



REFERRAL FEES, REFERRAL ARRANGEMENTS AND FEE SHARING

Discussion document on the regulatory treatment of referral fees, referral arrangements and fee sharing by the Legal Services Board

UNISON Response

Introduction

UNISON is the UK's largest trade union serving the public sector. We represent over 1.3 million members working in the NHS, Local Government, schools and universities as well as in the police sector and the electricity, gas and water industries, transport and voluntary sector. As a benefit of membership, UNISON provides a large range of legal services. This enables our membership, many of whom are women with the majority also being low paid, effective access to justice. The service includes a very comprehensive personal injury scheme. We support thousands of our members (for work and non-work related matters) and their family members (for non work related cases) who have suffered injury by referring their cases to specialist personal injury solicitors. UNISON therefore feels well placed to respond to this consultation paper and will focus our replies on those questions that directly relate to referral fees/arrangements in the personal injury field.

Our extensive legal assistance scheme also means we can provide other services to our members, such as free legal advice on non work issues, free wills and legal advice and assistance as well as representation in employment matters.

The personal injury cases we refer will only be pursued by our specialist personal injury solicitors where they have been assessed by them as having reasonable merit. UNISON does not receive any case referral fees for sending through this work. Further, UNISON never charges claimants for this service, whether they win or lose. If our member or their family member succeeds, they keep their damages in full.

Question 1: Do you agree with our analysis of the operation of referral fees and arrangements?

Question 2: Do you have additional evidence about the operation of referral fees and arrangements that should be considered by the LSB?

We agree with the LSB's analysis of the situation to the extent it concludes that the solution here is not to implement an outright ban in personal injury claims on all referral fees and arrangements (ie the type of wholesale ban recommended in Sir Rupert Jackson's report into civil litigation costs).

We believe that such a ban would restrict legitimate business arrangements of the type we have with our solicitors, and indeed the type of arrangements other not for profit organisations also rely upon as outlined below, and that this would have a very detrimental impact on access to justice for working people of modest means.

We say this because we do not receive any cash case referral fees but we do have an arrangement in place with our appointed solicitors. This, for example, enables our members to receive free legal advice and assistance when they need it. A total ban would therefore impact on the ability of organisations such as ours from offering such a valuable service. A service with clear access to justice benefits. This would have unintended adverse consequences, affecting organisations such as trade unions but also other not for profit organisations such as victim support groups and charities, all of whom may also receive assistance from law firms with legal helplines, legal surgeries and training etc. Banning such referral arrangements would, in our view, affect the most vulnerable in society. We therefore feel that all not for profit organisations should be able to continue with such referral arrangements (i.e. allowing a reasonable referral "fee" provided for wholly or mainly in such services to consumers). We enclose for your consideration the evidence we submitted to the consumer panel which sets out in more detail our position in this respect. You will also note from our response that we provide a number of other services, as a result of the agreement we have with our solicitors, covering a wider remit than outlined in paragraph 2.15 of your paper.

We also, as confirmed by the CRA findings in this paper, agree that in the personal injury market, increases in referral fees have not led to an increase in the price of legal services. This is not only because the guideline hourly rates were set before the ban on referral fees but so too was the predictable cost scheme for pre-issued RTA claims implemented well before 2004. Claimant solicitor's costs have been and continue to be set on the reasonable cost of doing the work, with those rates only being modestly increased over the prevailing years. No direct account has been taken of referral fees as they have continued to rise during this period.

That is why UNISON has had a longstanding concern about excessive cash for case referral fees which can be charged by some Claims Management Companies/BTE insurers. The impact is, in our view, detrimental to consumers as such high

payments inevitably affect the quality of legal services given to a claimant. A view that has been acknowledged as a potential consequence by both Sir Rupert Jackson and the Law Society, as referred to in the consultation paper. Or alternatively reduce the profit margins to such an extent that it puts pressure on lawyers to only take on low-risk claims, thereby restricting access to justice. Again the attached paper details our view on these matters.

Therefore, although we do not advocate an outright ban on all referral fees/arrangements we remain concerned about high case referral fees, and if such fees are to remain, we certainly accept greater consumer protection is needed, and that some of your proposals below (ie strengthening disclosure in relation to referral fees and promoting greater compliance and appropriate enforcement) would help achieve that.

