



The Hampshire Incorporated Law Society

REVIEW

OF

REFERRAL FEES

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Review of Referral Fees

This Society represents approximately 800 solicitors who work in the County of Hampshire. Our members have been written to requesting their views on the current rules regarding referral fees and how they have worked in practice over the last two years. The views expressed in this paper, therefore, are not only the views of the Hampshire Law Society Committee but also the views of our members.

At least 95% of responses from our members indicated they are opposed to professional rules allowing the payment of referral fees. From the result of our own research and enquiries it would appear that less than 10% of solicitors firm's in Hampshire pay referral fees. Of those firm's that do pay referral fees the majority wished they did not have to do so but now regard them as a commercial reality. Even Lord Falconer, speaking at the recent Law Society Conference, has come out against referral fees.

A selection of comments received from members are annexed at the end of this paper.

We wish to address the following areas of concern:-

1. The effect of paying a referral fee on the integrity of solicitors and their ability to give independent legal advice.
2. Has the cost of obtaining legal advice increased for the client due to the introduction of referral fees.
3. Has the introduction of referral fees affected a clients freedom of choice of solicitor.
4. Are solicitors and/or introducers disclosing referral fee arrangements to clients.
5. Are referral fees in the best interest of clients.

The Effect of the Payment of Referral fees on the Integrity of Solicitors and their Ability to give Independent Legal Advice

It is important to the integrity of the legal profession that it is totally independent and is seen to be independent. The proposed Solicitors Code of Conduct 2006 in Rule 1 defines the core duties of a solicitor. These state as a solicitor you must act with integrity and you must not allow your independence to be compromised and you must not behave in a way that is likely to diminish the trust the public places in you. Integrity, independence and public confidence are the bedrock of these new rules. It is the view of this Society that the payment of a referral fee in order to have work introduced to a solicitor flies in the face of these basic rules. In particular, if solicitors are paying for referrals from organisations that have a vested interest in the work being carried out by the solicitor this in itself throws doubt as to whether the solicitor is totally independent. For example, a solicitor may be reluctant to advise a client not to go ahead with the purchase of a property where the result of this may be that the Estate Agent concerned will not refer future business. It is interesting to note that in the financial services field, it is understood that the Financial Services Authority is considering a requirement that financial advisors should be paid on the basis of fees only and not on the basis of payment of commission by insurance companies. To be seen to be independent is important.

Has the Cost of Obtaining Legal Advice increased for the Client due to the Introduction of Referral fees.

The result of our own research indicates that the fees paid for conveyancing work by clients that use firms that pay referral fees are, on average, higher than the fees charged by firms which do not pay referral fees. Solicitors fees are generally calculated in accordance with Law Society guidance entitled "The Expense of Time". Basically this involves adding the total overheads of the firm e.g. rent, rates, salaries, advertising costs etc and would include the cost of referral fees. The charging rate by a firm's fee earners is directly effected by the total expenses of the firm. It is almost certain therefore, that the payment of referral fees would have an effect on the charging rate of every singly fee earner in that firm. In other words it would be

spread through all disciplines so that even client's who are not involved in conveyancing at all will be paying an increased hourly rate.

We have also received first hand evidence of a solicitor including a referral fee on a bill to a client but calling it a “title absolute fee”, where no such fee was relevant to the transaction.

The effect of paying referral fees is to increase the income of the referrer and, it appears, the solicitor's fee. The referral fee has to be paid by someone and ultimately this will be the client.

Has the Introduction of Referral fees Affected a Client's Freedom of Choice of Solicitor

The vast majority of our members believe that it has. First hand evidence has been given to the Society that client's have been told by Estate Agents that they must use a particular solicitor, often one that is out of the area. For example a client of one solicitor who lives in Emsworth, Hampshire was told she had to use a firm of solicitors in Northampton. The client was charged £765 plus VAT and disbursement on a purchase price of £185,000. This is considerably greater than most firm's in Hampshire would have charged for a similar purchase. The client was not advised to seek quote's from other solicitors and was not given any information by the Estate Agent in respect of the referral fee paid.

