

**UNITE THE UNION'S RESPONSE TO THE LEGAL SERVICES BOARD'S  
DISCUSSION DOCUMENT ABOUT REFERRAL FEES, REFERRAL  
ARRANGEMENTS & FEE SHARING**

Unite the Union ("the Union") provides legal services on a range of different matters to its members. Referral fees are included in its arrangements with its various firms of solicitors, although these are overwhelmingly in the form of free/discounted legal advice rather than cash payments. The Union considers that it is therefore well placed to comment upon parts of this discussion document, and is grateful for the opportunity to do so. It should, however, be noted, that the Union has limited experience of fee sharing/referral arrangements in relation to criminal advocacy, and therefore we have not commented upon these sections of the document.

**1) DO YOU AGREE WITH OUR ANALYSIS OF THE OPERATION OF  
REFERRAL FEES AND ARRANGEMENTS?**

The Union agrees with the LSB's view that referral fees and arrangements should not be prohibited, but should simply be managed/regulated differently. However, we would refer the LSB to our response to the Legal Services Consumer Panel's call for evidence on referral arrangements which was submitted early in 2010 (copy attached), and in particular to the negative impact of referral fees upon quality of service provided to the consumer via BTE insurers and claims management companies. We would ask the LSB to consider in some detail the distinctions that we drew in that document between those organisations who rely upon referral fees for commercial profit and those not for profit organisations who rely upon referral fees/arrangements as a means of being able to provide a better and less risk-averse service to those that they serve. We attach an extract from page 2 of our response to the call for evidence about the detrimental impact of referral fees upon the likelihood of more complex personal injury claims being supported via BTE insurers/claims management companies:

"We note that the Jackson report sets out in some detail concerns about referral fees in personal injury claims in particular and the fact that these are leading to BTE insurers objectifying individual claimants such that they are being seen as commodities rather than as individuals in need of assistance. The Jackson report also comments on the lack of value that BTE insurers and claims management companies add to the process. We agree with and share these concerns. Indeed, we have further concerns about the detrimental impact that referral fees are having, in some circumstances, upon the quality of advice provided, the types of claims being run, and the likelihood of claims being undersettled. We understand that, in order to be able to afford to pay ever spiralling referral fees, solicitors' firms are being forced to use less experienced (and therefore less expensive to the firm) members of staff to undertake work, even in complex/high value cases where a higher degree of expertise is required. This must affect the quality of the advice being

provided. In addition, and again because of the level of referral fees, those firms instructed by BTE insurers/claims management companies are, we understand, being forced into a position of only accepting those claims which have a very high chance of settling or winning as their margins are being squeezed to such an extent as a result of being required to pay exorbitant referral fees that they can only afford to take on those claims where there is a very high prospect of their costs being recoverable. The likelihood of claims being undersettled, on the basis that the firm will usually be able to recover their costs from the other party as part of a settlement rather than taking the risk of fighting a claim and losing it, and thereby not recovering legal costs from the other party, means that settlement of claims at whatever value is often seen as the preferred option for the lawyers. "

Whilst we note that the LSB has undertaken significant investigation into quality of service and price, it is not clear whether there has been any investigation into the types of claims being supported by different organisations (in particular whether certain organisations show a reluctance to take on "hard" cases rather than "easy" ones) and into settlement levels. It may be pertinent to consider undertaking such investigations.

We would also refer the LSB to the suggested way forward that we set out in our response to the LSCP's call for evidence.

We are in agreement with some of the proposals that the LSB has set out in relation to transparency, but we have grave concerns about others. We set these out in detail in our response to questions 6-8 below.

## **2) DO YOU HAVE ADDITIONAL EVIDENCE ABOUT THE OPERATION OF REFERRAL FEES AND ARRANGEMENTS THAT SHOULD BE CONSIDERED BY THE LSB?**

We would refer the LSB to our response to the LSCP's call for evidence, mentioned above and copy attached.

