



THE CITY OF LONDON LAW SOCIETY

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20 December 2010

By email: consultations@legalservicesboard.org.uk

Dear Mr McKay

Re: Referral fees, referral arrangements and fee sharing: Discussion document on the regulatory treatment of referral fees, referral arrangements and fee sharing

The City of London Law Society (“CLLS”) represents approximately 14,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. This response in respect of the LSB consultation on “Referral fees, referral arrangements and fee sharing” has been prepared by the CLLS Professional Rules and Regulation Committee (the “PR&RC”). The PR&RC is made up of a number of solicitors from thirteen City of London firms who have specialist experience in the area of the regulation of the profession.

In February this year, we responded to the Legal Services Consumer Panel Investigation into Referral Arrangements. In that response, we did not comment on the question of the payment of referral fees in personal injury or other cases or matters for private individuals, as this is not the type of work in which our members are predominantly involved.

Referral arrangements

We did point out, however, that our member firms will regularly be referring business to, and receiving referrals of business from, lawyers and other professionals such as accountants. These referrals are commonplace and arise for a number of reasons including, for example, conflicts, a lack of the requisite expertise within a firm (e.g. divorce or family matters) or jurisdictional matters. Moreover, as part of networking and business development activities, partners and lawyers in our member firms may have loose, informal understandings and/or arrangements with intermediaries such as investment banks, brokers and accountants for the mutual referral of opportunities, which may or may not result in legal work.

Such referrals are not characterised by payment in return for referral of business. Nor do they involve other non-monetary arrangements linked to the introduction of clients, such as the provision of free or below-cost services in exchange for the referral of other business. Given the fluidity of these arrangements and the absence of any payment of referral fees or other monetary benefit to the referrer, we think that they should be expressly outwith the proposed disclosure regime for referral arrangements.

Consultancies

Separately, our member firms may have consultancy arrangements with lawyers, which may include provisions for payment to the consultant on the introduction of work. Typically, these are one-off arrangements with individuals who are otherwise practising on their own account. Under the Solicitors Code at present, referrals between lawyers (as defined in the Code) are excepted from the regulatory requirements of Rule 9 of the Code. The overseas aspects are also potentially relevant. In some instances, the lawyer may well be in an overseas jurisdiction and operating through a one man company so the referrer is strictly a non-lawyer company, though in substance it is the lawyer making the referral as part of a regulated legal practice, so it would be appropriate for it to be treated as such. In some overseas jurisdictions referral fees with lawyers or non-lawyers are normal and a requirement to disclose arrangements which are otherwise entirely lawful, over an above the normal duty of disclosure owed to clients, puts us at a disadvantage to competitors from other countries.

While we can see no objection in principle to the disclosure to a client on the inception of a matter that such a consultant may receive a fee in relation to the work in question, we doubt that there is any client benefit in the publication by the approved regulator of the consultancy agreement in its entirety as proposed in Recommendation Two in Chapter 7 (Recommendations for improving transparency and disclosure).

Bulk-buying/central procurement

There are other referral-type arrangements which we believe should be expressly excluded from the disclosure requirements. These include where a framework agreement facilitating the call-off of legal services by participants on agreed terms is in place. These arrangements may involve the payment of a fee by the legal provider to the party which has put in place the framework. Bulk or central-buying arrangements also exist for the call-off by purchasers of legal services, where a rebate may be due to the central-buying agency, calculated by reference to the volume of business delivered. Here, the individual purchasers of legal services will already be aware that they are purchasing pursuant to the central-buying arrangements. By way of example this arrangement is operated, at clients' insistence, for certain work for the UK government where one department is the coordinator for procurement of legal services and receives a fee in respect of all work done for various government departments under the arrangement. We can see no client benefit in the publication of the agreements in question, and indeed the client(s) may object to our doing so.

Yours sincerely

David McIntosh
Chair
CLLS

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**THE CITY OF LONDON LAW SOCIETY
PROFESSIONAL RULES AND REGULATION COMMITTEE**

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