedded in, concerns in criminal advocacy could be removed.

Do referral fees discourage active choice by consumers and limit competition?

In the conveyancing market it appears that referral fees have had little impact on consumers shopping around. Though in the Personal Injury market there may be concerns that the need for significant investment to enter the market through referral fees could impact negatively on competition. It is likely though that the opening up of the market through Alternative Business Structures could alleviate this concern.

Does the lack of common regulation cause problems in the market?

Consumers seem largely unaware of the use of referral fees by lawyers. This may reflect differences in regulation or a failure to enforce disclosure rules in the past. In criminal advocacy the absence of QAA leads to concerns that differences in regulation could put downward pressure on the quality of advocacy. Though referral fees themselves do not cause any direct problems, a level playing field with consistent regulation across legal services is clearly desirable.

Our research has failed to demonstrate that referral fees damages the operation of legal services or causes detriment to consumers. Questions remain whether better disclosure would help consumers but there seems at this stage little sense in contemplating banning a market mechanism within legal services that appears to be working.

ⁱ The eight Regulatory Objectives are: Protecting and promoting the public interest; supporting the constitutional principle of law; improving access to justice; protecting and promoting the interests of consumers; promoting competition in the provision of services; encouraging an independent, strong, diverse and effective legal profession; increasing public understanding of the citizen's legal rights and duties; and promoting and maintaining adherence to the professional principles.

ⁱⁱ "Referral Arrangements Research", Vanilla Research, March 2010

ⁱⁱⁱ LSB consumer research, YouGov, December 2009

^{iv} "Review of Civil Litigation Costs", Lord Justice Jackson, December 2009

^v "Competition in the Professions", OFT, March 2001

^{vi} "Referral Fees and Legal Services Research Report", Mouton Hall Ltd (for The Law Society), March 2007

^{vii} "Referral Fees- a submission to the Legal Services Consumer Panel", The Law Society, 2010

^{viii} "Home Buying and Selling, a market study", OFT, February 2010

^{ix}

http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/ConsumerPanel_ReferralArrangementsReport_Final.pdf

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[http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/cra_impact_of_referral_arrangements_final_14may2010\(STC\).pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/cra_impact_of_referral_arrangements_final_14may2010(STC).pdf)

^{xi} http://www.legalservicesconsumerpanel.org.uk/ourwork/referral_arrangements/ReferralArrangementsSubmissions.html

^{xii}

http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/VanillaResearch_ConsumerResearch_ReferralArrangements.pdf

^{xiii} OFT, Home buying and selling Market Study, Quantitative Consumer Survey Report, Prepared for the OFT by GfK NOP Social Research, November 2009, OFT 1140.

^{xiv} http://www.legalservicesboard.org.uk/news_publications/latest_news/index.htm, 29.12.09