



1st Floor, St Mark's Court
Chart Way, Horsham
RH12 1XL

Telephone: 01403 235420

21 December 2010

Michael Mackay
Legal Services Board
7th Floor, Victoria House,
Southampton Row
London
WC1B 4AD

Dear Sirs

LSB's Consultation – Referral Fees, Referral Arrangements and Fee Sharing

About RSA

With a 300 year heritage, RSA is one of the world's leading multinational quoted insurance groups. With a focus on general insurance, it has the capability to write business in over 130 countries with major operations in the UK, Scandinavia, Canada, Ireland, Asia and the Middle East and Latin America.

Within the UK, RSA is the largest commercial lines insurer, covering the insurance and risk management needs of a significant number of FTSE 100 companies. It has a full multi-distribution capability, writing business through brokers and corporate partners, direct and online. Our personal lines business – MORE TH>N – is one of the UK's top three personal motor and household insurance companies.

Our interest in the LSB Consultation – Referral Fees, Referral Arrangements and Fee Sharing

RSA are a major provider of motor insurance, employers' liability insurance and public liability insurance and also provide household, property, professional indemnity, engineering, pet and marine products. Under a number of these covers, we make many payments to claimants who have suffered personal injury as well as additional costs where they have legal representation. In addition, we also provide 'before the event' legal expenses insurance. The types of personal injury claims we deal with can be broadly categorised as follows:

- Third Party Liability motor claims made by Claimants injured in accidents involving RSA or MORE TH>N policyholders.
- Claims for personal injury or disease made by employees against employers who have or have had an Employers' Liability Insurance policy with RSA.
- Claims for personal injury or disease made by members of the public against individuals and organisations who have or have had a public liability policy with RSA.
- Pursuit of personal injury claims through provision of legal expenses insurance to individuals and organisations.

Given our interest in this area, RSA welcomes the opportunity to comment on this consultation and we offer our observations in the following paragraphs. If convenient we would of course be happy to discuss any aspect of our response further.

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Royal & Sun Alliance Insurance plc No. 93792.

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Executive Summary

RSA take the view that the LSB Consultation Paper has dealt with Referral Fees in isolation without reference to the wider current activity on reform considered by Lord Justice Jackson and Lord Young (now being taken forward by Mark Prisk MP).

The LSB consultation paper draws a positive conclusion from the increase in frequency arguing that this represents access to justice. However, it fails to look at the wider implications of an increased frequency of claims with the result of a higher cost of insurance upon society as a whole.

No reference is made in the consultation to the desirability of practices that appear to have evolved in this area. Lord Young in his report, Common Sense, Common Safety, made reference to the Better Regulation Task Force's Better Routes to Redress report of 2004, stated "*concerns raised about the sector in the report and elsewhere were the use of aggressive marketing techniques, encouraging frivolous claims, misleading consumers about funding options, providing poor quality advice and dropping claims when they were thought not to be financially lucrative*". This concern is also raised by Lord Justice Jackson: "*it is offensive and wrong in principle for personal injury claimants to be treated as a commodity*".¹

Consideration also needs to be given to the cost of regulation of Claims Management Companies (CMC's). RSA note that there are currently 3,366 CMC's registered in the UK. We understand that the Government initially envisaged there would be approximately 500 such Companies. Since regulation was introduced in 2007, 200 CMC's have been closed by the Regulator.²

In considering the response, RSA has drawn upon other sources not considered in the consultation paper for example "Marketing Costs for Personal Injury Claims" carried out by Oxera Consulting Limited, ABI Research Paper No 15, 2009.

Q1, Do you agree with our analysis of referral fees and arrangements?

