



Referral arrangements and legal services research report
Prepared for the Strategic Unit of the Law Society

By Moulton Hall Ltd
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Executive summary

About the study

This study is an exploration of the operation of referral arrangements in legal services, specifically in personally injury (PI) and residential conveyancing. The aims of the research are to improve understanding of the use and impacts of referral arrangements, particularly in the types of arrangements solicitors have, how cases are paid for and costs recouped and how referral arrangements impact on firms, clients and the wider market.

Face-to-face interviews were conducted with the person in the firm who has experience of using referral arrangements and/or who has a good understanding of the firms' position in the local and wider market. Most firms identified the Senior or Managing Partner or Principal / Sole Practitioner in one partner firms as the most relevant person. In total, 34 interviews were conducted split evenly between:

- PI and conveyancing
- firms with less than 5 partners and 5 or more partners
- firms paying referral fees and firms which do not

Key findings

Type of arrangements and impact of referral fees in the PI market

Most firms we interviewed are practising PI in Metropolitan areas such as Manchester, Liverpool, London and Birmingham; few are based in rural or town locations. We found it difficult to identify any firms, which are not paying referral fees and conducting any great volume of PI work. On average the number of PI cases conducted per annum by firms paying referral fees was one hundred times that of those which are not paying. There is very little work available in the PI market unless it is paid for.

The main competition in PI comes from:

- larger firms indirectly or directly processing their own work
- insurance companies who are the first point of contact for potential clients particularly in Road Traffic Accidents
- claims management companies which are able to identify potential cases far more quickly than most solicitors.

Firms which do not pay for referrals rely solely on their reputations, work from previous clients and other solicitors. They may be in competition with local firms "picking up what's left" after large firms, insurance companies and claims management companies have taken the major share of the market. Few firms use traditional advertising methods, as the amount of marketing they would need to do in order to compete with introducers and generate any potential clients is prohibitively costly.

The number of introducers varies from 1 to 4 for firms with less than 5 partners and from 3 to 60 for firms with 5 or more partners. The types of introducers are:

- ❑ claims farmers / claims management companies
- ❑ insurers before-the-event
- ❑ legal expenses insurers
- ❑ other organisations such as marketing services companies, car repair and garages and hire car companies.

All but one firm is paying for Road Traffic Accident cases. Other types of cases paid for are accidents at work, industrial disease, public liability claims, and slips and trips.

All firms which pay for referrals profess to have written agreements with introducers. The types of agreements vary depending on whether the introducer is a well-established insurance / claims management company, or is a smaller not so well regulated outfit. The larger, well established introducers are regulated by the FSA or the Compensation Act and have strict guidelines on disclosure and how cases are processed. They tend to have contracts setting out the number of cases referred and service level agreements. Other introducers, although in the process of being regulated, are more ad hoc about what the agreement involves and how many, and how often, cases are referred to the firm.

Firms are sent a case and given two to ten days to decide whether to take the case or not. Introducers vet the cases to varying degrees before sending them to the firms. Some firms have their own “vetting departments”. Case refusal rates vary from 15% to 50% depending on the introducer and their policy on sending cases that have already been refused by other firms.

The referral fee is paid for 14 to 30 days after the case has been instructed. Most cases are paid for on a fee-per-case basis. The fees range from £250 to £700, on average £600. One firm pays an upfront fee of £5,000 per annum and another a marketing fee. No other mechanisms of payment are used, although a few firms are restricted in only using medical agencies chosen by the introducer. All firms say they do not recoup costs directly from clients – they are acquisition costs treated no differently from advertising or marketing costs. Firms either accept the additional cost or try and reduce other costs to the firm by changing the way they work through new technology and employing less qualified staff to increase the volumes of cases they can manage. One firm suggested costs could be recouped by getting commissions from referrals of clients to particular medical agencies or after the event insurers.

Paying referral fees has enabled firms working in PI to stay in business. The number of cases and profits has increased when a high volume of cases has been achieved. Service levels have been maintained or improved by adopting new business models. However, as a result of paying referrals the firms have an increased administrative burden, to carefully manage their cash flow, and some have invested heavily in new technology. These additional costs incurred make paying for referrals unaffordable for many firms.

Most of the firms are reliant on paying referral fees to get PI cases, particularly the firms with less than 5 partners. In general, PI is the largest practice area in firms paying referral fees. The few firms which are not currently reliant on paying for PI referrals say, if they do not pay, their future “market would disappear”.

In the future, firms envisage a market dominated by the insurance companies, trade unions and a few very large firms. These large firms will have adopted “alternative business models” enabling them to process a high volume of cases. They will either be owned or “in bed” with insurance companies. A few firms may have managed to set up capture companies to compete with the insurance and claims management companies, but smaller firms will disappear and there will be “no place for PI on the high street”.

Type of arrangements and impact of referral fees in the residential conveyancing market

Unlike firms working in PI, with the exception of firms with 5 or more partners, firms working in residential conveyancing are located in towns. The number of cases and percentage of turnover represented by residential conveyancing is different for firms paying and not paying referral fees, but not as striking as the PI market. Although the number of interviews is small, it is interesting that, on average, firms we interviewed which are paying referrals are conducting five times as many cases as firms which are not paying referral fees.

The market for residential conveyancing is local, with local solicitors competing against each other. However, the role of the high street firm is diminishing as “factory” type operations and firms based in other locations enter the local market. Firms are also viewing estate agents as their competitors. Firms not paying referral fees are able to get work from repeat business, existing clients, referrals from independent estate agents and recommendations based on their reputation. They will also sometimes get work from introducers who normally receive a referral fee, when cases are too complex for panel providers, when the local introducer does not abide by head office rules or when a panel firm has been found to be working for both sides and has a conflict. Some firms mention that work is starting to return, as introducers have been disappointed with the poor service received from firms paying referrals.

The number of introducers firms have varies. However, in general, firms we interviewed only had one introducer because they are either testing the approach, want to access different parts of the market either geographically or demographically, or have been in jeopardy of losing the business from an introducer if they did not start paying fees. The main introducers are:

- estate agents
- online property conveyancers
- independent financial advisors
- mortgage brokers
- marketing services companies

Most firms have a written agreement. Introducers less likely to have written agreements with firms are local estate agents and marketing services companies. Some of the “chained” estate agents and one of the online conveyancing organisations set strict guidelines for firms to work within. However most arrangements tend to be ad hoc - the introducer will telephone, fax or email details as and when they have potential conveyancing clients.

Most pay on a fee-per-case basis, ranging from £50 to £700 and averaging from £75 to £125 a case. Some fees are agreed in advance and others negotiated on a case-by-case basis. Firms occasionally have to reduce their fees quite considerably to get referrals from an introducer.

Most firms do not recoup the costs of paying referral fees directly from clients and have to treat it as either an overhead or have changed the way they work so they can conduct more work and/or increase efficiencies. However, there is a suggestion that a few firms are charging more for referred cases, or try to cross-sell services, and charge more for elements of the transaction that are beyond the basic service.

Firms which pay for referrals have mixed views on whether they have increased the quantity of cases as a result of paying referrals. A few have increased their profits. Firms which have been able to do this have changed the way they work either by becoming more efficient, employing non-qualified legal staff or introducing new technology. According to firms which pay referral fees, the level of service has stayed the same or improved through the standards of service driven by some introducers. Other impacts on the firm are the increased administrative burden and having to introduce systems that are compatible with the introducer. The impact of referral fees on firms not paying varies by size of firm. Firms with less than 5 partners have observed a reduction in the amount of business they get. Firms with 5 or more partners have seen little impact as there is no one else in their locality paying referral fees, they work at the high value end of the market or they offer a high quality service which is not competing with the "bulk conveyancers". However, there appears to be a growing amount of pressure on all firms to pay referral fees as estate agents gain increasing power in dictating who gets residential conveyancing work.

In general, firms paying referral fees are not reliant on paying for business. For firms with less than 5 partners, 10-15% of overall business comes from paid introductions and for firms with 5 partners or more the proportion is 2-5%. In the main, business still comes to firms via recommendation and repeat business.

