

**PERSONAL RESPONSE TO LSB CONSULTATION ON REFERRAL FEES,
ARRANGEMENTS AND FEE SHARING**

I am a barrister practising in criminal law. I responded to the last LSB consultation as head of my chambers, a post I no longer hold. I submit this as a personal response. This response addresses questions in relation to criminal cases.

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

No. The LSB is quite wrong to have “identified” a market rate of 80% of the RAGFS in crown court advocacy. The market rate will always pay 100% since that is the cost to the LSC.

The LSB needs to understand the distinction between fee sharing where different advocates undertake different parts of the work for a trial and agree an appropriate split and a referral arrangement where the responsibility for and the conduct of a trial is passed to an advocate in return for a payment representing 20% say of the fee.

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

In some cases there will be an agreed sharing of the fee to reflect a division of the work done by different advocates, be they solicitors or barristers. The practice of selling the advocacy element of a crown court trial in return for a referral fee of 20% which was widespread and which I referred to in the previous consultation has been recognised as improper by the LSC in their latest guidance for criminal contract holders (December 2010). The advice records:

“All litigators and advocates are reminded that an Instructed Advocate is to be appointed on the basis that he/she is to conduct the trial. It is not appropriate to designate an Instructed Advocate where there is no intention for that advocate to actually undertake the trial.”

This now properly reflects the fact that the Instructed Advocate is supposed to accept “primary responsibility” for the case. The position is accepted by the Law Society as well as the LSC. I hope the LSB will see the force of these submissions.

5. In particular, do you have evidence about the impact of referral fees or fee

sharing arrangements on the quality of criminal advocacy?

This is first of all a matter of principle. Any system in which the representation of a defendant is effectively sold to the lowest bidder is corrosive and leads to the selection of advocates based on cost not on quality. Does the LSB have any evidence that referral fees in criminal cases are disclosed to the lay client? Just ask what the client's reaction would be if he was told that his solicitors had secured an advocate who was prepared to do the case for 80% of the fee. Is the client entitled to express a preference for an advocate who will be paid 10% of the fee considered appropriate for his case by the LSC? If not where is the protection for the consumer?

Thank you for the opportunity to take part in this consultation

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