



**LEGAL SERVICES CONSUMER PANEL
INVESTIGATION INTO REFERRAL
ARRANGEMENTS**

A RESPONSE BY THE INSTITUTE OF LEGAL EXECUTIVES (ILEX)

**CALL FOR EVIDENCE AND INVESTIGATION INTO REFERRAL
ARRANGEMENTS**



<p style="text-align: center;">LEGAL SERVICES CONSUMER PANEL INVESTIGATION INTO REFERRAL ARRANGEMENTS</p>
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The Institute of Legal Executives

The Institute of Legal Executives (ILEX) is the professional and leadership body representing Legal Executive lawyers and has a membership of 22,000 students and practitioners. There are 7,500 Fellows who are regulated by the ILEX regulatory arm, ILEX Professional Standards (IPS).

Alongside Barristers and Solicitors, Legal Executive lawyers are recognised under the Legal Services Act 2007 as qualified lawyers. Recent developments also mean that Legal Executive lawyers are eligible for prescribed judicial appointments, including eligibility as first tier judges of tribunals. Recent changes in legislation also permit Legal Executive lawyers to become partners and to form partnerships with other lawyers.

Fully qualified and experienced Legal Executives lawyers are able to undertake many of the legal activities that solicitors and barristers do, (subject to advocacy rights). For example, they will have their own client base with full conduct and responsibility of cases.

Legal Executive lawyers must adhere to a code of conduct and, like solicitors, are required to undertake and obtain continuing professional development points each year and throughout their careers in order to keep themselves abreast of the latest developments in the law.

ILEX provides policy responses to Government consultations in order to represent its members and the public interest. This submission follows evidence from Legal Executive lawyers specialising in civil litigation, in particular personal injury cases and conveyancing. Given that this

submission is evidence based, reflecting the views of ILEX members this is a submission by ILEX as an Approved Regulator.

Introduction

1. ILEX welcomes the opportunity to provide a response to the Call for Evidence in respect of the Consumer Panel's investigation into referral arrangements across the whole legal sector. The Consumer Panel is defining referral arrangements as any arrangements under which business is received from, or referred to, a third party. For the purposes of the legal sector, the third party referrals will often be from claim management companies, insurance companies and estate agents. However, referrals will also be from fellow lawyers or the voluntary sector. Referral arrangements often reflect a monetary consideration, but fees need not be involved.

2. The Call for Evidence endeavours to address two areas relating to the impact of referral arrangements on consumers:
 - (i) The use of such arrangements by authorised persons (lawyers) across the whole legal sector having regard to the different types of referral arrangements; and
 - (ii) Looking at the arrangements in relation to the payment and receipt of referral fees, together with the non-monetary arrangements that are linked to the introduction of clients, such as the provision of free or below cost services in exchange for the referral of other business.

3. The above areas will be examined having regard to the Consumer Panel's Key Areas of Investigation (a – g) as outlined in its Terms of Reference. ILEX responds to the Call of Evidence in the order of the Key Areas of Investigation.

4. It has been approximately five years since the relaxation of the rules on referral fees for law firms. What is abundantly clear is that they are

divisive. Some view them as a normal part of ordinary business practice, whilst others view them as an improper inducement, with potentially negative effects on their ability to act in the best interests of the client, this is also apparent from the evidence gathered by ILEX from its Legal Executive Lawyer practitioners. The evidence also shows where referral fees may compromise the quality of work and the integrity and impartiality of the legal service provider; this is particularly evident in the conveyancing world, where some unregulated estates agents have cultivated unpalatable practices, including pressurising clients to instruct particular firms.

Referral Fees v Referral arrangements

5. At the outset, referral fees must be distinguished from referral arrangements. This is an important distinction because referral arrangements may not involve monetary consideration in exchange for the referral from the introducer, which may be from the voluntary sector. The author is aware that Citizens Advice Bureau (CABx) often have arrangements in place with local law firms who see clients at the bureau for 'free' initial advice. If the case warrants further work, the firm will treat the case as a referral. There is no evidence that this sort of arrangement works to the detriment of the client. Indeed, the advantages of referrals are plainly evident: the CABx are increasing service provision; firms receive a steady stream of clients who would not otherwise approach a legal firm for various reasons; and the consumer receives specialist advice from a local firm. In terms of law firms, the evidence shows that there is the opportunity to cross-market different specialities between specialist firms. For example, one respondent law firm pointed out the advantage of this sort of arrangement on the quality of service provision for clients: a trusted lawyer referring a client to another listed practitioner with specialist knowledge, thereby keeping customer loyalty and giving piece of mind to the client.
6. Given the above, ILEX views these cross referral arrangements as having a positive impact on law services provision from the perspective of both the consumer and the legal firms involved. As such, ILEX is of the view

that there is no need to regulate or police such informal referral arrangements where no money is exchanged.

Methodology and Legal Executive Lawyer Feedback

7. In gathering the views and evidence contained in this submission, ILEX contacted Legal Executive lawyers and asked them to respond to the following questionnaire based upon the Panel's Key Areas of Investigation:

1. What are the advantages and disadvantages of referral arrangements to:

- a) Your firm?
- b) Clients/consumers?

2. If referral arrangements are banned, what impact would this have on:

- a) Your firm?
- b) Clients/consumers?