There are mixed views on who will be competing in the market in the future. Some firms believe "factory" firms will drive the market, while others believe there will be a move away from volume processing towards quality service. However, there are two potential legislative changes firms are concerned about:

- Legal Services Act
- Home Information Packs (HIPS)

Some firms see both pieces of legislation as a threat to their residential conveyancing business, a few think they will have little impact and in the case of HIPs could be used by solicitors as a first point of contact in the sales process.

Impact of referral fees on clients

Both firms which do and do not pay referral fees struggle to see the advantages to clients in firms paying for referrals. Only a few firms could identify advantages:

- easier access to solicitors and the legal market, particularly in PI
- improvements in the level of service.

Most firms can cite disadvantages:

- ❑ lack of freedom of choice of solicitor
- ❑ solicitors tied by introducers to recommend other organisations such as after the event insurers and medical agencies
- ❑ a low quality of service, particularly as a result of the employment of non-legal staff and reduced face-to-face client contact.

Firms say clients have not given feedback on the firm paying a referral for their case. However, firms do not seem to be proactively asking clients for feedback on this matter. Most firms feel clients are not interested as they are not liable for the charge and are more interested in getting the job done or their compensation. However, some firms implied that disclosure might not be as transparent as it could be and clients do not think through the implications to them of a firm paying referral fees.

Compliance and disclosure

The easiest areas to comply with are advising clients about how much the referral fee is and putting together the contractual agreements with introducers. The most difficult aspect to comply with is ensuring introducers disclose referral arrangements and referral fees to clients. The Compensation Act has made disclosure easier in the PI market, however, it is difficult to monitor whether introducers are informing clients about the referral arrangement.

In the PI market, firms say their introducers disclose referral fees to clients; the FSA or the Compensation Act regulates introducers. The level of disclosure by introducers in the residential conveyancing is unclear: firms did not know whether introducers are definitely complying and “hope they are”. Most would like introducers to be required by law to follow the same disclosure rules as solicitors.

Enforcement and reintroduction of a ban on paying referral fees

Amongst firms which do not pay referral fees the general view is that the rules do not protect public interest because:

- ❑ by paying referral fees *“there is a clash of principles between making a profit and doing what’s right for the client”*
- ❑ they are not regulated.

Although a few firms think the rules are not enforceable, some suggested how the rules should be enforced:

- ❑ regularly checking solicitors files for documentation from the solicitor and the introducer to the client
- ❑ disciplining solicitors with heavy fines, and taking further action if firms persistently break the rules

- ❑ educating the public on referral arrangements and fees, so they can make an informed decision.

Firms are aware of recent enforcement of the rules, either by:

- ❑ reading articles in the Gazette, particularly regarding the SRA findings that only 6% of firms are complying to the referral rules
- ❑ or receiving warning cards. (Early in 2007, the SRA sent a warning card to every solicitor in England and Wales, reminding them that they risk facing disciplinary action if they do not follow the rules.)

Most firms, which have received warning cards are positive as all firms are now aware of their obligations and the information was presented clearly and succinctly.

There are mixed views about reintroducing the ban. In the PI market the split is 50:50, but most of those currently paying for referrals are against a ban and those not paying are pro a ban. The arguments against a ban are:

- ❑ inability to compete against the insurance and claims management companies
- ❑ independent firms of solicitors practising in PI will cease to exist, which would not be in clients' best interests
- ❑ some firms would ignore the ban, so it is better to regulate and monitor referral fees

The arguments in favour of banning referral fees are:

- ❑ to give all solicitors a level playing field so competition is based on reputation rather than on how much the firm can pay for a case and
- ❑ it is in the public interest as firms are not abiding by the rules and disclosing referral arrangements.

In the residential conveyancing market, there is a strong view that the ban should be reintroduced – even amongst some of the firms currently paying introducers. The two main arguments are:

- ❑ clients will benefit from a better quality of service
- ❑ other organisations are benefiting at solicitors' and, more importantly, indirectly, at clients' expense.

The arguments against a ban are:

- ❑ it does not take into account what is happening in the market - solicitors will not be able to compete with other providers of conveyancing services, particularly if the government opens up the market
- ❑ it would not be enforceable.

1. Introduction

This report covers the findings from the research on referral arrangements in the area of PI and Residential Conveyancing conducted by Moulton Hall Ltd on behalf of the Law Society (TLS).

1.1 Background

In March 2004 the longstanding ban on referral payments was lifted, allowing solicitors, subject to certain conditions, to pay fees to third parties in return for referrals of clients. Up until July 2007, referrals have been governed by the Solicitors' Introduction and Referral Code, now replaced by Rule 9 of the Solicitors' Code of Conduct 2007.

The guiding principle of the rules is to ensure that the arrangement does not compromise the independence or ability of the solicitor to act and advise in the best interests of the client. In brief, the following conditions must be met.

- In the solicitor's relationship with the introducer a solicitor must:
 - draw the attention of introducers to the relevant Rule, before referrals are made
 - make financial arrangements in writing, including an undertaking by the introducer to comply with the Rules
 - be satisfied that the introducer has not acquired the client by using methods which, if used by a solicitor, would be in breach of the practice rules (e.g. cold calling)
 - not allow the introducer to influence or constrain the solicitors' professional judgement in relation to any advice given to a client.

- In solicitors' relationships with the clients, solicitors must provide in writing all relevant information concerning the referral, including the amount of any payment, as soon as the referral is made

- In the introducers' relationship with the client they must also give clients all relevant information about the arrangement and amount of payment, but the solicitor in practice, regulates the introducer. To this end the solicitor:
 - needs to be satisfied that the introducer has provided the client with all relevant information about the referral before it takes place, so if the client has concerns they can go elsewhere
 - if in doubt that the requirement has been complied with, is required to ask clients about the information the introducer has provided, and keep written records of checks. The solicitor is obliged to terminate the agreement with the introducer if they are persistently in breach of the conditions.

The lifting of the ban was contentious and the Society, at the time of the change, agreed with the Master of the Rolls to review the working of these rules after they had been in force for a year. As a result, a regulatory impact assessment was

conducted in 2005, which advised issuing further guidance to the profession and the increased monitoring of firms paying referral fees. One of the proposals was a completion of themed visits early in 2006 to firms making payments for referrals. The key findings from the visits, were well publicised in the Gazette and highlighted four systematic breaches:

- ❑ a failure of solicitors to ensure that introducers are complying with the code
- ❑ a failure to obtain an undertaking from the introducer to comply with the introduction and referral code
- ❑ failure to carry out 6 monthly reviews of referral arrangements
- ❑ failure to disclose the referral arrangement and the amount of the payment

As a result, the new Solicitors' Regulatory Authority is currently in the process of reviewing referral arrangements as a whole. Earlier this year warning cards were sent to every solicitor in England and Wales, reminding them that they face disciplinary action if they do not follow the rules.

1.2 Research objectives

This study has been commissioned by TLS, as the representative body for solicitors, in order to improve understanding of the use and impacts of referral arrangements in the market for legal services. The results will aid TLS in developing strategies in this area for representing the interests of its members.

This research focuses on the practical operation of referral arrangements, in particular:

- ❑ the types of arrangement solicitors have
- ❑ how cases are paid for and costs recouped
- ❑ how arrangements impact on the firm
- ❑ ease of compliance
- ❑ clients' interest in, and levels of, disclosure by introducers
- ❑ advantages and disadvantages for consumers of such arrangements
- ❑ the impact referral fees have had on the market

Other areas investigated are:

- enforcement of the rules and
- views on reintroduction of a ban

The scope of the research focused on practice areas where referral fees are most commonly paid, namely PI and residential conveyancing.

