

## **Warning notice**

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## **Referral fees LASPO and SRA Principles**

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## **Status**

This document is to help you understand your obligations and how to comply with them. We may have regard to it when exercising our regulatory functions.

## **Who is this warning notice relevant to?**

This warning notice is relevant to you if you enter into or already have referral arrangements for personal injury work. Our codes of conduct are clear that, in addition to the regulatory requirements set by us in the Standards and Regulations, we directly monitor and enforce the requirements relating to referral fees set out in section 56 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).

## **The SRA Standards and Regulations**

The principles and codes of conduct are underpinned by our Enforcement Strategy, which explains in more detail our approach to taking regulatory action in the public interest. The following principles are most relevant to this warning notice, however other principles and parts of the Standards and Regulations may apply.

- Principle 1: You act in a way that upholds the constitutional principle of the rule of law, and the proper administration of justice.

You have obligations not only to clients but also to the court and to third parties with whom you have dealings on your clients' behalf;

- Principle 2: You act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons,

You must behave in a way that maintains the trust the public places in you and in the provision of legal services. Members of the public



should be able to place their trust in you. Any behaviour either within or outside your professional practice which undermines this trust damages not only you, but also the reputation of the legal profession and its ability to serve society;

- Principle 4: You act with honesty

Acting honestly in all your dealings is fundamental.

- Principle 5: You act with integrity.

Personal integrity is central to your role as the client's trusted adviser and should characterise all your professional dealings with clients, the court, other lawyers.

- Principle 7: You act in the best interests of each client.

You should always act in good faith and do your best for each of your clients.

In addition to complying with the Principles and LASPO, paragraphs 5.1 – 5.3 of the code of conduct for solicitors, RELs and RFLs and paragraph 7.1(b) of the code of conduct for firms set out obligations in relation to referrals to and by you.

You must make sure you do not have an own client conflict because of your relationship with an introducer (paragraph 6.1 of the code of conduct for solicitors, RELs and RFLs and paragraph 6.1 of the code of conduct for firms).

You must make sure you are authorised by and have clear instructions from your client in every case and that you are not influenced by an introducer (paragraphs 1.2 and 3.1 of the code of conduct for solicitors, RELs and RFLs and paragraphs 1.2 and 4.1 of the code of conduct for firms).

## **Our concerns**

We know that the ban on referral fees has raised difficult issues in relation to its application and interpretation. We are also aware that, because of the wording of LASPO, it is possible to have arrangements that involve the introduction or referral of personal injury work without being in breach of LASPO. We are concerned, however, that by setting up arrangements in a way that does not breach LASPO, some of those we regulate are failing to consider their wider duties to clients and others, and in doing so may breach the Standards and Regulations. Examples include:

- agreeing with an introducer to deduct money from clients' damages;
- inappropriate outsourcing of work to introducers;



- referrals to other service providers which are not in the best interests of clients;
- failure to properly advise clients about the costs and how their claim should be funded; and
- lack of transparency about the arrangement.

## **Our expectations**

We expect you to comply with LASPO and your obligations in the Standards and Regulations at all times. We will take enforcement action against you if you ignore the ban on the payment of referral fees or fail to address the issues and risks associated with referral arrangements, particularly where arrangements are detrimental to the interests of clients .

Where arrangements are permitted by law you must comply with paragraphs 5.1 to 5.3 of the code of conduct for solicitors, RELs and RFLs and paragraph 7.1 (b) of the code of conduct for firms.

You are required to inform your clients about any fee-sharing agreements you have and to have those agreements in writing. Clients must be informed where you have a financial or other interest either in referrals made to you or by you to others.

You must be satisfied and be able to evidence the fact that an arrangement with a referrer does not adversely affect your independence and your ability to advise your client.

You have a duty to ensure that contracts or other arrangements between your client and a referrer are fair. You must stop dealing with a referrer whose contractual terms or whose behaviours are contrary to your clients' interests or to the rule of law (paragraph 5 (e) of the code of conduct for solicitors, RELs and RFLs and paragraph 7.1(b) of the code of conduct for firms).

For this reason, you should review your referral arrangements regularly.

You should be aware that the onus is on you to show that a payment is not a referral fee if it appears to us that it is (paragraph 5.2 of the code of conduct for solicitors, RELs and RFLs and paragraph 7.1 of the code of conduct for firms).