3. If referral arrangements remain what if any, additional safeguards would you like to see for:

- a) Your firm?
- b) Clients/consumers?

8. ILEX felt it was necessary to also examine the referral arrangements from the perspective of those providing the legal advice. For example, a negative outcome for a firm might consequently have a detrimental impact on legal services provision and choice for the consumer. To this end, ILEX feels that the consumer issues arising as a result of referral arrangements cannot be viewed in isolation from the providers of legal services.

9. There were a total of 90 responses. 62 respondents answered all of the questions contained in the questionnaire. 18 respondents did not express an opinion or felt that the questions were not relevant to their area of legal

provision. 11 of the 62 respondents supported a total ban on referral fees. Only 2 respondents made the distinction between referral fees and referral arrangements, both supporting the latter.

10. ILEX takes this opportunity to extend its appreciation to those Legal Executive lawyers who have responded to the questionnaire. This has helped to inform and submit evidence from Legal Executive lawyers who are at the 'coal face' so to speak. We thank everyone who has responded.

11. The views and evidence gathered by ILEX as a result of the questionnaire underpins the findings and contents of this submission.

Key Summary of the Findings

12. For referral fees:

- Guaranteed work
- Referral fees increase access to justice
- Introducers can match clients to specialist law firms
- The ability to outsource marketing to experts
- Those that supported the fees also indicated that the referral fees allow predictability on what law firms spend

13. Against referral fees:

- Continued worries in respect of Claims Management Companies and Estate Agents
- Difficulties have been expressed by some respondents of obtaining work without paying a referral fee
- Concerns regarding panels and issues around 'closed shops'
- Lack of transparency for the consumer, in respect of referral fees

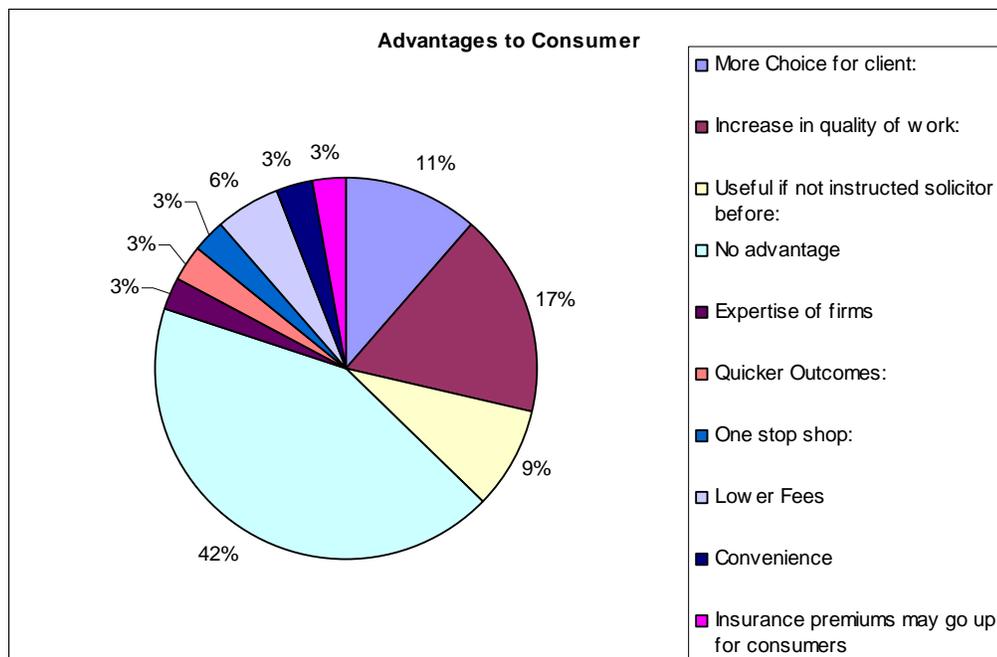
- Lack of choice for the consumer

Key Areas of Investigation

A) Demonstrable positive and negative outcomes for consumers due to referral arrangements, such as the impact on access to justice, consumer choice of lawyer, quality of legal advice and independence of legal advice.

Positive Outcomes for Consumers

14. The following pie chart reflects the views of those Legal Executive respondents who viewed referral fees as having a particular benefit in respect of their clients.



15. Of those respondents that did express a view in respect of the advantages of referral fees to their clients, 42% of the respondents felt there was no advantage to the consumer of referral fees.

Access to Justice

16.11% of respondents felt that referral fees promote access to justice by increasing consumer choice. For example, one respondent made the following observation:

“the advantage to the consumer is that a referral agent can provide assurance in the first instance that the firm recommended will provide a good quality of service. In addition, the referral agent may be able to obtain several quotations for legal costs for the client”

17. Similarly, another respondent made the following point about third party referrals:

“Claims management companies (CMCs) can often assist both clients and lawyers in situations where the client is from an ethnic minority and does not speak English (or the client’s English is limited, many CMCs employ staff who speak a variety of languages including Punjabi, Urdu, Farshi etc), which can then assist those individuals who would have difficulty instructing a solicitor directly due to language barriers”. This respondent went on to say:

“By the client going to a CMC they should receive a better service from a solicitor but also should be referred to a solicitor who the CMC trust from a panel of solicitors. As the CMC may refer numerous claims of this nature they are able to verify which firms are good at handling those cases, a private individual will not have the same knowledge and it could be pot luck as to whether they instruct a competent solicitor”

18. Additional verbatim comments were as follows:

- The national campaigns run by the major third party referral organisations increase access to justice to those consumers who would not normally step into a solicitor’s office or law firm

- Consumer are directed to specialist firms and their case can be presented to many firms with little effort (convenience of the referral)
- Public opinion still suggests that a third party may be more accessible than a legal firm
- When a complaint is made about a solicitor, a referrer can ensure a swift resolution

Consumer Choice of lawyer

19.11% of respondents feel that third party referrals increased consumer choice. This appears to be based on the national marketing campaigns run by the major referrers. However, respondents also made the following comments supporting the view that referrals increase consumer choice:

- Consumers may not know any solicitors and third party referrers help to fill this gap in consumer knowledge
- If a consumer has language difficulties, third party referrers can make an appropriate referral to a bilingual solicitor
- Where referrals are made on the basis of good work, the consumer will be getting the best person for the job

Quality of legal Advice

20.17% of respondents feel that referral fees improve the quality of legal services provision for the following reasons:

- Regular third party referrals promote the development of businesses which can then resource improvements in quality of legal services provision
- Third party referrers maintain standards in service provision in the sense that if a firm continues to provide a poor service to consumers then the referrer will go to another firm
- Panel solicitors are also by some third party referrers ensuring quality of service provision to the consumer
- Some Claims Management Companies will insist on certain service standards to progress claims
- Third party referrers can also verify which firms are the most appropriate for individual clients

Independence of Legal Advice

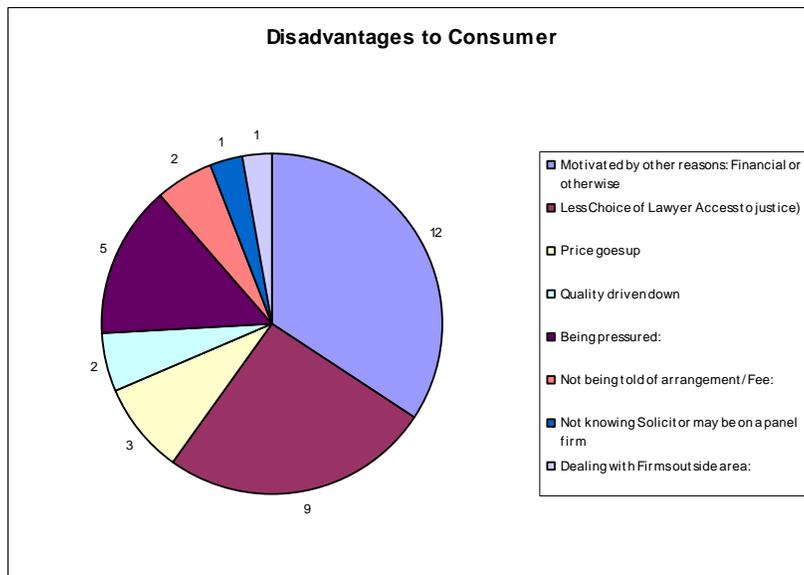
21. The majority of the respondents did not specifically address the issue of independence of legal advice, but it is clear that some felt the independence of legal advice is closely linked to the issue of matching a referral to the most suitable firm for the client. For example, one respondent made the following comment:

“they [the referrer] know which companies/firms have the expertise and level of service which matches [the consumers] needs”

17% of respondents felt that third party referrals enable the introducer to match clients to specialist firms (See pie chart above under paragraph 12).

Negative Outcomes for Consumers

22. The pie chart below shows the views of respondents who felt that third party referral arrangements work to the detriment of their clients:



Access to Justice:

23. 12% of respondents felt that third party referral fees were motivated by other reasons (financial or otherwise). Practitioner feedback seems to indicate that the use of Panel Firms by insurance companies and Claims Management Companies compromises access to justice for consumers. This appears to be based on the fact that some Claims Management Companies and some insurance companies operate "secret bidding" rounds whereby firms paying the highest fees receive a place on the panel. The evidence gathered by ILEX seems to indicate that access to justice is being undermined by the use of third party referral fees because consumers are being denied any real freedom of choice when it comes to instructing their preferred law firms.

24. The following are an example of verbatim comments received:

- Referral Fees are directed to firms by people who are acting for their motives
- Clients do not realise that the recommendation is based on the fact that money is changing hands and not necessarily because the firm is good

- I know of elderly clients who end up going to bulk conveyancers at the other end of the country because they thought they had no choice
- Limited access to justice as fewer and fewer firms can afford the unreasonable referral fees being charged and so limiting the choice of legal representation
- I do not believe referrals (as opposed to advice on local services) offer any advantage to the consumer as it takes away freedom of choice

Consumer Choice of Lawyer

25.9% of respondents are of the view that third party referrals restrict consumer choice. It is suggested, however, that this area is inextricably linked to access to justice issues. For example, being denied a choice of lawyer can impact on access to justice for the client.