1.3 Methodology

An exact picture of the number of firms paying referral fees in PI and/or residential conveyancing was not available. The regulatory database (REGIS) identifies firms, which currently use referral arrangements based on the information the firm provided on their RF1 submission. However, the information is not entirely accurate as the form asks two questions, the first asking if they have arrangements for referrals and the second asking about payments. The second difficulty is identifying the practice areas firms work in, information does not distinguish how much work firms conduct in residential conveyancing and/or PI. With this in mind, REGIS provided the following number of firms with and without referral arrangements working in conveyancing and PI:

Number of firms practising in PI and conveyancing, which pay for referral arrangements

	Conveyancing	PI	Both	Total
< 5 partners	354	283	471	1,108
5 or more partners	91	46	400	537
	445	329	871	1,645

Number of firms practising in PI and conveyancing, which do not have referral arrangements

	Conveyancing	PI	Both	Total
< 5 partners	1,445	445	1,366	3,256
5 or more partners	28	40	428	496
	1,473	485	1,794	3,752

Within each firm the Senior or Managing Partner was identified. A sample of 618 firms with referral arrangements and 1,060 without referral arrangements were written to in March 2007. The purpose of the research was explained to the Senior or Managing Partner in a notification letter and recipients were invited to nominate a more relevant contact if they were unlikely to be the most appropriate participant.

Firms identified by REGIS as having referral arrangements were screened to confirm whether they:

- ❑ have any arrangements whereby the firm pays third parties, excluding other firms of solicitors, fees in exchange for client referrals
- ❑ have referral arrangements in residential conveyancing and / or PI at that site

Firms identified by REGIS as not having referral arrangements were screened to:

- ❑ verify that the firm does not have any arrangements whereby the firm pays third parties, excluding other firms of solicitors, fees in exchange for client referrals
- ❑ ensure the proportion of fee earning time the firm spent on residential conveyancing and/or PI was 25% or more
- ❑ identify the most appropriate person to speak to

During the course of the screening exercise it became very difficult to find firms, particularly with 5 or more partners, which did not pay for referrals and were conducting a reasonable amount of PI work. We therefore became less stringent about the percentage of PI work conducted, but ensured that the firm was conducting some PI and had views on referral arrangements.

We conducted 34 face-to-face in-depth interviews from 29th March to 15th May. Prior to the main stage, a pilot of four interviews was conducted to ensure the topic guide worked. The interview length varied considerably from 25 minutes to 2 hours. A copy of the topic guides are appended to this report.

The following table shows the distribution of interviews by practice area, size of firm and whether they pay referral fees or not.

	Small high street firms (< 5 partners)	Larger firms (5 or more partners)	Total
PI	4 RA 4 non RA	4 RA 4 non RA	8 paying referral fees 8 not paying
Conveyancing	4 RA 5 non RA	4 RA 5 non RA	8 paying referral fees 10 not paying
Total	17	17	34

In terms of geographical location, interviews were conducted in London, South East, the Midlands and the North. A mixture of metropolitan and rural firms was included.

This report sets out the results from the research conducted by Moulton Hall Ltd. It covers the following headings:

- ❑ Profile of respondents and firms
- ❑ How referral arrangements work
- ❑ Involvement of those without referral arrangements
- ❑ Impact of referral fees on the market
- ❑ Impact of referral arrangements on clients
- ❑ Compliance and disclosure
- ❑ Enforcement of the RA rules
- ❑ Re-introduction of a ban
- ❑ Conclusions

2. Profile of respondents and firms

The following chapter outlines the profiles of the firms which, and respondents who, took part in the research. As firms working in PI and residential conveyancing are very different we have reported on their profiles separately.

2.1 Respondents

All respondents are of a senior level and have strategic roles in the firm. Most respondents were either Managing Partner / Senior Partner or Principal / Sole Practitioner in one partner firms. Most are running the business, while some are also involved to varying degrees in casework either in PI or Residential conveyancing.

Most of the respondents who are paying for referrals have a strategic role in the firm regarding referral payments. This involves:

- in the first instance, deciding whether they should pay for referrals
- the firms' future development of referral arrangements
- ensuring that legal issues are covered. Two of the partners in PI firms work alongside Compliance Officers, whose sole responsibility is to ensure that the firm is complying with the referral rules on a day to day basis.

"We are a very structured firm, cases come into the firm, if they have a referral fee the Compliance Officer records the case before passing it onto a partner, so she knows all the sources of work. She will check with me on a regular basis to make sure client letters, contracts are being adhered to."

(Has referral arrangements, 5 or more partners, PI)

- approving the referral agreement

Few decision makers in the firms with 5 or more partners deal with introducers on a day-to-day basis.

All who work in firms that do not currently pay referral fees would be involved with other partners in deciding whether the firm would start paying for referrals. Some would be the main decision maker.

2.2 Firms working in PI

Most of the firms interviewed, working in PI are Metropolitan, based in London, Manchester and Liverpool. Very few firms we interviewed are practising PI in rural areas or towns. The number of partners in the PI firms varies from 1 to 42. However, the number of partners is not necessarily an indication of the turnover of the firm or the volume of their PI caseload. For example, one firm paying referral fees, has one partner, 40 fee earners and 85 staff in total, most of whom are working on PI cases. The firm conducts 8,500 PI cases per annum, the second highest number of PI cases conducted by any firm interviewed regardless of the number of partners.

As well as PI the firms with fewer than 5 partners are mainly practising in:

- Employment
- Family
- Commercial
- Mental health
- Litigation

Firms with 5 or more partners work in a number of different practice areas:

- Employment
- Commercial
- Probate
- Private client
- Commercial property
- Corporate
- Conveyancing
- Criminal
- Defendant work in PI

The number of PI cases conducted per annum, and the percentage of turnover that PI cases represent, varies considerably between those paying referrals and those not. These numbers have been given to illustrate the differences in the firms which took part in the research, however, as the numbers of interviews is small they may not be reflective of the market as a whole and should not be interpreted as such. The number of PI cases per annum for those not paying referrals varies between 10 and 100 (on average 35), whereas for those paying referrals the number of cases varies from 80 to 9,000 (on average 3,500). The percentage of turnover that PI cases represents is between 5% and 35% (on average 15%) for those not paying referral fees, while for those paying referral fees the percentage varies from 5% to 90% (on average 50%).

None of the firms which are not paying referral fees are proactively advertising. They rely solely on their previous reputations to get recommendations, and work from previous clients and other solicitors.

“We’ve made a policy decision not to turn PI work away, but to expand in other areas. The insurance companies are collaring the work and selling it. PI used to represent about half our work”

(No referral arrangements, PI, < 5 partners)

“Largely through personal recommendation and mainly from other solicitors who feel I am more experienced in PI cases. Before I started here I specialised almost entirely in PI cases for a large firm, so I have a very wide experience, which isn’t usually the case for solicitors working in smaller practices”
(No referral arrangements, PI, < 5 partners)

“There is only me now. Whereas there used to be three, well two partners who were members of the PI Panel and an assistant solicitor or associate who was a member of the PI Panel, plus a trainee, four staff. You know the principal objection that we took has cost us.”
(No referral arrangements, PI, 5 or more partners)

“We are a niche PI insurance practice and we have been for fifty years so it’s reputation really and that includes the claimant injury work – most of it comes from reputation and word of mouth. We don’t advertise, we don’t have any relationship with a claims management company or anything like that”
(No referral arrangements, PI, 5 or more partners)

In order to sustain the numbers of cases, and to remain competitive, a few of the firms paying for referrals have changed or adapted the structure of their businesses. The following are examples of these changes:

- ❑ A firm with one partner, processing 8,500 cases per annum has a management team consisting of a Chartered Accountant, an insurance professional and a Compliance Officer. The firm has 85 employees, most of whom are not trained solicitors.
- ❑ A large firm (11-25 partners) processing 4,500 cases, has a large number of paralegals working for them. The solicitors supervise the paralegals.
- ❑ A very large firm (26+ partners) processing 9,000 cases has ring-fenced the work they get via paying referrals and has set up a different business model than their usual working methods. Claims are dealt with by less qualified staff using computerised case management systems, while other cases get “the old fashioned face-to-face service”. They have also bought a claims capture organisation to compete with the insurance and claims management companies.

2.3 Firms working in residential conveyancing

Unlike the firms working in PI, firms we interviewed working in residential conveyancing are generally located in towns. The number of partners varies from 1 to 24. Most of the firms describe themselves as traditional high street law firms.

