
This guidance note is intended to help Costs Lawyers understand their obligations in relation to referral arrangements and referral fees.

What are referral arrangements and referral fees?

1. In broad terms, a referral arrangement is any arrangement whereby one party introduces or refers a potential client to another party, or recommends the services of the other party to the potential client. (Note, however, there is a narrower definition of a referral arrangement for the purposes of the ban on referral fees in personal injury cases – see below). As a Costs Lawyer you could either receive the referral or refer your client to a third party.
2. It follows that referral fees are payments (including money or other consideration) made in connection with a referral arrangement.

Background to referral fees

3. The subject of referral fees within the legal profession continues to polarise opinion. A report by the Legal Services Board published in May 2011 identified no regulatory reason for a complete ban on referral fees but concluded there should be better disclosure, so that consumers know exactly how much money is changing hands and between whom. However, in 2013 a ban on referral fees in personal injury cases was introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). This was part of a raft of measures aimed at balancing the need to ensure access to justice with the need to reduce the cost of civil litigation.

As a Costs Lawyer, may I enter into a referral arrangement and pay referral fees?

4. Under the CLSB Code of Conduct, there are seven principles to which Costs Lawyers must conform to ensure public confidence in you and the profession. The following principles are most relevant to referral arrangements and referral fees:
 - Principle 1: You must act with integrity and professionalism.
 - Principle 3: You must act in the best interests of your client.

Principle 4: You must provide a good quality of work and service to each client.

5. The Code of Conduct also contains the following provisions which are specifically relevant to referral arrangements:
 - 1.5 You must not ... accept referrals from a third party who made an unsolicited approach to the private individual (lay person) being referred.
 - 1.6 You must not enter into any fee arrangements which are unlawful.
 - 4.6 You must ensure that clients are able to make informed decisions about the work being undertaken on their behalf and the cost of that work.
6. Therefore, you may enter into referral arrangements and pay or receive referral fees provided that:
 - the party you enter into the arrangement with is reputable;
 - the arrangement is disclosed to your client as soon as reasonably practicable, including the amount of the referral fee paid;
 - the arrangement does not influence or impinge upon your duties and responsibilities to your client;
 - the arrangement is in the best interests of your client;
 - the referral is not the result of an unsolicited approach to a private individual;
 - the arrangement is lawful; and
 - the arrangement does not result in a third party being in breach of their legal or regulatory obligations.

Does the ban in LASPO apply to Costs Lawyers?

7. Not directly, because Costs Lawyers are not “regulated persons” for the purposes of section 56 of LASPO. However, the Act could prevent some arrangements that you may wish to have with regulated persons such as solicitors or barristers. In particular, the Act prevents a regulated person, in the course of conducting a personal injury claim, being paid for arranging for another person to provide services to the client. So this would be likely to, for example, prevent you paying

a referral fee to a solicitor who instructed you to act for one of their clients on costs issues connected with a personal injury claim.

8. You should also bear in mind that any agreement which breaches LASPO will be unenforceable.
9. Note that the definition of a “referral” in LASPO is very specific and is narrower than the interpretation generally applied for regulatory purposes. Therefore, if you are considering entering into a referral arrangement in respect of personal injury matters, we would encourage you to carefully consider the application of LASPO to your individual circumstances and to seek specialist advice if necessary.

Do referral fee arrangements have to be in writing?

10. There is no specific requirement for your referral arrangements to be in writing. However, having a written agreement will enable you to demonstrate compliance with the law and with the CLSB Code of Conduct, and is of course good business practice.
11. Likewise, the information provided to the client concerning the arrangement should be in writing.

Can I pass on the cost of a referral fee to a client as a disbursement?

12. A referral fee that you pay to a third party is not a disbursement and should not be charged to a client as such. This is because a referral fee is not a liability you have incurred on the client’s behalf in the course of acting for them; it is your liability incurred by you before the client instructed you.

What if I work in a solicitors’ firm or regulated ABS?

13. If you work in a firm or organisation regulated by the Solicitors Regulation Authority (SRA), you will be subject to the SRA’s Standards and Regulations – in particular the Principles and Code of Conduct for Firms – in addition to your obligations as a regulated individual under the CLSB Code of Conduct. There is

unlikely to be any conflict in our requirements and those of the SRA in relation to referral arrangements. See our separate guidance note on Costs Lawyers in SRA Regulated Firms for more information.

14. However, if your organisation is involved in personal injury work, it will be subject to the provisions of LASPO and you must not do anything that would cause the organisation or its managers to breach that Act.

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