26. Verbatim comments specifically related to consumer choice of lawyer were as follows:

- I do not believe referrals (as opposed to advice on local services) offer any advantage to the consumer as it takes away freedom of choice
- Clients not having any choice over the solicitors instructed
- I was aware that certain corporate agents were aggressively selling services to their panel solicitors situated elsewhere in the country
- Pressured to use firms that they would not normally use

27. A respondent employed by a property firm made the following observation:

“The clients are under immense pressure by the estate agents to use their own legal firms to carry out the conveyancing, often at inflated prices to the detriment of the client. My clients have expressed feeling very uncomfortable when put in this position”

Quality of legal advice

28.2% of respondents indicated that the quality of legal advice would be driven down. Quality of legal service provision, however, cannot be viewed in isolation from the above topics. This is made evident from a respondent working for a property law firm who stated:

“some buyers or sellers in property transactions are now effectively sold by estate agents to the highest bidder (that is whoever will pay the highest referral fee) without any thought of which firm would offer the best service, value for money”

29. This theme was echoed by other respondents. For example one respondent complained that he has seen a general decline in the standard of service provision because referral fees for conveyancing work can be in the region of £150 or more per transaction. This is often then deducted from the solicitor's fees (often in the region of £400), which consequently leaves little or no profit margin for the firm. The respondent went on to say that this “suits in firms using more and more unqualified staff”.

Independence of Legal Advice

30. Again, respondents did not specifically address the issue of independence of legal advice, but it is clear that some felt the independence of legal advice is inextricably linked to other topics, in particular where issues of conflict arise. For example, one respondent made the following observation:

“If firms of solicitors and conveyancers are dependent on referral arrangements from introducers for much of their work then this can seriously affect the independence of the staff at that firm who can come under pressure not to rock the boat in order to keep a particular

introducer happy rather than putting their client first. It can seem on some occasions that the estate agents are calling the shots and telling the solicitors what to do rather than their clients. I have spoken to Legal Executives and Solicitors who work for firms who pay referral fees and they are often unhappy about the situation it puts them in and the conflicts that can arise”

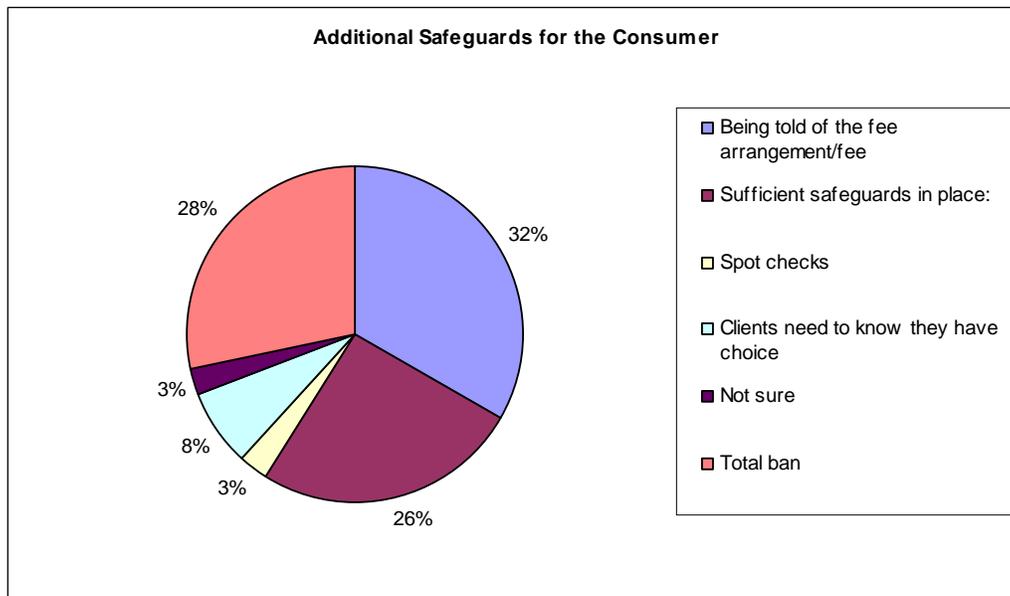
31. This was echoed by another respondent who strongly felt that referral arrangements cause conflict issues to arise:

“To me, it seems quite clear that there is a potential for a conflict of interest (and I know it only happens on the odd occasion). For example, if a lawyer were to check the title etc and thought quite frankly the client shouldn’t touch it with a barge pole, pull out should be the lawyers best advice. There is now a conflict of interest, if the lawyer gives that advice and the client pulls out of the transaction the lawyer does not get paid; yet buying a property is probably the biggest financial investment that the majority of people will make, the lawyer saves them from an expensive mistake and doesn’t get paid – there’s something wrong!!”

32. It is clear from the above that few topics divide opinion among lawyers more than the use of referral arrangements. Some law firms see them as a legitimate source of business, but other criticise them for restricting client choice and undermining the quality of legal services provision.

B) Feasibility and effectiveness of possible consumer safeguards, such as consumer education, disclosure, consent, standardised referral arrangements or a cap on referral fees.

33. The following table lists the safeguards practitioners view as essential if referral fees are to remain:



34. 32% of respondents were in favour of a system of regulation that ensured that consumers were notified that a fee was exchanging hands from the introducer to the law firm. In contrast, 26% of respondents felt there were sufficient safeguards already in place.