Some of the national chains of Estate Agents have given instructions to their branches that they must refer clients to particular “solicitor factories” due to the referral fee arrangement. This is despite the local Estate Agent not wishing to do so, because the quality of the service received from these firms is on the whole poor.

The result of our own research clearly shows that Estate Agents predominantly recommend those firm's that pay referral fees. First time buyer's in particular who are not aware of the conveyancing process are particularly vulnerable and are likely to accept without question an Estate Agent telling them that they must use a particular firm of solicitors. We have first hand evidence that confirms this.

The effect of the payment of referral fees is that Estate Agents will tend to recommend those firm's that will pay referral fees rather than recommending a firm of solicitors that will do the best job for the client. It is also considered likely that elderly and vulnerable client's will be steered towards firm's that pay referral fees. This often results in a firm out of the area being recommended.

Our research shows, particularly in the Conveyancing and personal injury sectors, that on the whole it is the larger firms who feel it necessary to pay referral fees in order to attract business to pay for their investment into staff and technology. The long term result of this is likely to be that smaller firms will lose work and go out of business. Clearly this will have an adverse affect upon a client's freedom of choice of solicitor as there will be fewer firm's available to choose from.

Are Solicitors and/or Introducers Disclosing Referral fee arrangements to Client's

The result of our own research is that in most cases this is not happening either by the estate agents or the solicitors. A recent report from The Law Society Practice Standards Unit also clearly shows that by far the majority of firms paying referral fees are not complying with the Rules, with 39% committing significant breaches and 55% minor breaches. Only 6% of firms visited by the Unit fully complied with the Rules. It would appear the so called safeguards introduced by the Law Society are not being adhered to. Clients are therefore unable to make an informed choice.

Are Referral fees in the Best Interest of Client's

The view of the vast majority of our members is that they are not, for the reasons stated above. It compromises the independence of the profession. It adds to the cost of delivery of services to the client. It adversely affects the client's freedom of choice, and it is clearly anti competitive and likely to create a monopoly within the profession. This could have very serious consequences in terms of "unmet need" and "legal deserts" in the provision of legal services.

The appalling reports into the miners' compensation scheme also clearly shows that the referral fee arrangements in the personal injury sector have not been in the best interests of clients. Headlines such as "thousands of ailing miners pay the price of lawyer's secret deal" or "the conduct of the miners' compensation cases is discreditable" do the profession a great deal of harm and, in turn do no good for the client.

And where is it all going to lead? A Hampshire firm has already been criticised for paying referral fees to local hairdressers who refer matrimonial clients to them. A number of firms in Hampshire have been approached by a commercial outfit willing to introduce divorce clients in return for a referral fee. There is no requirement for the firms to have any particular expertise – just to pay the fee. Is this really in the best interest of clients, we maintain it is not. A solicitor should have work referred on the basis of his or her expertise and competence at the job.

A SELECTION OF COMMENTS FROM MEMBERS

1. ‘One of my clients got pushed into one of the bulk conveyancers by the Mortgage Company. It was a matrimonial matter, and a slightly difficult one at that. If the monies were handed over to the opponent at the wrong time, the client could have had real problems. She clearly did not know or did not understand about any referral fee. I warned her in advance not to do it, but she was seduced by the lower fees and talked into by the Mortgage Company – I suspect it was quite a hard sell. They then proceeded to mess the matter up, the crowning glory being them asking me to draft the conveyancing document. “Isn’t that your job?” I asked. “Yes, but we are on a fixed fee so we don’t want to do it” was the reply. The cost in the end was far higher to the client than if she had just come to us in the first place.’

2. ‘The referral fee system creates a situation where estate agents and others heavily pressurise people to go for solicitors or conveyancers who might not be right for them. Indeed some junior estate agents privately admit to some frustration as they know these bulk firms are often useless, but they have been directed from on high and indeed get into trouble if they do not do it. It is causing referring organisations to not act in the best interests of often vulnerable clients and I think it makes me ashamed that we allow this to happen.’