There are no major differences in the areas of practice by size of firm. As well as residential conveyancing the areas of law they are working in include:

- ❑ Wills and probate
- ❑ Commercial Property

- ❑ Matrimonial
- ❑ Company and Commercial (particularly the larger firms)
- ❑ Private client
- ❑ Family
- ❑ Employment

The number of cases and percentage of turnover represented by residential conveyancing is different for those paying and not paying referral fees, but not as marked as the firms working in PI. These numbers have been given to illustrate the potential differences in the firms taking part in the research, however, as the number of interviews is small, they may not be reflective of the market as a whole and should not be interpreted as such. The number of residential conveyancing cases per annum for those paying referrals ranges from 250 to 6,000 (on average 2,500) compared to 400 to 750 (on average 500) for those which are not paying. Five of the firms paying referral fees are conducting at least 1,500 residential conveyancing cases per annum. The difference in the percentage of turnover that residential conveyancing represents for those paying and those not paying referral fees is not that different. For smaller firms with less than 5 partners, residential conveyancing on average represents just over 50% (60% for those paying referrals, 45% for those not paying), while for larger firms around 33% (40% for those paying, 25% for those not).

Those not paying referral fees get their work from repeat business, existing clients, referrals from independent estate agents and recommendations based on their reputation.

"We get our work from repeat business, recommendations, word of mouth, children of former clients, referrals from independent estate agents and from the odd "chain solicitor."

(No referral arrangements, Conveyancing, <5 partners)

"Being an old established firm for the last 200 years we have a good local reputation and long term clients who use us for repeat business and a number of referrals. In an average month, across the board of 100 new instructions 85% would be existing clients".

(No referral arrangements, Conveyancing, 5 or more partners)

A few of the firms have changed the way they work in order to conduct the volume of referral work.

- ❑ A firm with fifty staff in total, of whom only 14 are fee earners, processes 4,000 cases a year.
- ❑ A firm with 5+partners has a former estate agent as one of its Directors. Separate teams within the firm handle work that is paid for. The team has one lawyer and 3-5 assistants with varying levels of ability and qualifications. This enables them to achieve satisfactory volumes.
- ❑ One sole-practitioner handles 1,500 cases per annum. A licensed conveyancer heads the residential conveyancing department, and work that comes via online referrals is handled specifically by two individuals.

3. How referral arrangements work

This chapter covers referral arrangements in practice, who the introducers are, types of arrangements they have, payment, impact of referral arrangements on the firm, the firms' reliance on referral arrangements and the advantages and disadvantages of referral arrangements to firms. As the operation of referrals in the two areas differs substantially, the results have been analysed separately for firms working in PI and residential conveyancing.

3.1 Firms working in PI

3.1.1 Introducers

The sample firms with less than 5 partners, in general, deal with smaller numbers of introducers than firms with 5 or more partners.

- One firm with less than 5 partners uses one claims management company. The relationship originally developed with a company who put advertisements in hospitals, they *“jumped into bed with an organisation who wanted to do claims farming, they changed overnight from a printers into a claims management company”*.
- One firm with less than 5 partners, uses one marketing services company.
- A firm with 60 introducers covers a variety of different businesses. *“We have a mixture of insurance brokers, claims companies of sorts – we’re not involved in any of the really big claims companies that advertise on TV. Car repair shops, lots of small claims companies”*.

Overall, firms use a cross-section of introducers. The different types of introducers are as follows:

- Claims farmers / claims management companies

“The methodology is not a secret. Everybody does the same. Some claims management companies, most of them, will have a high street shop, and you will have your passing trade. People will walk in and put forward a claim. Some of them advertise in local press, radio, and things like that. The bigger claims management companies have got TV campaigns. The ones I deal with, obviously, are small companies. They rely on, effectively, introductions, word of mouth. And they’ve got their own high street shops, if you like. Some companies historically used to cold call – knock on doors and so on and so forth. I think that’s largely dying out nowadays”.

(Has referral arrangements, PI, <5 partners)

- Insurers before-the-event

“They are a sizeable long established motor accident businesses.... They do the background processing on behalf of household names in insurance.”
(Has referral arrangements, PI, <5 partners)

- ❑ Legal expenses insurers

- ❑ Other organisations
 - Marketing services
 - Car garages and repairs
 - Hire car companies

All but one of the firms pays for road traffic accident cases (RTAs). Other types of cases paid for include:

- ❑ accidents at work
- ❑ industrial diseases
- ❑ public liability claims
- ❑ slips and trips - Section 41 (Highways Act 1980)

3.1.2 Types of agreements

All firms interviewed profess to have written agreements with all their introducers (as required by the conduct rules). Many mentioned occasions where they have refused to work with introducers who would not sign the agreements.

The types of agreements vary considerably depending on the type of introducer. The arrangements firms have with the big insurers and larger well-established claims management companies are transparent. These introducers have strict guidelines they have to abide by, from regulations set out by the FSA and the Compensation Act respectively. *“In some areas their regulations are stricter than TLS’s rules”*. To get on their panels tends to be quite difficult and for most firms is cost prohibitive.

“We have been trying to get on the XXXX panel, who own [insurance companies] which represents 20% of the Road Traffic Accident market. They started with 60-70 firms, 17 or 18 got through to the second round. One of the areas is 4,000 cases at a referral fee of £600 a case, that equates to approximately £2.4 million. That’s an awful lot of money to fork out before you have done your work in progress, let alone settled”.

(Has referral arrangements, PI, 5 or more partners)

Firms which manage to get on these panels have contracts setting out:

- ❑ the number of cases they will receive in any given period
- ❑ service level agreements that the firm has to adhere to.

“We have referral contracts, they are long term contracts, they refer a number of files to us per month. Contract for XXXX for example is 3 years; others are 1 year rolling contracts. Referral cases come in daily, we have a vetting team, a first response team that phones the client, requalifies that client to see a) they are rightly referred in the first place b) they want to continue with the claim, some indication of their losses, help them fill in some of the forms - they are then sent out. Only once we’ve got the forms back, seen it’s an established case, there’s a third party insurer and that the circumstances stack up we’ll then be sent a referral fee schedule following the month of the referral. We will then reconcile that statement with our statement; there have been times when we have rejected cases that they think we’ve still got. That process takes 7-10 days. They guarantee a certain amount, give or take – we’re pretty flexible, the only reason there’s a number in there is so we can staff for it”.

(Has referral arrangements, PI, <5 partners)

“XXXX divide the country up into different postcodes and you pay upfront and get all the cases from a particular postcode”

(Has referral arrangements, PI, 5 or more partners)

Other referral arrangements tend to be more ad hoc as follows:

- ❑ a roster of solicitors whereby every 20th case, for example, will be sent to the firm
- ❑ cases emailed or faxed on an as and when basis
- ❑ calling the firm when the client is at the premises e.g. at a garage repair shop

“What happens is there is a rota of solicitors, when someone has an accident they refer it to the next in the queue. That’s what they say they do. We get quite a lot of cases referred to us, but a lot of them aren’t very good so we don’t actually take that many. We turn more away than we take.”

(Has referral arrangements, PI, <5 partners)

“They normally fax us the details and we are given 2 to 5 days to check the claim out and we tell them whether we’re prepared to take the claim on. If we do they invoice us and we pay the referral fee shortly afterwards. With most of them we have an agreement that if the claim doesn’t work out and we don’t recover costs, they will replace it with another claim free of charge.”

(Has referral arrangements, PI, 5 or more partners)

“With the claims management companies, what will normally happen is, we’ll get a batch of claims in. They normally come by email, or if not, they come in batches through the post. There’ll be a claims form filled in with all the client’s details and maybe some witness statement, photographs. We will look at it. We will then contact the client and introduce ourselves. Say where we’ve got the claim from and just go through some important questions that we think we need asked and answered by the client, so that we can assess whether or not there are reasonable prospects of success. If we believe that the client is, as far as we can see, bona fide and there are initially at this stage reasonable prospects of success, then we will tell them and ask them if they want us to act for them..... “

(Has referral arrangements, PI, 5 or more partners)

In most circumstances, firms will be sent the case and have a set period of time to decide whether to take the case on or not. The time varies from 48 hours to 10 days. Some introducers, particularly the large insurers, are better at vetting cases than others and some firms will also have staff within their own firm employed to vet cases. Case refusal rates tend to vary depending on the referrer from 15% to over 50%. Some claims farmers will send cases that have been refused by other solicitors, so the quality of cases varies considerably.