35. The evidence gathered, however, strongly indicates a lot of consumers are not being made aware that they are being recommended to a law firm, not because it benefits their transaction, but because of a business arrangement for the payment of fees. This begs the question, are these clients being charged more because a fee is exchanging hands?

36. The following is a selection of verbatim comments:

- Ensure that referrers are telling clients that a fee will be payable and are given clear information
- There could be a model agreement, and more structures as to what we are supposed to tell the client
- Transparency with improved policing of safeguards

37. Interestingly, from the perspective of law firms, 81% of respondents preferred a cap on referral fees. The majority of the respondents would prefer a cap because in their view it would create a “level playing field”. This therefore seems to suggest that a cap on fees would be more beneficial for firms than for clients. This view is reinforced by one respondent making the following observation:

“The biggest advantage of this is that it would eliminate the need for certain CMCs to refer work to a firm who pays the biggest referral fees. There would be an incentive for the CMC to refer work to the firm who does the best job. Firms benefit as it creates a level playing field. This would in turn give the consumer greater protection as the only incentive for the CMC is to refer the consumer to the best firm as the referral they receive from any one firm will be the same”

38. This also reinforces the view that the majority of clients may not be aware that fees are being paid by introducers to the law firms. And if these clients are being charged more than they otherwise would (if no fee is payable), then there is a need for further transparency.

39. There was also support for standardised model agreements that applied across the whole legal sector.

40. The following is a selection of verbatim comments in support of the above:

- Proper and proportionate regulation striking a balance that is fair. However same standards need to apply to the whole sector
- Cap on referral fees, all agents required to enter into Law Society approved agreements to make referrals visible
- More effective regulation and enforcement and a readily accessible register of referral fee arrangements

- More guidance as to what the referral fee should include, could there be a model agreement?

41. It is clear from some respondents that there is scope to educate the public. For example, one respondent observed:

“The payment of referral fees and the actions of some claims managements companies have brought the profession into disrepute in the eyes of the public. They refer to us as those “No Win No Fee Lawyers” failing to understand that legislation has forced the profession down this route. The public do not understand and are being misled”

42. Similarly, one respondent made the observation that claims management companies exploit the ignorance of clients and some even claim to be law firms.

43. Improving consumer education is therefore a desirable goal. The voluntary sector could be used as a vehicle to promote consumer education. Target leaflet campaigns distributed via CABx and Doctor Surgeries would enable wide spread coverage. The CAB is a trusted brand with the public and last year alone it saw 2.1 million people. The figures suggest that up to 1 in 3 people in their life time have sought advice from a CAB¹. The Claims Management Companies may also have a role to play (see below).

44. Although a total ban would be simpler to apply across the whole legal sector, the practicalities of a total ban must not be underestimated. The evidence gathered indicates there is a presence of unsavory practices that work against the best interest of consumers, particularly from estate agents. This appears to be as a result of a lack of regulation of estate agents. Proportionate regulation may be a move in the right direction and therefore should not be ruled out for the protection of consumers.

¹ The Times, 24th February 2010.

45. Ensuring public transparency must be a goal that is not only in the consumer interest but will also benefit the legal sector as a whole. This coupled with tighter but proportionate regulation may be more desirable than a total ban. Importantly, this would avoid the law of unforeseen circumstances a total ban may bring.

C) The Role of referral arrangements in driving and inhibiting competition in the legal services market.

46. Those respondents in favour of referral arrangements, including the payment of third party referral fees pointed out the benefits such arrangements have in respect of the consumer market. For example, they pointed to the need for competition and that they are a vehicle to promote access to justice. The following is a selection of verbatim comments:

- They [clients] do not normally know which companies/firms have the expertise and level of service which matches their needs: referral arrangements promote the development of larger businesses which can improve standards
- They [clients] may not know a solicitor
- Public opinion still suggests that a third party may be more accessible than a solicitor
- The referral agents may be able to obtain several quotations for legal costs for the clients
- If one firm is too busy then work is directed to another firm, thus ensuring the client receives a service from solicitors who can cope with the work

47. The above views are consistent with the Office of Fair Trading's current thinking on Competition issues expressed to Lord Justice Jackson's team in the course of the Civil Costs Review:

"One of our major concerns in the market for legal services is the asymmetry of information between providers and consumers who are not always able to judge the quality of service provided. Consumers generally find it difficult to access information about professional services:

"By contrast, referrers may develop a good understanding about services on offer and the service providers. They are therefore in a better position than some clients to identify high quality services providers for relative good value and use their bargaining power to negotiate better services and better value. We therefore consider that referral arrangements enhance competition as solicitors will have to compete with each other to obtain referral work."²

48. By contrast, however, 12% of respondents felt that referrers were motivated by other reasons. Verbatim comments were as follows:

- The work goes to the conveyancer that pays the highest fee, not necessarily the one who works efficiently and gets the job done
- Referrals are being channelled to firms paying the highest fee
- Referral fees, particularly those paid to agents mean that conveyancing firms recommended will be those prepared to pay for work and not those who will look after clients. Estate agents are in the driving seat and not the legal profession
- People are getting greedy and the referral fees are going up and up

² Lord Justice Jackson's Review of Civil Costs: Final Report, Chapter 20 p203 at 4.1. See also The OFT Report: Competition in the Professions 2002 at page 13.