3. ‘The bad PR that the profession receives as a whole is made worse by payment of referral fees. A local firm has recently been caught paying hairdressers to send them family cases. This made national news. I am amazed that there has not already been a Panorama programme on how ruthless lawyers are ‘bribing’ estate agents and others to send them vulnerable people to ‘exploit’. Maybe there already has, but in the current environment with non-lawyer organisations poised to move in, we cannot afford the already tarnished image of solicitors to be further damaged.’

4. 'We have recently been approached by a referral organisation offering to refer us family cases. This was a new one on us as it is normally personal injury. I was initially concerned, as they claimed to be on the Women's Aid Website. They are a highly respected charity dealing primarily with domestic abuse. I enquired of Women's Aid and discovered that there was no such link as the organisation were removed due to complaints. These referral organisations put up adverts in Yellow Pages and on the web as well as on radio, etc. They look very professional and give the impression that they know what they are doing. However, all they do is immediately pass referrals to solicitors who are on their panel. The only criteria for being on their panel is to pay for the referral. They did not ask (I even offered) for any evidence that we know what we are doing, so we could be the dodgiest family firm in Hampshire and they would not have known, or, I expect, care. Thus vulnerable people could end up being put through to solicitors with no clue what they are doing....much like the PI claims farmers.'

5. 'Referral fees are or will in future increasingly be covertly detrimental to a quality service and good advice. I carried out a survey for my firm when we were considering taking work from claims management companies and we learnt that referral fees were being paid between £250 and £750 per case. With increased competition amongst lawyers and increased awareness among those who have the gift of such work referral fees are only going to go up. To maintain margins law firms will have to continue to reduce overheads, and most importantly increase speed of turnover or through put. The combination of all of these factors in the PI world leads in my view to poor service to clients in need, an absence of real knowledge of law and procedure by those applying it and a dilution of the professionalism and 'clients first' attitude of which real lawyers are so proud. I speak from the perspective of a lawyer which leads a team which is on the receiving end of the often very poor service. We see claims being settled cheaply just to get costs and move on. I know of one specialist PI firm with 160 handlers and no lawyers in that team (apart from the Senior Partner who was telling me this) with all work being done strictly to precedent letters and processes. Our general belief is that the

client's interests are now generally subordinate to the claim handler's needs to settle the case and move on and the business need to turn/maintain a reasonable profit after payment of a referral fee. In short, unless we can take referral fees out of the equation PI lawyers will soon be buying work so expensively that the quality of client service won't even be a secondary consideration in the volume claims arena. Referral fees should be banned and stringent criteria put in place to give every lawyer an unassailable reason to say to anyone asking for a referral fee "I'm sorry, I could lose my career".'

6. 'I have spoken to two clients in the last month who advised me that they were recommended to other solicitors notwithstanding that we had a good relationship with them. In most cases the representation was that the transactions would be better dealt with, and the clients had no idea that referral fees were part of the deal as they were not mentioned at all.'
7. 'A local firm of estate agents recently telephoned me on a matter that I was dealing with and volunteered that, although they accept referral fees from their 'chosen' solicitors, they were unhappy with the quality of service being provided with a failure to explain matters to clients or answer both agents and client's telephone enquiries during a sale and purchase. The direction or recommendation of clients to solicitors was based on receipt of referral fees and not efficiency or quality of practice.'
8. 'We need to compete in the commercial world of legal services and if solicitors are prevented from paying referral fees other commercial entities certainly post clementi will do so and solicitors will suffer the consequences. I support referral fees provided that the client maintains their freedom of choice, that the client is made aware of any payment made and is not penalised in any way financially.'
9. 'Speaking for my firm, we do not regard these fees to be in the interests of clients either financially or in quality of advice and service. We have resisted becoming involved, indeed we strongly suspect their widespread abuse.'

10. “On numerous occasions I have received requests from longstanding good clients to send deeds to factory firms in Yorkshire on the basis that agents have told them either that they have to use them or that the deal is better or that they will get a better service, which of course generally they do not. I also have numerous agents who I know extremely well telling me that they really do not want to recommend these factory firms but they have to otherwise they will get the sack and also the target for the office won’t be met and the bonuses won’t be paid. We therefore have agents simply lying to their vendors/purchasers but they are recommending a firm who they know is pretty well useless.’