You must also make sure clients give informed consent if you refer, recommend or introduce them to a separate business or divide a client's matter between you and a separate business (paragraph 5.3 of the code of conduct for solicitors, RELs and RFLs and paragraph 7.1(b) of the code of conduct for firms).

## **Deductions from clients' damages**



Some claims management companies ("CMCs") are seeking to charge clients a proportion of their damages in return for being referred to a suitable law firm and/or for other claims management services. If you are asked by a CMC to deduct payments from your client's damages or forward the client's damages to the CMC you are unlikely to be able to comply with your obligations in the Standards and Regulations.

This is because any arrangement must be in the interests of your client. You must always consider if your ability to advise the client will be impaired by your relationship with the introducer. The Solicitors Disciplinary Tribunal has on a number of occasions criticised solicitors for failing to give independent advice to their clients where their own commercial interests in a referral arrangement conflict with the interests of the client. You must act with independence at all times.

In all cases, money can only be deducted from a client's damages with the client's informed consent, although even with consent deducting money in this way is unlikely to ever be in the client's interest.

This type of arrangement may place the introducer in breach of LASPO and you should not enter into any arrangement that could result in a third party acting in breach of the legislation or our regulatory arrangements (paragraph 5.1 (e) of the code of conduct for solicitors, RELs and RFLs and paragraph 7.1(b) of the code of conduct for firms).

## **Outsourcing/paying for services**

We know that some arrangements involve the introducer carrying out a certain amount of work on the client's matter and a firm paying the introducer for carrying out this work.

Provided the payment is for a genuine service and is reasonable in all the circumstances, such a payment may not breach LASPO. However, payments for the receipt of or making of referrals cannot not be dressed up as a payment for services. Remember, the onus is on you to demonstrate a fee is not a referral fee (paragraph 5.2 of the code for Individuals and paragraph 7.1(b) of the code for firms).

Before entering into an arrangement, you need to consider carefully whether it is appropriate and reasonable for the introducer to be carry out work at all. We know that sometimes outsourcing might include advising the client on the appropriate means of funding the matter, explaining and signing the client up to a conditional fee agreement or damages-based agreement. Remember that you have a duty to make sure your clients receive enough information to make informed decisions about their matter and the way it will be handled. In our view, outsourcing work of this nature, or relying on a third party to provide the necessary information to the client, breaches the Standards and Regulations.

## **Inappropriate referrals**

Some we regulate and introducers are arranging for clients to purchase insurance, medical reports or other products or services at inflated prices so that the firm or introducer receives a higher commission. In some cases, the firm may have an interest in the business providing the product or service. The receipt of these commissions, either by you or another person, may put you in breach of section 56(2) of LASPO. Where you refer your client to another service provider, the referral must be in the client's best interests and must not compromise your independence. Remember, you are also required to account to the client for any financial benefit you receive as a result of their instructions (Paragraph 4.1 of the code of conduct for solicitors, RELs and RFLs and paragraph 5.1 of the code of conduct for firms). Even if the client has been sold these products or service before instructing you, you must make sure you are not facilitating arrangements that are detrimental to clients' interests.

You should also consider whether any requirement by an introducer to use a particular provider compromises your independence and your ability to comply with your obligations.

## **Funding and fee agreements**

There have been suggestions that some firms are not discussing with clients the options for funding their claim and in particular that they are not exploring whether the client has insurance that would cover their legal costs, so that the firm can charge an uplift on their fees. Remember, you must not take advantage of your clients and you have a duty to make clients aware of, and understand, the options for funding their claim and the terms of any fee agreement they enter into with you. (See, for example, paragraphs 1.2, 8.6 and 8.7 of the [code of conduct for solicitors, RELs and RFLs](https://higher-rights.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/) [https://higher-rights.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/] and paragraphs 1.2 and 7.1(c) of the [Code for Firms](https://higher-rights.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/) [https://higher-rights.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/]).

## **Transparency**

Clients need to be in a position to make informed decisions about any referral to a firm or third party and about how their matter will be dealt with. Some introducers and firms have set up complex arrangements in order to make sure they do not breach LASPO, for example by making the client, rather than the third-party introducer, provide information to the firm about a potential claim. If you are involved in such an arrangement, you must make sure your client is not misled about who they are dealing with and who is providing particular services.

## **Further help**

If you require further assistance, please contact the [Professional Ethics helpline](https://higher-rights.sra.org.uk/contactus) [<https://higher-rights.sra.org.uk/contactus>].