49. Payment to the firm paying the highest fees does not suggest the matching of firm expertise to the needs of the client nor rebalancing the “information asymmetry”. It can also be seen to undermine quality of choice for the consumer.

50. Notwithstanding the above, however, it is important to strike the right balance. New regulation to tackle the above must be proportionate. Any disproportionate response might unreasonably hamper the development of new forms of marketing that assists in bringing clients and professionals together. This is particularly important in relation to the development of Legal Disciplinary Practices and the Alternative Business Structures that will open the legal market to many new forms business models vying for consumers. This too will affect the use of referral fees/arrangements.

51. One also must not forget that The Compensation Act 2006 effectively legitimises the use of referrals in the claims market.

D) Degree to which referral fee size reflects equivalent marketing/other costs

52. In Lord Justice Jackson’s Review of Civil Costs, the Final Report, the evidence gathered from claimant firms seems to suggest that the level of referral fees for person injury (PI) work ranged from £250 to £900, excluding VAT. The evidence gathered by ILEX for the purposes of this submission seems to indicate that the referral fees, in particular from estate agents, were in the region of £150 to £300 per transaction. Many of the respondents specialising in personal injury work did not indicate the size or range of referral fees³. This submission will therefore assume the figures gathered from Lord Justice Jackson’s Final Report as indicative of the fees exchanging hands for personal Injury work.

53. Although none of the respondents gave an indication of their firm’s marketing costs, it is clear from some of the responses that firms view

³ This is consistent with Lord Justice Jackson’s findings that there was a ‘certain reticence among respondents to reveal the full amount of the referral fees’. Review of Civil Costs Final Report at p202.

referral fee arrangements as more cost effective than direct advertising and marketing:

54. The following is a selection of verbatim comments:

- They allow us to outsource our marketing to experts, which is more efficient and allows us to concentrate on our core business, the law
- They allow us some predictability on what we spend and what we get back for our spend both in quality and volume, so we can manage our resource accordingly
- The advantages as a legal firm are numerous. By paying a referral fee, you are paying for guaranteed work
- We do not have to sift out pointless claims that direct advertising could provide and therefore we do not have to waste staff time on a verification process
- If we were direct marketing we would have no control over the amount of claims received

55. It is clear from the above comments that a lot of firms view the fee arrangements as an effective use of resources and if they were unable to continue this business relationship their costs would soar considerably. As one respondent observed:

“A market had been created for referrers and like it or not they are now part of the process. Solicitors are not geared to the market, it is a concept that is seems alien to them.. .”

56. Notwithstanding the above, one cannot escape from the fact that some referral fees are so high, especially in relation to PI work and estate agent referrals that charge up to £300 per transaction, that it is difficult to

envisage how firms can make a reasonable profit, together with maintaining standards of quality and service provision. The law firms above obviously feel that the fee arrangements are suited to their business model and direct marketing would have a detrimental impact on their resources. What is clear is that more research needs to be undertaken in this area. Are firms passing on the costs to their clients in higher fees and as such adding to civil litigation costs? ⁴

E) Feasibility and effectiveness of alternatives to referral fees as a means of obtaining work, such as direct marketing by law firms, the establishment of legal firm alliances, non-paid referrals networks and/or quality assurance schemes.

57. As indicated above, the direct marketing by firms is a model that requires further research. It cannot be dismissed entirely as some firms may have a model more suited for direct marketing than others. Some respondents felt that direct marketing would create a level playing field and increase the amount of work they receive. In contrast however some respondents felt that direct marketing is a concept that is alien to law firms. For example, one well known firm observed:

“A market had been created for referrers and like it or not they are now part of the process. Solicitors are not geared to the market, it is a concept that is seems alien to them”

58. Another respondent pointed out that direct marketing by his firm would mean that the firm would have to:

“Invest in setting up our own marketing team, effectively creating our own Claims Management Company and adding cost and risk to our business and divert attention from our core business” See similar comments above.

⁴ The Law Society’s Advice and Ethics Committee, for example, advised firms that they can charge a higher fee for clients referred by a particular source, to take into account any referral fees payable; or you may choose to spread the cost of referrals across all of your clients. Questions and answers on referral fees: 21 December 2005.

59. Non paid referral agents have been around for a long time. Certainly since 1987, when the ban for advertising and touting for business by solicitors was lifted. As mentioned earlier, Citizens Advice Bureau (CABx) often have arrangements in place with local law firms who see clients at the bureau for “free’ initial advice. If the case warrants further work, the firm will treat the case as a referral. There is no evidence that this sort of arrangement works to the detriment of the client. Indeed, the advantages of referrals are plainly evident: the CABx are increasing service provision; firms receive a steady stream of clients who would not otherwise approach a law firm for various reasons; and the consumer receives specialist advice from a local law firm.
60. Similarly, some Trade Unions do not charge a referral fee as such; they receive certain free legal services from lawyers to their members. Presumably akin to the free legal advice offered by lawyers to clients of the CAB, but instead to Trade Union members.
61. One respondent who expressed a view in relation to non paid referrals believes that such arrangements “develop good working relationships with other businesses and quality to the consumer”. There is clearly a consumer advantage with non paid referral arrangements, but whether they can entirely replace paid referral fees is more problematic.
62. The establishment of law firm marketing alliances is a concept that ILEX feels warrants further consideration and may be progressed by extending current schemes in existence such as the Accident Line Scheme, a scheme endorsed by the Law Society itself⁵. However, direct marketing by the Approved Regulators has also been mooted as a possible alternative in the Jackson Review of Civil Costs: the Final Report. Some Approved Regulators may have the resources for the level of marketing required to effectively replace the huge national campaigns run by some Claims Management Companies, others Regulators, however, may not have the resources required to run such campaigns nor will it align with the