We also welcome that at the very outset of your report, at paragraph 2.3, you have sought to draw a distinction between the different types of referral agreements in place. Distinguishing between cash referral fees and referral arrangements is important for reasons already outlined above.

Question 6: Will the proposals assist in improving disclosure to consumers?

Question 7: Are there other options for disclosure that approved regulators should consider?

We agree there is a need to improve transparency and disclosure for consumers in relation to referral fees. Such obligations need to be strengthened, especially in view of the evidence the consultation paper highlights, namely that the obligations already in place are often breached. With this in mind, we agree disclosure of the key facts as set out in your Recommendation 1 will assist, subject to the clear distinction made by the LSB in the paper between referral fees and referral arrangements, applying. We highlight this as it would clearly be untenable, in relation to the complex type of referral arrangement we have with our solicitors, to simply be able to stipulate a distinct cash value per case, and implementing such a requirement would not be proportionate where the current provisions already contain appropriate disclosure requirements relevant to referral arrangements.

Recommendation 1, in terms outlined above would then, we hope, by reflecting and building upon the existing provisions already in place reinforce protection for consumers.

Question 8: What are the issues relating to the disclosure of referral contracts by firms to approved regulators and their publication by approved regulators?

Question 9: How should these issues be addressed?

We are concerned about the second recommendation relating to improving transparency and disclosure in the market, notably that all approved regulators should collect and publish all agreements between introducers and lawyers.

We note the LSB consultation paper does not go into detail about the extent of disclosure in respect of referral agreements. We welcome transparency where it leads to either direct or indirect consumer benefit because of changes in the market. However it is clear that while it may be easier to compare and contrast cash referral fees paid for in straightforward claims such as RTA cases, where the services provided for that fee are largely the same; there is a significant issue in our view about the benefit that can be obtained from disclosing more complex referral arrangements. These can be unique individual agreements, very different in their remit (ie relating to referrals from a wide range of different types of personal injury claims) and coverage (leading to agreements in respect of various other free or discounted services), and of course they also alter in respect of the type of introducers involved in the agreement.

In terms of full, detailed disclosure there are, we believe, clear competition and confidentiality issues which also makes this recommendation impractical.

We note at the end of paragraph 7.13 you refer to disclosure by way of a “summary template” although in paragraph 7.16 the paper rejects standardising disclosure information. Clearly for reasons outlined above we are unsure of the benefits from any presumably briefer “summary template” particularly as it would not be in a standardised format, when as highlighted above referral arrangements are not easily compared. Although this may be more proportionate disclosure, again we have concerns about how this provision will ultimately impact on the market to the benefit of consumers who are often one time users.

Further as stated in your consultation paper - disclosure requirements impose costs and should only be used where justified by the consumer benefit being greater than the costs imposed. To this extent we also have concerns about the time and costs spent in gathering, publishing and regularly reviewing such agreements to ensure they remain up to date and would query the proportionality here.

Question 10: Will the proposals assist in improving compliance and enforcement of referral rule rules?

Question 11: What measures should be the subject of key performance indicators or targets?

Question 12: What metrics should be used to measure consumer confidence?

We note that these questions relate to the recommendation on delivering active regulation. This will encompass approved regulators setting out their compliance strategy for referral fees and arrangements when setting out their regulatory arrangements. We too agree that to assist consumers compliance and enforcement are important and visible action from approved regulators to achieve this will be of benefit. In relation to publishing information subject to the concerns we have raised to Questions 8 and 9 above, we accept that publishing data generally about the operation of referral fees could prove useful. We also welcome the consumer panel's recommendation at paragraph 8.8 of monitoring through surveys the impact of referral arrangements on levels of client satisfaction with outcomes and service. This potentially could also be a simpler way of comparing/assessing different referral arrangements, where unlike with referral fees, there is very unlikely to be any straightforward type of price comparison to be made.

As the attached paper outlines, we offer high quality independent legal services for our members. We have in place agreed standards of service and already carry out client care surveys (which over the last three years have shown exceptionally high approval ratings for the service our members and their family members have received) to assess the service provided and the overall benefit to our members.

Further, it seems clear that where compliance with referral fee provisions is low, targets should be set to try and ensure improved compliance in the relevant areas, albeit on a temporary basis until those targets have been reached.

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UNISON

13 December 2010