## **6) WILL THE PROPOSALS ASSIST IN IMPROVING DISCLOSURE TO CONSUMERS?**

We are in broad agreement with the first of the LSB's recommendations in relation to improving transparency and disclosure, but on the proviso that this applies solely to referral fees rather than referral arrangements. We do not consider that a requirement upon legal providers to disclose basic information about referral fees to clients is unduly onerous, nor is it that dissimilar to current Solicitors Regulatory Authority requirements. However, we do not consider that this disclosure requirement should also apply to referral arrangements as we consider that this would be unworkable. Referral arrangements are likely, by their very nature, to be much more detailed and wide-ranging and therefore that much more difficult to explain. We would question whether most insurance policy holders/union members etc would in

fact wade through detailed information about referral arrangements that, as far as they are concerned, will have very little to do with the personal injury (or other) claim that they are looking to pursue.

We have significant concerns about the second of the LSB's recommendations in this area, which we set out in our response to questions 7-9 below.

**7) ARE THERE OTHER OPTIONS FOR DISCLOSURE THAT ARs SHOULD CONSIDER?**

**8) WHAT ARE THE ISSUES RELATING TO THE DISCLOSURE OF REFERRAL CONTRACTS BY FIRMS TO APPROVED REGULATORS AND THEIR PUBLICATION BY APPROVED REGULATORS?**

**9) HOW SHOULD THESE ISSUES BE ADDRESSED?**

We have concerns about the second of the LSB's recommendations in relation to transparency and disclosure. We consider that agreements between introducers and their lawyers constitute privileged and confidential information that all organisations, whether they be insurance company or not-for-profit introducers, or law firms, would not want their competitors, current or potential, to have access to. Introducers may have slightly different arrangements with different law firms. Lawyers may have different arrangements with different clients, even where those clients are similar types of organisations. Each of these arrangements will have been set up, altered, and then further altered over many years to take account of different and particular needs etc. We consider that it would be anti-competitive to seek disclosure of such arrangements.

The primary objective of the LSB in increasing transparency and disclosure is to provide better protection for the consumer. We consider that provision of the information set out in recommendation one should provide a starting point for this, but that provision of the information set out in recommendation two will not in fact assist in reaching this objective, and instead will simply have the adverse consequence of being anti-competitive. This is because we consider that the better way to enable protection for the consumer is, as the LSB has to some extent done for the purposes of its discussion document, to measure consumer satisfaction with outcomes/service/price and to see whether referral fees have led to any reduction in the quality of service provided to the consumer. We consider that focussing on such criteria provides a much better and more direct measure of the service being provided and therefore makes it easier to better protect consumers from poor levels of service. Simple disclosure of referral arrangements will not provide such information and may in fact provide a skewed picture of the service being provided, as such disclosure will not give the "full picture".

We would therefore recommend that the LSB reconsider this recommendation in its entirety and instead look at introducing a different regulatory regime that focuses much more specifically upon the criteria mentioned above.

**10) WILL THE PROPOSALS ASSIST IN IMPROVING COMPLIANCE AND ENFORCEMENT OF REFERRAL FEE RULES?**

**11) WHAT MEASURES SHOULD BE THE SUBJECT OF KEY PERFORMANCE INDICATORS OR TARGETS?**

**12) WHAT METRICS SHOULD BE USED TO MEASURE CONSUMER CONFIDENCE?**

We consider that the LSB's recommendation for delivering active regulation is broadly appropriate. We would, however, refer to the point made in our response to questions 7-9 above about the subject-matter of KPIs/targets/metrics - these should relate to measuring the service being provided rather than simply considering referral fee agreements/arrangements.

We consider that appropriate KPIs/targets/metrics include:

- level of satisfaction with outcome;
- level of satisfaction with service provided;
- type of claim pursued ("easy"/"hard");
- settlement levels;
- costs/price charged to consumer;
- complaints.

If you require any further information, please contact Shubha Banerjee, Solicitor, Unite the Union, at [shubha.banerjee@unitetheunion.org](mailto:shubha.banerjee@unitetheunion.org).