- 1.1 RSA believe that the LSB's consultation does not explore in sufficient detail the cost of Referral Fees and the effect that they have on driving increased claims frequency and frictional costs since they were made lawful in 2004. Lord Young points out that LSB figures suggest that lawyers who pay Referral Fees can receive up to 100 times as much work as those who do not. Fees have risen from £250 per case in 2004 to over £800 per case today. Evidence from the insurance industry shows that over 15% of the total cost of a claim goes to pay for Referral Fees and adds nothing to a claimant's damages. As Lord Young says, this burden cannot be sustained, especially given the constant increase in referral costs.
- 1.2 Referral Fees have driven a culture where enterprise and socially desirable activities have been stifled. Lord Young in his report Common Sense Common Safety said: "*I am in no doubt that the payment of referral fees and the accompanying culture that sees claimants rewarded before the legal process has begun creates a climate in which businesses, the public sector and even the voluntary and charity organisations fear litigation for the smallest of accidents, and then manage risk in accordance with this fear*".
- 1.3 Despite a reduction in road traffic accidents, bodily injury claims have increased in 2000/2001 from 400,000 to 625,000 in 2008/2009. The increased claims frequency since the advent of Referral Fees, has lead to an increased cost for consumers and business by way of premium.

¹ (Jackson Final Report p205)

² (Neil Rose, A ban on referral fees may be too late for lawyers, Sunday Times, 08/04/10)

- 1.4 In association with the cost of Referral Fees, the cost of advertising legal services is estimated at £35 - £40m (LSB Consultation). RSA share the opinion of the ABI in that access to justice can be facilitated by other means at a lower cost to the consumer, bearing in mind access to justice should not be restricted to claimants. *'The facts of this case appear to show that access to justice for one party may well lead to a substantial denial of justice to the other.'*³

Q2. Do you have additional evidence about the operation of referral fees and arrangements that should be considered?

- 2.1 RSA consider that the issues raised in the LSB's Consultation should not be dealt with in isolation to the recommendations made by Lord Justice Jackson in his well balanced and comprehensive review of Civil Litigation Costs. There is no doubt that the Government, Judiciary and Insurance Industry view the need to reduce legal and frictional costs as paramount. The consideration of the operation of Referral Fees should be considered alongside these wider reforms. Jackson LJ: *"...solicitors will compete for business, 'not on the basis of who can pay the largest referral fees, but rather on the basis of who can charge the lowest success fees'".*⁴
- 2.2 The Motor Transport Committee is currently considering the ongoing escalating costs of motor insurance pricing, to which rising bodily injury costs and Referral Fees have been contributing factors. This raises the question of affordability and fraud (see 2.3 below).
- 2.3 RSA are concerned by the increasing number of fraudulent claims. Within the Motor Industry in 2009 122,000 fraudulent claims were identified with an associated claim value of £840m. Staged accidents made up £350m of this cost.⁵ According to research recently published by the Insurance Company LV, 93% of GPs have seen a patient in the past two years who they thought had exaggerated their injuries to try to make a personal injury claim. In addition 79% said that they had seen someone who they suspected was making up the injury entirely.⁶ It can be argued that the existence of Referral Fees adds incentive to the behaviour that looks to drive income from frivolous and unmeritorious claims.
- 2.4 As noted above, there are 3,366 CMCs against an initially anticipated 500. The Regulator has recently sought an additional £0.58m in funding from regulatory fees to support the costs in relation to escalating enforcement action, court decisions and changes in the economic conditions.⁷ This is another hidden cost of the referral fee regime when there are potentially more effective cost mechanisms for access to justice.

Questions 3-5

Questions 3 – 5 are not of relevance to the course of its business and therefore RSA has no comment to make.

³ The Chancellor of the High Court Sir Andrew Morritt in the recent decision on the case of Pankhurst v White & MIB

⁴ (Legal Executive Journal January 2011)

⁵ (J Dalton 2010, Speech to the North East Regional Group of Insurance Institutes, Leeds, 08/09/10)

⁶ (Stephen Adams, Patients "exaggerating injuries for insurance claims" say GPs, The Telegraph (10/12/2010)

⁷ (Claims Management Regulations Fees Determination 2011-2010 Consultation)

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Questions 6-12

Questions 6 – 12 refer to disclosure arrangements and measures of consumer confidence. RSA, having taken the view that Referral Fees should be considered alongside wider reform, has decided to make no comment on these specific questions. However we agree with the ABI's response in that regulation of any new proposals for disclosure would need to be robustly enforced. We fear though that the consequence would be a further increase in cost and bureaucracy, and may not ultimately provide the desired outcome for the consumer and society as a whole in any event.

Yours faithfully



Ian Currie
UK Technical Claims Director
Technical & Strategic Claims