

TO: The Legal Services Board

Response to discussion document on Referral fees, referral arrangements and fee sharing

This is a response by me, Nicholas Gurney-Champion, to your discussion document on referral fees, referral arrangements and fee sharing in the legal services marketplace. I am a Solicitor and a Law Society Council member representing approximately 22,000 residential conveyancing solicitors in England and Wales.

There is overwhelming opposition to referral fees within the solicitors' profession. If it were up to the membership of this profession referral fees would be banned. Further regulation is not the answer as it cannot be adequately imposed or properly policed and enforced. An outright ban is the only correct option to take.

In November 2009 the Law Society Council passed a motion by an overwhelming majority to accept that referral fees limit access to justice, reduce the quality of legal services and are not in the best interests of clients, and as such the Law Society should encourage the Government and the LSB to ban them by all providers of legal services. It is important that there is a regulatory "level playing field" between the different players within the legal services market.

This issue is also a matter of great concern to not just solicitors. There have been published in 2010 the results of three recent studies which call for a ban on referral fees. The first is a report on litigation costs by Lord Justice Jackson that has called for referral fees to be banned in personal injury cases. The second is a study into the home buying and selling market by the Office of Fair Trading that has raised concerns that the payment of referral fees may cause conflicts of interests and has recommended that the Government should consider whether the payment of these fees should be banned. The third is a review by Lord Young of the operation of health and safety laws and the growth of the compensation culture which supports the recommendations of Lord Justice Jackson. I welcome these conclusions.

Since the Law Society's change in rules allowing the payment of referral fees by solicitors approximately five years ago, a whole industry of referral agencies has been created. The Claims Management Regulator has been in place for over 3 years. It now regulates over 2,500 businesses, which together have an annual turnover of approximately £300m.

It is not uncommon for a solicitor to pay up to £800 for the introduction of a personal injury case. With the current fixed fees regime for the majority of personal injury work a solicitor might recover in costs in the order of £1,500 of which £800 has to be paid to the introducer. Which solicitor is likely to give the better level of service? The one receiving £1,500 net or the one receiving only £700 net?

With fixed fees in litigation work becoming more common the payment of referral fees is going to have an increasing impact upon the level of service that a solicitor is able to afford to give his or her client. The high level of referral fees is, in my view, going to have an increasing impact upon the quality of work being carried out for clients.

The recent OFT report shows that a typical referral fee paid by a conveyancing firm to an estate agent for the introduction of work is between £250-£300 per case. An average fee to a client by a conveyancer for a typical conveyancing transaction is between £500-£650. Which conveyancer is likely to give the better service? The one receiving £500-£650 net or the one receiving only £250-£350 net?

I suggest that in each case the business receiving the higher fee is likely to be giving the better service.

I dispute the findings of Charles River Associates that there is no evidence that the payment of referral fees increases the cost to the consumer. I have in my possession a completion statement from a firm of solicitors in the Isle of Wight for the straightforward sale of a residential property at a price of £217,000. My firm would do a job such as this at a fixed quote of £625. The Isle of Wight firm charged £770

including a referral fee of £370, which was passed on to the client. The solicitors therefore received only £400 net for their own costs. £225 less than my firm would have received for the same job but an extra £145 to the client.

This is occurring up and down the country on a day-to-day basis. The consumer is suffering financially because of it.

What a ridiculous state of affairs the legal profession has got itself into. How can it possibly be in the best interests of clients for providers of legal services to attract work by paying referral fees and then pass this on to the client by way of an inflated price?

I am constantly invited by referral agencies to join their panels and receive the introduction of work, provided I pay their fees. There is no requirement for me to show any expertise or competence. Provided I pay the requisite fees then the work will flow. Can this be right? Is this in the best interests of consumers? I suggest no.

I have worked in general practice and in particular the conveyancing field for almost twenty-five years. My firm and hundreds like it up and down the country have traditionally attracted conveyancing and other work by way of recommendation from estate agents and others on the basis of doing a good job at a reasonable fee. For most firms who do not pay referral fees this introduction of work has almost completely dried up. In my experience most estate agents now will only refer work to those who will pay a fee. In many cases clients are referred to conveyancers out of their geographic area and often at a price in excess of what a local firm would charge. I do not believe this is in the interests of consumers.

In my view referral fees by their very nature are completely contrary to the regulatory objectives and professional principles set out in Section 1 of the Legal Services Act 2007.

The following are examples of situations where referral fees are paid. Please ask yourself -

- Does paying referral fees to hairdressers for the introduction of divorce work enhance the trust the public places in the legal profession?
- Does paying funeral directors a fee for the introduction of probate work enhance the independence and integrity of the legal profession?
- Does paying a referral fee to a hospital receptionist for the introduction of personal injury work encourage an independent, diverse and effective legal profession?
- Does being referred to a legal adviser many miles away in return for a referral fee improve access to justice?

I suggest the answer to all these questions is no.

Would it make it right that if in each case the hairdresser or the funeral director or the hospital receptionist told the potential client that they were being paid a referral fee and explained the relationship between them and the solicitor and that the professional rules were being followed? Again, I suggest no.

I strongly believe that the payment of referral fees:

- Fails to protect the public interest or the interest of consumers.
- Damages access to justice.
- Damages competition in the provision of legal services.
- Is damaging to an independent, diverse and effective legal profession.
- Adversely affects the independence and integrity of the legal profession
- Damages the quality of work carried out for clients.
- and is generally not in the best interests of clients.

What is wrong with the principle of being referred work because you are properly qualified, you are good at the job, you are efficient and you charge a reasonable fee? That is where the legal services market should be. That is how all providers of legal

services should attract work. It should not be upon the basis of the person who pays the highest referral fee gets the job.

If the payment of referral fees is to be allowed to continue then I agree that further regulation is required, particularly before or at the point when the consumer is making the decision as to which legal services provider to use. Full transparency of the referral arrangement, and the fact that the consumer has a choice, is essential. It is not just the lawyer that needs to be regulated but also the introducer i.e. the estate agent or the claims manager. This is most important as it is at this point that the consumer needs to make an informed choice. Very often the consumer knows nothing about the referral arrangement until it is too late to do anything about it.

I believe that regulations should be introduced to impose a short “cooling off” period for the consumer if a referral arrangement is in place. Say 14 days. The consumer should be able to consider the arrangement in his/her own time without the pressure of an instant decision imposed by the estate agent, claims manager or other salesman.

We need to face up to the realities of referral fees. I believe they have no place in the legal services market and should be banned. However if they are to stay they need robust, effective and enforceable regulation of all parties to the arrangement and to include full disclosure at the stage when the consumer is making the decision whom to instruct.

Nicholas Gurney-Champion
Solicitor and
Law Society Council Member for Residential Conveyancers

4th January 2011