In the main, the firm will pay for the referral 14 to 30 days after accepting the case. Some of the larger firms have arrangements with introducers should the cases not work out – i.e. the cases are replaced or fees are returned.

“We operate with a three month unwind with the claims management company. So you get the claim up and running. If during that 90 day investigation period after we’ve taken on the case and paid for it, there is adverse evidence comes to light, or the client often these days disappears and doesn’t want to pursue the claim any more, then we have an unwind agreement...the percentage is quite high, because of methods that claims management companies tend to use to acquire clients”.

(Has referral arrangements, PI, 5 or more partners)

“There are no guaranteed numbers per month, they all say they can send this many, but referrers are desperate to get money for every claim and a lot of claims are no good, so you have to be selective otherwise you’ll bankrupt yourself”

(Has referral arrangements, PI, <5 partners)

3.1.3 Payment of referral fees

Most cases are paid on a fee-per-case basis. The fees range from £250 to £700 per case; on average they are approximately £600. Less often different methods of payment are used:

- ❑ A firm with less than 5 partners, pays a fee upfront to a claims management company which is £5,000 a year for 5 years and £350 per case
- ❑ A firm with 5+ partners, pays a “marketing fee each month” for industrial disease cases

One firm with less than 5 partners feels the fees are too high and suggested that TLS could intervene.

“I hope TLS will put a cap on it, one set fee of £400. You should not pay more than that. Big firms look at it from the point of view that if they’re paying higher fees, but getting bulk work that justifies the figure. They can buy more, we can’t compete and are getting pushed to the side.”

(Has referral arrangements, PI, <5 partners)

Although no other mechanisms of payment are mentioned, some firms say introducers have restrictions in their contracts which require use of introducers' medical insurers, so they can earn commission.

"We're not involved with [some of the large claims management companies with help lines] because their requirements are too restrictive. I think they're breaking the TLS rules as they insist that you use their medical agencies, so they can earn commission on that. We don't work with anyone who limits our choice of barrister or doctor".

(Has referral arrangements, PI, 5 or more partners)

Another area questioned by some firms is the relationship between referral fees and trade unions. One firm with 5 or more partners does all the trade unions' employment work for free in order to secure their PI work.

None of the firms admitted to recouping their referral fee costs directly from clients. In the main, such 'acquisition' costs are treated no differently to advertising or marketing costs.

"It is part of my overhead – it cuts my margin. From my point of view I could choose to instruct a marketing consultancy to run a £1million marketing campaign and they wouldn't be able to guarantee anything apart from a load of air time. I'd then get a load of crap through the door, which I would have to filter, from 1,000s of calls I might only end up with 200 cases. It is no different from the marketing fee, but I know what I'm getting".

(Has referral arrangements, PI, <5 partners)

"There is no way to recoup these costs. These are the acquisition costs of the firm. There's no way to offload them at all. So ultimately they hit the profit margin. In other words, if I earn on average £1200 per case, and I've paid a referral fee of, say, £450 net of VAT, let's say £550 gross, I simply take it out of the net earnings. So, in essence, if I've got 40% profit margin without it, it gets reduced to 20%. And that's it. There's no way to recoup that.... At the moment, the profit margin is very tight, if you do it correctly and you do it legally. If you do not seek to recover, which is what we do, profit margins are really tight, and it makes you wonder whether or not it's worthwhile doing anyway".

(Has referral arrangements, PI, <5 partners)

The way some firms are able to operate is to save costs by changing the way they work and to increase the volume of cases. Some firms have invested heavily in new technology, have streamlined their processes and employed less qualified staff to conduct the more administrative aspects of the work.

"From what I hear, my accountant tells me he has 6 firms who do PI and I'm the only one who's making money from it and the smaller firms struggle to work efficiently enough to turn it around in a profitable way".

(Has referral arrangements, PI, 5 or more partners)

“We run the two practices side by side. The legal expenses insurers work is much more computerised, not structured to give the face-to-face personal service that one gives to a private client. Various protocols from the insurers as to how often you write to the client, how many letters, whether they see the client, which medical agency you have to use etc abide by that in your fast track computerised work. But that’s the only way to make money is to actually save £700 worth of costs. There will become a time when people will not be able to do that, there will only be a few firms about who have the money to invest in the IT to get the work done and that’s what’s happening”.

(Has referral arrangements, PI, 5 or more partners)

One firm suggests that costs can be recouped by referring clients on to medical agencies or After the Event Insurers (AEI) who will pay solicitors commission for those referrals.

“One of the additional ways of making money on a PI case is the commissions you get from medical agencies. If you’re having a case referred to you by a non-legal expenses insurer or claims management company they have to take out after the event insurance, as they can’t run the case on a conditional fee agreement unless they have after the event insurance. That’ll probably cost you about £2,500, you can get commission of £400”.

(Has referral arrangements, PI, 5 or more partners)

3.1.4 Impact of referral fees on the firm

Overall, a positive relationship between paying for referrals and case numbers is suggested. In the main, firms report an increase in the number of cases since referral fees have been paid. In some cases where a previous reduction in the number of cases had been experienced, referral fees are being paid in order for firms to stay in business or to keep the number of cases at previous levels.

“We used to have 55 staff in our office in Birmingham, we now have 5. When we weren’t paying referral fees we were mainly relying on insurance companies for work, when that disappeared we had a big drop in our work. Fortunately this office through referral fees has managed to survive and expand. If it wasn’t for referral fees we would have been completely screwed by the [XXXX] of this world.”

(Has referral arrangements, PI, 5 or more partners)

“We have tried to keep the same number of cases we had 4 or 5 years ago. We have to fill the gap with paid referrals”.

(Has referral arrangements, PI, 5 or more partners)

Profits have generally increased, but only by increasing the volume of work and working more efficiently.

“We had to change the way we work. We’ve had to employ a lot more paralegals. So the client is less likely to have their case dealt with by a solicitor, so we have had to reduce our costs in that way. It’s not such a bad thing as long as it’s structured in the right way, so there are good solicitors supervising the paralegals. Traditionally there have been highly paid solicitors doing work that could be done by more junior staff”.

(Has referral arrangements, PI, 5 or more partners)

Most firms claim the service levels are the same, or even better, for those clients who came to the firm via the referral fee route. They have managed to do this by changing the way they work - quality of service is driven to a certain extent by the introducer.

“The insurance companies are hard task masters. If we don’t give a good service the client will complain or they may not renew with the insurer. They come in annually to do an audit and examine the process”

(Has referral arrangements, PI, <5 partners)

Although a few employ less qualified staff, in the firms’ views, the level of service has been maintained because of legally qualified staff overseeing less qualified staff. The non-legal staff conduct the administrative elements of the case by using the new technologies and systems to process cases. The solicitors will be involved in the legal aspects.

Only one firm which pays for referrals suggests that the quality of service might not be as good as cases where referral fees are not paid. *“Cases from paid referrals tend to be more computerised and processed, and are not structured to give face-to-face personal service that one gives to a private client”.* However, the firm has learnt from the streamlined approach adopted by some introducers and this learning is being applied to other parts of the firm. It is difficult to assess whether clients expect, or cases need, face-to-face contact.

Other impacts on firms of adopting referral fees are:

- ❑ Increased administration, in setting up the agreements, checking that introducers are complying etc
- ❑ Putting procedures in place to keep introducers up to date with the referred cases

“It’s generated more bureaucracy and documentation. Introducers want you to tell them what’s going on all the time”

(Has referral arrangements, PI, <5 partners)

- ❑ The investment in and introduction of new technology
- ❑ Careful management of cash flow

“It is a significant outflow of cash. It requires a lot of careful management and a lot of financing. In the blink of an eye, you can have a marketing account, which is up to several hundred thousand pounds. Because law firms, unlike private

equity firms, can only drum up capital to the tune of what the equity partners can stand at the bank, irrespective generally of the size of the business. And you have to very carefully manage”.

