

Beachcroft Response to Legal Services Board Consultation Paper on Referral Fees, referral arrangements and fee sharing

Beachcroft LLP is one of the largest national commercial law firms in the UK. With more than 1,500 employees, including over 800 lawyers and 151 partners, we provide commercial legal advice and litigation services from eight locations in the UK, as well as in Auckland, New Zealand. We provide services as Beachcroft Dublin in Ireland and we have a representative office in Brussels. We also have a best friends network in Europe and a joint venture in India. Beachcroft provides 'trusted adviser' work for major national and international organisations, and delivers integrated legal services to clients in six main industry groups: health & public sector; real estate; financial services (including the insurance industry); technology, media & telecommunications; consumer goods & services; and industrial manufacturing and transport.

The specialist nature of the firm's dispute resolution practice is reflected by the breadth of services offered to the financial services and insurance industry. Sixty of its Partners and over 300 of its lawyers advise the insurance industry on a daily basis, providing tailored solutions to a broad range of issues. Clients include the top ten composite insurers, specialist companies, leading re-insurers, Lloyd's syndicates, professional associations and self-insureds. In the health care and commercial sector, the firm's litigators handle a range of medical and clinical negligence, employers' liability and public liability cases and a variety of other litigation on public sector law and patient care issues.

We note that the report concludes that consumers do not suffer detriment as a result of referral fees. We consider that a system where the consumer is not at the heart of the litigation process is not a system that best serves that consumer. Lord Young in his report "Common Sense, Common Safety" states:-

"Referral fees are paid by solicitors to third parties.....Such companies then proceed to auction any claim that appears well founded to the solicitor who will pay the most. Quite apart from encouraging litigation in circumstances when it might not otherwise occur, claims go to the solicitor who pays the most, rather than the one most suitable for the client – sometimes if their practice is far away from the client"

In his report Lord Justice Jackson stated:-

"On the basis of all the evidence that I have read and heard during the Costs Review, I consider that BTE insurers and claims management companies charge referral fees without adding any commensurate value to the litigation process. On the contrary, referral fees have now escalated to such a level that some solicitors cut corners in order to (a) cover the referral fee and (b) make a profit on the case. In straightforward road traffic accident ("RTA") cases often more than half the fees paid to the solicitors are paid out in referral fees.⁴⁸ This is to the detriment of the client, the solicitors and the public interest."

Beachcroft consider that these views more closely reflect the position. There is a detriment to clients and to the public interest in allowing referral fees. The claimant is not at the heart of the case in circumstances where the case goes to the highest bidder. There is little if any consideration given to who the most appropriate solicitor to deal with that claimant is. For that reason it would not be unusual for a claimant based in Southampton to have a solicitor

based in Newcastle and for that solicitor to then issue proceedings, if required, in Newcastle for their own convenience.

There also tend to be a number of intermediaries involved in the claims management process. For many of those intermediaries it is difficult to see what benefit their involvement in the process adds. These intermediaries mean for example that we have seen claims for translators fees (in cases where the claimant does not even require a translator) or agents fees for signing a claimant up to the ATE and CFA, something which a solicitor could deal with perfectly adequately.

All of these add up to a significant extra layer of cost, generated around the claimant, to no obvious benefit to that claimant whatsoever.

If however, referral fees are not to be removed, Beachcroft argue that the regulation needs to be transparent and clear. Claimants should be made aware, not only of the referral fees paid, but also of the fees charged by intermediaries between the Claims Management Company and the solicitor.

Any regulation needs to be linked closely to planned regulation of ABS. Beachcroft consider that the problem of referral fees could be exacerbated by ABS. Until the details of profit sharing in an ABS are made public it will not possible to fully assess how significant a problem that will be.

Any regulation that is put in place now, will need to be sufficiently flexible and adaptable to be carried through into the regulation of ABS. Unless the regulation of profit sharing arrangements in ABS are sufficiently tightly controlled the issues highlighted by Lord Young and Lord Justice Jackson will be exacerbated.