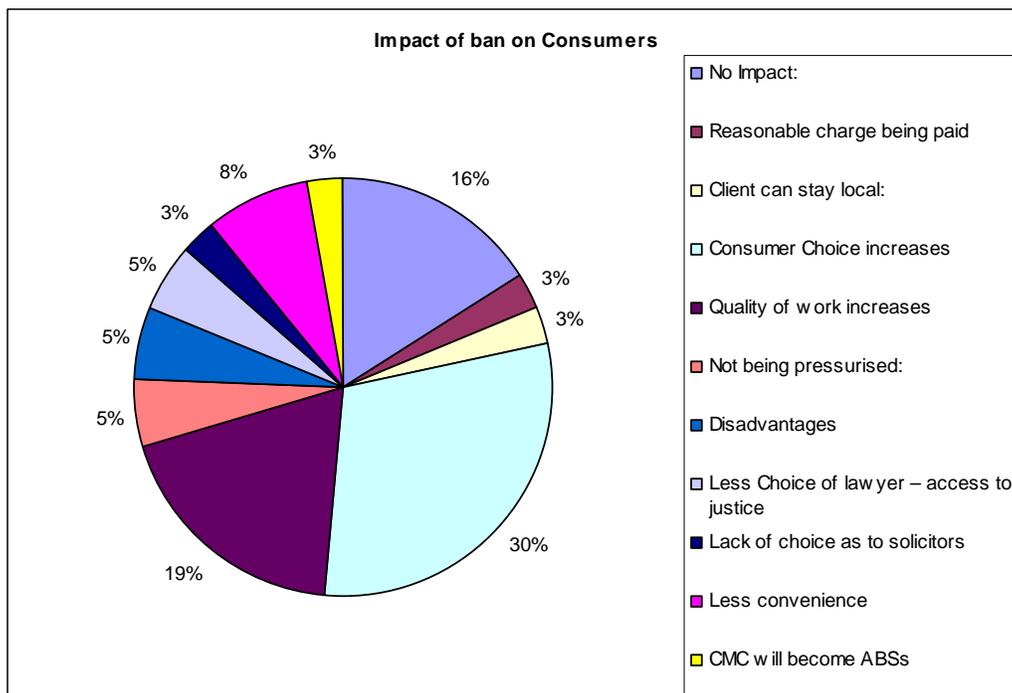
⁵ Accident Line provides a free telephone service which links consumers to specialist PI solicitors who can assist consumer further.

organisation's objectives. Importantly, this may also undermine the smaller approved regulators who wish to become licensing authorities for ABS purposes.

63. Within the legal sector there are two predominant quality standards in use, namely Lexcel (Law Society driven) and the ISO 9001:2000 standard. Whilst the standards bring about best practice in legal practice, to include regular auditing, and can assist firms in securing work from commercial clients, it is questionable as to their perceived value from the consumer perspective.

F) Risks and Benefits for different stakeholders of a reintroduced ban on referral fees, including consumers, the legal profession, and non-legal stakeholders, such as claims management companies.

64. The pie chart below shows the view of respondents on the impact of a referral fee ban on consumers:



65. 30 % of respondents felt that consumer choice will increase, together with 19% of respondents with the view that quality of work will increase. In

contrast, however, 16% of respondents felt that there will be no impact of a ban on consumers.

66. The following is a selection of verbatim comments:

- Price should go down, access to justice goes up
- Clients would have the option to shop around for quotes and would have the confidence to know that if a agent recommends a solicitor it is not because they are paying them a referral fee
- Clients would benefit greatly because they would be referred to a firm who would look after them, provide an excellent service and competitive fees

67. Quality of service provision and client choice was a theme echoed by the majority of the respondents. In contrast, however, some respondents felt consumer choice would be restricted. For example one respondent felt:

“There would be more people of the street, but more likely the insurance companies would collect these people and refer them to a selected panel firm. This gives the insurer much more power and control”.