(Has referral arrangements, PI, 5 or more partners)

Most of the firms with less than 5 partners are reliant on referral arrangements for their PI cases. In terms of PI cases only one firm with less than 5 partners has a substantial number of cases referred from word of mouth and recommendation. However, all but one firm with less than 5 partners work in other areas of law and, therefore, are not totally reliant on income from PI, which represents from 5% to 50% of their business. One firm in particular is totally reliant on paid referrals in PI cases -they have four introducers and PI represents 90% of their business, of which 95% is from paid referrals.

For the firms with 5 or more partners, most are reliant on payment for their PI casework. PI is also their largest practice area representing around 50% to 85% of their business. Paid PI casework represents around 25% to 40% of their business, so they are still generating some business without paying referrals. One firm with 26+ partners is not as reliant on cases from referral fees. They have a large proportion of high value work acquired via word of mouth. They have also purchased a claims capture organisation in order to “move further up the food chain to battle against the insurers”. The service was to be launched in June, and advertised on television. Twelve other firms of solicitors will pay the firm an advertising fee to receive contacts.

“Not reliant on referral fees (about 10% of PI), but to maintain our position in the market if we just continued to get work from the old sources, we would begin to see our market disappear”

(Has referral arrangements, PI, 5 or more partners)

3.2 Firms working in residential conveyancing

3.2.1 Introducers

In the residential conveyancing market, of the firms interviewed, few have a large number of introducers. A few of the firms had 6 to 10 introducers, while most of the firms interviewed have only one because:

- ❑ It was forced on them, the introducer stipulated that they had to pay the referral fee in order to keep getting referrals from them
- ❑ They are testing the approach, before deciding whether to take on more introducers
- ❑ It gives them access to different types of work
 - High value customers
 - Customers in different parts of the country

The main introducers are estate agents. One firm with 5 or more partners is on a panel for a chain estate agent. All other firms paying referrals to estate agents have arrangements with local agents. Other types of introducers are:

- ❑ Online property conveyancers

“They are essentially middle men. What they’ve done is seen the need from the estate agents’ point of view to try and make sure transactions go through as quickly and efficiently as possible. For the estate agent, the prize is the commission, which is only paid on completion of the transaction. If it doesn’t complete they don’t get anything. Therefore it’s of vital importance to the estate agent. Where you’ve got chains of estate agents that are well managed and focused on their financial criteria, they’ve been looking for a way for transactions to go through as quickly as possible. They haven’t got the wherewithall to do it – the intermediary has come in and said we’ll take our cut, but we’ll manage the solicitors for you. We will drive the solicitors to achieve the level of performance, we will charge the lawyers a fee and we’ll pass it onto you. So you’ll make more money in addition to your commission, but more importantly we’ll drive it so you get your commission more quickly, so it’s a no brainer for the estate agent provided they can deliver. To be fair to them they have good computer systems, but it does put a big squeeze on the lawyers, because they are sharing a fee with the intermediary and the estate agent”.

(Has referral arrangements, Conveyancing, 5 or more partners).

“[XXXX] is a web-based company, they have perhaps 100 estate agents who are on their panel and they have about a dozen solicitors who they give the work to”.

(Has referral arrangements, Conveyancing, <5 partners)

- ❑ Independent financial advisors
- ❑ Mortgage brokers
- ❑ Marketing services companies

“He [the introducer] circulates estate agents and mortgage brokers to say that he can provide conveyancing services that he knows are reliable and will provide a good service in return for a reasonable fee. I think he's been particularly successful in the south east, because we've had people, say, buying properties in the £800,000 - £1.2m bracket, where they're paying considerably more in London (not just central London but the suburbs as well) than we are able to do up here”.

(Has referral arrangements, Conveyancing, 5 or more partners)

The types of cases referred are mainly residential conveyancing on sales and purchases. A few also get remortgage cases, but *“less these days as the mortgage lenders have these things tied up in house”.*

3.2.2 Types of arrangements

Written agreements between solicitors and introducers appear to be the norm. All firms working with chains of estate agents, and the online conveyancing firms have agreements. Introducers less likely to have written agreements are local estate agents and marketing services companies.

A few of the introducers have strict guidelines for referral firms to work within. These introducers are the chain estate agents and one of the online conveyancers. The firm and introducer will agree on the number of referrals the firm will receive over a given time period. The firm will have to meet the often high service standards of the introducer.

“We negotiate every quarter, depending on what capacity we have so we can deliver the quality of service that is required. There is a careful balance to be had, if I said 200 cases a month I know we wouldn't be able to service them properly. Quality standards would fall, they wouldn't be happy and that would threaten the relationship. So we always try and keep to a level we can manage. We are good at what we do and the referrer is pleased with us and therefore we are always under pressure to take more cases. We have to be careful to resist that”.

(Has referral arrangements, Conveyancing, 5 or more partners).

“Once you're on the panel, with the panel arrangement basically there are service standards that you have to be able to meet and ultimately if you didn't meet those service criteria then you would probably have your membership of the panel suspended or taken away from you”.

(Has referral arrangements, Conveyancing, 5 or more partners).

Other arrangements tend to be ad hoc. Introducers telephone, fax or email details as and when they receive potential conveyancing clients.

3.2.3 Payment of referral fees

Most pay on a fee-per-case basis, ranging from £50 to £700 per case for high value properties. The average fee per case tends to be from £75 to £125 a case. Some fees are agreed in advance and others are negotiated on a case-by-case basis.

“It’s a flat fee-per-case. It’s an agreed advance fee of £75 per case.”
(Has referral arrangements, Conveyancing, <5 partners).

“XXXX quote the client a fee and they tell the client that from the fee they’re going to get x amount and y amount will be coming to us”
(Has referral arrangements, Conveyancing, 5 or more partners).

“The fee is per case and that fee varies, dependant on what it is - if it’s a remortgage, if it’s a purchase, if it’s a sale. And the fees can range from about £130 to perhaps £700, but it’s virtually exclusively around the £130 - £160 level. So we don’t feel professionally embarrassed that the client is having to pay a lot more than he might get in the market place, because they’re getting a good service and they’re aware of what’s happening. And I’m comfortable with that”.
(Has referral arrangements, Conveyancing, 5 or more partners).

Only one introducer is paying an upfront fee.

“It’s a very sophisticated way of doing it. It involves some payment upfront which I’ve always understood is to assist their cash flow, so they get money for work that hasn’t yet completed and it is designed to give them some security against law firms that might want to stop doing that work. It’s paid monthly, but on a quarterly plan. The two are combined to create one monthly payment, its computerised and complex and took us quite a while to understand how it works. We’re fortunate enough to have a Finance Director, who’s a chartered accountant and I’ve also got a qualified management accountant and she now understands that model really well and we think we understand it slightly better than they do as we pick up their errors in the way they calculate. I’m certain that a lot of solicitors on the panel don’t understand how it works and simply have to accept the information that comes via email in this hugely complicated spreadsheet. You can’t calculate it manually you need a computer program”.
(Has referral arrangements, Conveyancing, 5 or more partners).

A number of firms mention that in order to get onto an introducer’s panel or to get referrals from an introducer they would have to charge their conveyancing fee at a reduced rate.

“The fees on [XXXX] are atrocious, we have to charge £350 and you could say “why do I do it”. We probably make little money from it, we normally charge on average around £600. The client is probably paying a kick back to the estate agent and [XXXX] and the only way I can justify it is to try and get more business from these contacts”
(Has referral arrangements, Conveyancing, <5 partners).

In general, firms claim not to recoup the costs directly from clients. However, a few suggested that the referral fee is “*built into the cost*” of the fee charged to the client or that the fee for cases where referrals are paid is marginally higher than the non-referred work.

