



Referral Fees

An Update from NewLaw Solicitors

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Introduction

This update is the third in our series of briefing documents that have tracked the progress of the proposed reform of the personal injury compensation system. This series began with the introduction of Jack Straw's Motor Insurance Regulation Bill.

Since then the Government has picked up on some of the proposed reforms and embodied them within the Legal Aid, Sentencing and Punishment of Offenders Bill. That Bill has now completed its journey through the House of Commons and it is almost safe to assume that the proposed provisions are now in their final format.

The short point is that the majority of the original propositions and subsequent amendments have fallen away, leaving the referral fee ban as the only remaining live issue for the time being.

Previous provisions in relation to whiplash claims, cold calling and the use of personal data in relation to injury victims have fallen away.

It is worth noting that the original Motor Insurance Regulation Bill which contains some of those provisions remains in existence and is due for its second reading on the 20th January 2012. However it seems unlikely that the remaining parts of that Bill will now make it into the statute books.

Referral Fees

1. (a) A regulated person who:

- is paid for referring prescribed legal business to another person; or
- who pays another person for a referral,

is in breach of the provision.

Prescribed legal business is described as a claim or potential claim for personal injuries or death.

A breach of this provision does not give rise to a criminal offence.

- (b) A regulated person providing prescribed legal services will also be in breach if that person arranges for services to be provided by another and receives a payment for making the arrangement.

It is proposed that regulation will be shared by the FSA, the Claims Management Regulator, the Solicitors Regulatory Authority and the Bar Council.

Potential Consequences of the Bill

Our view remains that joint venture Alternative Business Structures (ABS) providing personal injury legal services would not breach these provisions. The governance of such structures is not entirely straightforward and now certainly warrants immediate strategic thinking.

This should be undertaken sooner rather than later as a genuine risk exists of being caught in the gap between the implementation of the referral fee ban and the granting of a licence to operate an ABS vehicle. The danger of being caught in this gap is that during this time any direct income derived from the referral of personal injury claims shall breach these provisions.

The regulations allow the Solicitors Regulation Authority a maximum period of 9 months to deal with an application for licence for an ABS. It is not inconceivable that less than straightforward applications may take this long. If, as may be the case, the ban is implemented in October 2012 then the importance of lodging any application in January 2012 is self-evident.

All claims for personal injury and death remain contemplated, affecting employer's liability, public liability, clinical negligence and industrial disease claims.

The ban of referral fees now also goes beyond the initial referral of the claimant to the solicitor. The solicitor conducting the claim shall no longer be allowed to receive payment for arranging other services in respect of that claim.

This will bring a final end to the already grey area whereby a solicitor receives a 'commission' from a medical agency for placing an instruction for a medical report. Interestingly, this provision would not prevent such a payment being made to some person or organisation other than the solicitor placing the instruction.

Observations

It is important to think carefully about any proposed alternative commercial arrangement that is intended to avoid breaching these provisions. The Bill provides for the regulator to look beyond any label (for example marketing fee) that is given to a payment that might be considered to be a payment made for a referral.

Such a payment may still be treated as a referral fee unless the person making or receiving payment establishes that the payment was for a 'service'. In considering such an argument the regulator shall be entitled to consider whether the payment made or received exceeds the amount that might ordinarily be expected in respect of such services.

Any fee paid that is calculated by reference to the number of claims referred is likely to come under very close scrutiny.

Those arrangements that are less likely to attract regulatory attention are those whereby the only financial reward stems from a genuine share in the revenue, cost and commercial risk of an entire venture rather than an individual claim.

NewLaw Solicitors

NewLaw Solicitors is a fresh thinking legal practice. It is the trading style of NewLaw Legal Limited. The company trades within a corporate structure that delivers a modern, nimble approach to legal services that cannot always be achieved via more traditional Partnership models.

Founded in 2004, the firm has its roots firmly within the insurance industry. Chief Executive Helen Molyneux was Head of Insurance at Eversheds. Other senior managers including the Strategic Partnerships Director Philip Dicken are also insurance lawyers of many years experience.

NewLaw now employs over 270 people from its Head Office in Cardiff and is the 7th fastest growing company in Wales. With an almost infinitely scaleable infrastructure, NewLaw currently processes in excess of 20,000 personal injury claims each year.

The firm has a growing reputation for providing claimant personal injury legal services of the very highest quality on a business to business basis on behalf of its strategic partners.

We pride ourselves on our integrity, service delivery and innovative commercial proposals. We shall not compromise on any of these.

We understand that everything that we do reflects upon the brand of our business partners, hence our unwavering dedication to delivering legal services of the highest quality.

For further information please contact:

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