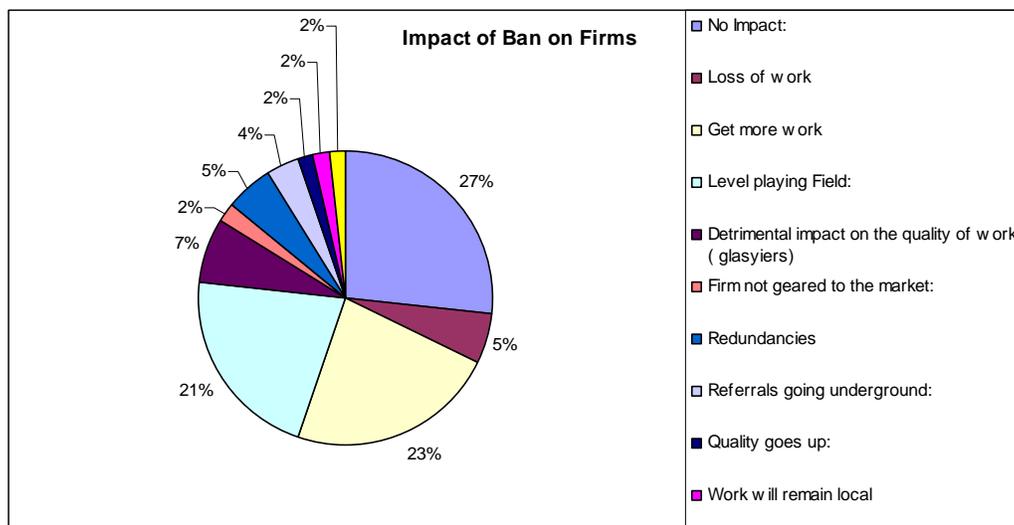
Similarly, some respondents felt:

- There will be less choice of providers for legal services. Clients will be left in a position of having to look through yellow pages or searching the internet at different firms with no real knowledge of who does the work correctly
- Some clients are inert and prefer the agent to ‘sort it out’

68. 16% of respondents felt there would be no impact of a ban on referral fees on consumers. The following is a selection of verbatim comments:

- No impact whatsoever
- If referral fees were banned it would have no real impact on clients who would be able to choose their own lawyers anyway
- There would be no impact on the service clients receive or the fee they pay

69. The following pie chart shows the views of respondents on the impact of a ban on law firms:



70. 27% of respondents felt that there would be no impact on their firms. 23% of respondents felt that they would get more work and 21% of respondents felt a ban on referral fees would create a level playing field. The evidence gathered by ILEX would suggest that the majority view is that there would be no impact or very little impact on the firms themselves, and in any event it would create a level playing field or possibly even increase work.

71. In contrast to the above, some respondents felt that a ban would have a huge negative impact on their firms. For example, one respondent firm made the following statement:

“A large proportion of our work is referral fee based and if referral fees are banned I believe that the firm will lose a significant proportion of its work which could result in redundancies”

72. Other verbatim comments were as follows:

- We would potentially lose valuable work
- If referral fees are banned then we would have to change our business plan and look to market or employ sales staff. If a new business plan cannot be devised it would potentially mean us closing departments that rely on referrers and thus redundancies will happen

73. It is evident from the above that the greatest impact will be felt by firms heavily reliant on referral fees as a form of marketing. In contrast, however, those firms that are not so fee reliant envisage little impact on their firms, if any. Indeed, these firms see the benefit in having all legal firms on an equal footing. Some will even see an increase in the number of consumers. One respondent firm who felt that it would lose a lot of work if a referral fee ban was imposed, even saw the brighter side, when they observed:

“however if work was obtained on a level playing field then those firms offering a good quality service may benefit”

74. ILEX is not in a position to assess the impact of a referral fee ban on Claims Management Companies. Although ILEX understands that there are approximately 1000 intermediaries in the referral market, mainly specialist claims management companies, but including over 200

management companies, with a total annual turnover of £190 million⁶. However, ILEX is concerned with the impact on consumers. The evidence seems to suggest that Claims Management Companies do reach out via their huge national campaigns to consumers who would not otherwise access legal services. There is also evidence that their campaigns can be used to promote consumer education. The views were recently encapsulated by the Manchester Law Society when giving evidence to the Lord Justice Jackson's Review of Civil Litigation Costs:

"Advertising by claims management companies increases awareness of the product and informs the potential claimants of the ability to bring a claim. A good claims referrer can market on a much bigger scale and achieve economies that an individual firm cannot"⁷

75. In addition, as one respondent observed:

"I understand that client's insurance premiums may go up if insurers do not get referral fees anymore"

76. This was reinforced by evidence from the Legal Expenses Insurance group which stated that if referral fees were banned, they would still refer such claims to law firms, but premiums for Before the Event Insurance would rise⁸

77. It is evident that referral arrangements, in particular referral fees where money is exchanged are a highly divisive area of civil litigation. However, from the perspective of the legal profession and the Approved Regulators, the challenge is to make the system work, together with safeguarding the interests of the consumer. A total ban may not be in the interests of the consumer or a proportionate response to the mischief that a ban is intended to remedy. The interests of the consumer may be better served by stricter compliance and transparency. Referral arrangements can and

⁶ Claims Management Services Regulation: Baseline Study 23 April 2007.

⁷ Lord Justice Jackson's Review of Civil Costs: Final Report, Chapter 20 p 200.

⁸ Ibid at page 198

do work in the interest of consumers, the case in point being the voluntary sector as mentioned above. Used properly and transparently, they can be convenient to consumers and increase awareness of rights. Used wrongly, they can undermine the standing of the profession. It is important to strike the right balance between access to justice, protection of the consumer and proportionate regulation of the profession.

G) Relevant parallels with referral and commission arrangements used in other sectors in relation to customer introduction

78. ILEX feels unable to make any significant comment in respect of any relevant parallels with other sectors where referral fees are exchanged. That said, ILEX is aware that the independent financial advice sector, together with the selling of pensions, and other life insurance products may involve the use of introductory fees.