“We aim to charge a sufficient fee to the client that means we make sufficient to pay the fee and still make a profit. We don’t have a budget for referral fees. We look on it as an expense, unfortunately, for doing the business”
(Has referral arrangements, Conveyancing, 5 or more partners).

“The price overall is higher than the standard fee by £50 to £75 to the client. We are losing more than that in referral fees”
(Has referral arrangements, Conveyancing, 5 or more partners).

As with some of the PI firms, a few firms have changed the way they work so that they can conduct more work and/or are working more efficiently. Computer systems and less qualified staff enable them to reduce their overheads.

“Fortunately we have 1 fee earner who is exceptional and does this work with a team of 4/5 people. She is able to handle a volume of cases that most lawyers wouldn’t be able to handle...She handles a volume that even when you pay the referral fee and her staff that there is a reasonable level of profitability for the partnership. I’d find it difficult to replicate that and if I couldn’t then it would be questionable if the profitability would be sufficient. We work more efficiently, using technology and running a tight ship”.
(Has referral arrangements, Conveyancing, 5 or more partners).

One firm tries to recoup costs by trying to get additional business from the client either by trying to cross-sell clients additional services or if there are any services beyond the very basic residential conveyancing they will charge the clients an additional fee.

“I can try and sell the client other services, have you got a will, do mum and dad need inheritance tax advice etc it’s a prospect / a name. With stamp duty land tax, you have to complete a tax return to the revenue – we offer the service and charge the client £50 and if you say we want to complete quicker we’ll charge you for that”.
(Has referral arrangements, Conveyancing, < 5 partners).

3.2.4 Impact of paying referral fees on the firm

There are mixed views as to the impact of paying referral fees on the number of cases. It is difficult for firms to distinguish between the number of cases they have instructed as a result of paying referral fees and the number of cases they would have dealt with otherwise. In general, firms say the number of cases has increased or stayed the same since paying referral fees.

“Three years ago it was just me and now there’s 11 of us. It was part of my strategy to try and get 50% of my business working on this basis”.
(Has referral arrangements, Conveyancing, < 5 partners).

“We’ve increased the number of cases. They’re the same type of cases that happen to come from the larger estate agents that have signed up to middlemen”
(Has referral arrangements, Conveyancing, 5 or more partners).

“It’s difficult to assess because it’s still not a very large part of our business”
(Has referral arrangements, Conveyancing, 5 or more partners).

As a rule, firms say they do not increase profits by paying referral fees, as by paying fees their profit margins are reduced. In order to increase profit, firms have to increase the volume of work they do, and try and work more efficiently.

“We’re getting more profitable. We’ve increased the amount of work that we’re handling and just making sure that we’re more efficient in the way we handle it”
(Has referral arrangements, Conveyancing, 5 or more partners).

“Well, we have a fairly substantial number of people in residential conveyancing who we have to keep employed and it comes down to turnover in the end. The more cases you can put through..even if its £10 a case, the more profit you’re making”
(Has referral arrangements, Conveyancing, 5 or more partners).

The impact of referral fees on service is debatable. Firms paying referral fees claim the service clients receive is exactly the same, whether referrals are paid or not. Some introducers impose service levels on solicitors which can result in higher standards of service.

“We are LEXCEL accredited – we have very high work ethics here. No difference at all, we do the same job for both, you can’t draw a distinction”.
(Has referral arrangements, Conveyancing, < 5 partners).

“In fairness I think they do drive the service levels quite hard because it’s in their interest as well as the clients. No conflict there because the client and the estate agent want the job done quickly and efficiently. It does not erode service it improves efficiency...making conveyancing faster, resilient and less likely to break down than traditionally”
(Has referral arrangements, Conveyancing, < 5 partners).

“Well I think it keeps us on our toes. You know, because there are service criteria, which we need to comply with which are to the advantage of the client, but they’re also to our advantage. I mean we’ve had to up our game on how we handle files, to make sure that we are handling the files effectively and efficiently for the client. I think it’s made us a better practice for our clients. We are, we’ve put systems in place to make sure that the file is progressed which is what most of the clients want, and the service criteria make sure, you know gives us timescales for doing things which I think is to everyone’s benefit.”

(Has referral arrangements, Conveyancing, 5 or more partners).

Two other impacts of paying referral fees were mentioned:

- The administrative burden of abiding by the rules
- Investment in new technology, so the firms' systems are compatible with the introducers.

"It's an administrative burden, you have to keep your eyes on the regulatory paperwork which is a management expense and deal with arrangements to ensure our initial letters are compliant. Then there's the cost of actually making the payment of the fee...it's additional work".

(Has referral arrangements, Conveyancing, 5 or more partners).

"We've invested massive amounts of money in computers and software. For example web reporting, automatic text messaging".

(Has referral arrangements, Conveyancing, 5 or more partners).

Even though the majority of work in firms with less than 5 partners is in residential conveyancing, most are not reliant on referral arrangements to get business. Firms' referred business represents approximately 10-15% of their overall business. In the main, residential conveyancing business in firms with less than 5 partners still comes from recommendation and repeat business.

"We're not reliant at the moment, but if the market is liberated and financial institutions move in and provide conveyancing services then getting work will be more difficult"

(Has referral arrangements, Conveyancing, <5 partners)

Firms with 5 or more partners cover a wider range of case types and are therefore not as exposed to changes in one area of law. For all but one, residential conveyancing represents around a quarter of their business and work that is paid for represents only 2% to 5%. One firm with 5-10 partners specialises in residential conveyancing, and half of its work comes from paying referral fees. The firm claims it is becoming more and more reliant on referral fees for work.

"We're getting more and more reliant. But it is the future as far as I can see. I don't think, as a traditional law firm, I mean, the alternative is to become some kind of niche provider, but niche provider of what? There is no money to be made in the legal aid work and our expertise has traditionally been in residential conveyancing"

(Has referral arrangements, Conveyancing, 5 or more partners).

3.3 Advantages and disadvantages to the firm of paying referral fees

Firms which are and are not paying referral fees were asked what the advantages and disadvantages of the firm are in paying referral fees. Some of the responses for firms conducting PI and residential conveyancing cases are fairly similar, so we have reported them together, any differences in responses by type of casework and size of firm have been highlighted.

Clearly the main advantage of paying for cases is the increase in business, however, the motivations in PI and residential conveyancing are different. In PI those paying referral fees feel the main advantage for them is to stay in business. The claims management and insurance companies capture clients before solicitors can and, therefore, the only way to get business is to pay introducers.

“If you want to work in PI you have to pay for it. There are so many introducers out there trying to get work, ordinary advertising doesn’t work as well as it used to”.

(Has referral arrangements, PI, 5 or more partners)

“Referral arrangements, if correctly managed, allow you to grow a successful and profitable business, albeit margins are slim and therefore the volumes are high, but you have the sustainability to maintain jobs. You can run it purely as a lawyer and eventually go bust or as a business and a lawyer. I’m in business to make profit, this practice employs a lot of people and we’ve survived while others haven’t”.

(Has referral arrangements, PI, <5 partners)

“There has been a downturn in PI work, we had to make a decision to either make it work in the new world or get rid of staff”

(Has referral arrangements, PI, 5 or more partners)

Another advantage, particularly in relation to PI, mentioned by those who do and do not pay for referrals, is to get work on a regular basis.

“I know how much work I’m getting and can resource accordingly”

(Has referral arrangements, PI, <5 partners)

“I don’t want to do it myself, but I suppose for some firms it’s a way of getting regular cases to keep the firm going. It’s not easy getting the cases in and the PI farmers do a lot of marketing”

(No referral arrangements, PI <5 partners)

For firms practising in residential conveyancing the emphasis is on growing the business or getting work they would not otherwise get by sourcing:

- work from other locations
- high value cases.

“We want to build the business and there are a number of good firms in the area. There isn’t enough work to keep everybody going, so we get it from different locations”

(Has referral arrangements, Conveyancing, <5 partners)

“Increases capacity and gets us work we wouldn’t get otherwise. We want to expand the residential property department. The more I’m out there, the more work I’m doing, the more I’ll get”

(Has referral arrangements, Conveyancing, 5 or more partners)

Where firms are on panels for more established introducers they have improved their service levels to clients by introducing new technologies and processes.

