

AMLIN UK



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Legal Services Board
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Dear Mr Mackay

**Amlin UK Response to Legal Services Board Discussion Document on the
Regulatory Treatment of Referral Fees, Referral Arrangements and Fee Sharing**

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Introduction

Amlin is a major insurer at Lloyd's, with a premium income in excess of £1bn per year. Amlin UK is a trading division and offers insurance in the areas of motor, EL/PL, property, commercial combined, professional indemnity and financial institutions.

This is our response to the Legal Services Board discussion paper on referral fees, referral arrangements and fee Sharing.

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As defendant insurers we are in the main compensators within the Civil Justice system. Inevitably referral fees will have been paid in many of the cases which we are defending and paying on behalf of our policyholders. We therefore believe that we have a direct interest in the subject of referral fees. We would make it clear at this point that we are not in favour of the payment of referral fees.

In answer to the questions that you pose.



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

No. We believe that the conclusions drawn in relation to the operation of referral fees is too narrow. What appears to have been overlooked, particularly in the consumer panel's report, is the knock on effect of the payment of referral fees and the need for those paying them to generate income. This manifests itself in commission payments being received upon other services that are then ultimately funded by the defendant, (our policyholder and also a 'consumer'). For instance, commissions are received by solicitors on ATE premiums (we are aware of payments up to 35%) from medical agencies and the like, which therefore introduces additional costs into these areas which would normally be dealt with as disbursements. To believe that referral fees have not had an inflationary affect on total costs as opposed to specific legal fees is therefore in our view misguided. We also believe that the research undertaken by Vanilla Research was limited and restricted in its remit.

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

It is quite clear that Lord Justice Jackson in his report and echoed by Lord Young in his subsequent report, both felt that referral fees should be banned. For the reasons expressed by both, we support the call for a ban, more specifically in the area of personal injury litigation.

We do not think that it can be a coincidence that whilst accident levels are falling, the volumes of personal injury claims following motor accidents have increased substantially since 2004, when the payment of referral fees was first allowed.

We think that consideration should also be given to the question of fraud and to what extent the existence of referral fees encourage some claims that can at the best be described as questionable. The insurance industry have most certainly seen an increase in the number of fraudulent claims that have been intimated.

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

Not relevant to our business.

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

Not relevant to our business.

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

Not relevant to our business.

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

Yes they should but in practice will have little impact on consumer choice as disclosure will occur after the event.

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

Following on from our previous comments, full transparency for the consumer that would enable them to have a choice would require consent from the consumer before a referral fee is paid.

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

The immediate consideration would be one of commerciality and to what extent information would be publicised. It may have the affect however of moderating some of the larger referral fees that one hears about in the market.

9. How should these issues be addressed?

It is our view that referral fees should be banned. That said, apart from specific enquiries being made as appropriate by either the SRA or FSA, adherence to any requirements could form an element of the annual solicitors audit.

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

As mentioned in our last reply, compliance may be improved if it did feature as part of the audit process.

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

We would have thought that simple compliance with the rules should be sufficient.

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

Consumer confidence in our view can only be brought about by full compliance with the rules and evidence through the auditing process that they are being followed.

Conclusions

It is our view that referral fees should be stopped altogether because in our view, these additional costs must be paid for and in personal injury cases, it is the defendant / their insurers who pay the cost bills. At present a claimant has no interest in controlling their legal spend but there is an impact on cost for any consumer who purchases motor and liability insurance.

Marketing is a legitimate business activity and there would seem to be quite a lot of information available for anyone who has a claim to make without the need for referral fees. Referral fees are a costly and inefficient marketing tool in our view and in contrast to Access to Justice, can be a restriction on consumer choice.

The Consumers Panel report did touch upon the practicability of policing referral fees, indicating that these were being paid before they were officially allowed. It would not appear to us to be a sound reason for them continuing. Lord Jackson in his report however recommended that if they were to continue that they should be capped at something like £200.

Yours sincerely



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