The main disadvantage for firms paying referral fees are issues around their principles. Many firms, even those paying referral fees, would rather get work as a result of recommendation than by paying referral fees. Paying referral fees potentially impacts on the firms’ autonomy, the way they work and how they deal with clients. Firms can be influenced by factors other than the clients’ best interests, such as profits and introducers demands.

“Well I’m a bit old fashioned, I was brought up in the days when you got work for doing a good job and that has changed. I thought it was detrimental to the firm and to the practice generally that we have to pay for some of the work we do. I think it muddies the waters, a firm such as mine that has operated in the area for many years and has a good reputation – we can survive on that, whereas arguably the firms which are less good, nevertheless get new work in simply by buying it”

(Has Referral Arrangements, Conveyancing, 5 or more partners).

“We don’t think that they are in the best interests of the client ... because the referrer is not going to refer to a solicitor who is either delivering the best service, or is best placed or is the right person for the client, they are going to refer it based on who is paying them the highest fee!.. I think we have always taken the view that legal independence is actually very important ... and I think that has been eroded quite substantially, and I think this erodes it even more in a very bad way”.

(No referral arrangements, Conveyancing, 5 or more partners).

“I suppose you could feel beholden to the PI farmers because you’re effectively working for them. I have heard of decidedly ‘iffy’ cases that farmers have insisted should proceed although the solicitor dealing with it has said there’s no case to answer. Some have been invented by the marketing company reps, also I don’t like the idea of being tied-in, as I believe they sometimes are to particular medical examiners – who may not be the best person to send clients to”.

(No referral arrangements, PI, 5 or more partners)

Other disadvantages mentioned are:

- The payment of referrals upfront causes serious cash flow problems particularly in the PI market as cases can run for years. Cash flow can be a serious barrier to entry, particularly for smaller firms.

“I would make more money if I didn’t have to pay them, there are considerable cash flow implications and for us now it’s OK, but initially it’s a barrier to entry. You need very, very deep pockets, because if you can’t pay for 20 cases a month then you haven’t got a business, you have to buy significant volumes as margins are so thin.”

(Has referral arrangements, PI, <5 partners)

- Dilemma of managing cash flow versus quality of service. There is some suggestion that firms working in PI are completing cases more quickly than they should.

“Cash flow becomes critical so solicitors want to turn the cases over quickly to protect their cash flow, so some claims look small in the beginning and the client doesn’t recover as quickly as predicted, after waiting a year for a medical report and then another year, the claim could have risen from £2k to a £100k claim after several years. There are some cases like that. We had one like that and we got £240k for her, some firms would have settled for £3k early on. In a PI claim 9/10 will recover in 6 months, 1/10 are sold down the river”.

(Has referral arrangements, PI, 5 or more partners)

- Level of investment to set up systems for processing cases

“The costs of doing it properly are in the £millions”

(Has referral arrangements, PI, 5 or more partners)

- Other professions are benefiting from money which would otherwise have gone to solicitors.

“ When the referral arrangements came along I thought lets have it all out in the open, but of course I was short-sighted because what’s happened is those who are referring don’t generally go on service, it’s largely about who’s paying the most. The local Independent Financial Advisor will talk about it now as his slush fund and he’s not doing anything, he’s just doing what he did before”.

(Has referral arrangements, Conveyancing, < 5 partners).

“I can’t stand it, it’s produced a whole new business riding on the back of solicitors’ inability to market themselves”

(Has referral arrangements, PI, <5 partners)

- Impact on reputation of the firm being associated with introducers

4. Firms without referral arrangements

This chapter explores whether firms which currently do not pay for referral arrangements have had such arrangements in the past, and if they have come into contact with introducers or firms which have referral arrangements.

Firms which do not pay referral fees have little previous experience of referral arrangements. Of the firms we interviewed, only one firm working in PI previously had referral arrangements, while two of the PI respondents have previously worked in firms which had referral arrangements. None of the conveyancing firms interviewed have any previous experience of paying for referral fees or working for firms that do.

“The firm threw a lot of money at trying to get PI work, whether it was claims management companies, local advertising, billboards, yellow pages, hospitals it never really seemed to pay in terms of what it generated. Good 75% of work was from word of mouth and Citizens Advice Bureau. It is very difficult to expand a PI practice. Its not easy, we tried to get on panels. We did 2 or 3 cases, all successful, we asked if we could be panel solicitors. They came to see us and they wanted so many £1,000s to get on the panel and then they wanted you to sell their insurance policies for them even if you did that they still wouldn't promise to put you on the panel and you have to pay £500 a case, its absolute nonsense”

(No referral arrangements, PI, <5 partners)

The main reason for not paying for referrals is ethical. Most firms which do not pay for cases oppose paying for referrals on the basis that they are not in the clients' best interest and are, in essence, “bribery and corruption”. Firms, which pay referral fees, have mixed views, they either see it as an unavoidable way of doing business or feel at odds with paying referrals.

“There's something not quite right about paying for cases. It doesn't feel right it's not based on reputation”

(No referral arrangements, PI, <5 partners)

A few feel uncomfortable about the relationship between the introducer and the solicitor, as the balance of power shifts from the client to the introducer. Introducers can:

- ❑ impose unrealistic business terms and conditions
- ❑ and tie firms and clients into particular medical experts or insurers

Other reasons for not entering into referral arrangements:

- The profit margins are too small
- There are barriers to entry
 - Cash flow, in paying for cases
 - Difficulty of getting onto panels
- The type of work acquired through referrals is not appropriate i.e. not high value PI cases

4.1 Relationship with introducers

Most firms practising in residential conveyancing, and a few in PI, have been approached by introducers in order to get the firm to pay for cases or enter into an ongoing relationship.

“As I’m on the PI panel, I get a lot of calls and letters from management companies saying we can give you all these cases”.
(No referral arrangements, PI, <5 partners)

“I had this conversation with this insurance broker in the town with whom we had a very close connection which I noticed some months ago had dropped off completely over a couple of years ... and we went to lunch and discovered that he is now selling his work ... for a £100 a client ... the purpose of this lunch ... was to see whether or not I wanted to replace this arrangement and pay my £100 to him and then he would send me the work ... he got the short end I’m afraid.”
(No referral arrangements, Conveyancing, <5 partners).

In the case of residential conveyancing, non-referral firms will sometimes get work from introducers who would normally expect a referral fee to be paid when:

- The case is complex or a very particular service is required
- A local introducer may continue referring to particular non-referral firms, despite head office dictates
- A firm is acting on both sides – i.e. when conflicts within a referral paying firm arise.

“ I get business when the agents want a specific service, either particular expertise or speed, and are therefore prepared to forgo the fee. I had a case about three months ago where XXXX had recommended the clients to go to YYYY but a situation evolved which was too complex and unusual for them to deal with and so the work was referred to me”
(No referral arrangements, Conveyancing, <5 partners).

‘We know that agents have said to us they want to use us because they like us but from on high they have been told that they have got to go with A, B and C (the big chain estate agents who have arrangements with legal firms/licensed

conveyancers which do pay arrangement fees) ... so we know we have lost work there because they are telling us ... So we do still sometimes get instructions but it is not nearly what we would have been getting if we had been paying referral fees.'

(No referral arrangements, Conveyancing, 5 or more partners).

"We did eventually get the business where it was discovered by the estate agent that one of the large 'nationwide' conveyancers was actually acting on both sides of a house sale/purchase and they had not realised. When this was discovered the estate agent instructed us and we took over and completed the transaction".

(No referral arrangements, Conveyancing, <5 partners).

4.2 Relationship with firms, which pay referral fees

Firms which do not pay for referral arrangements can come into contact with firms which do, either by having worked for them, taking on their clients or when they are representing the other side. Generally, the relationship is negative as the non-referral firms become more aware of firms which pay referrals when there is an issue or problem. There is little mention of relationships between firms who do and do not pay referral fees – there is almost an "us and them" situation.

"I'm occasionally instructed by people who have been represented by firms such as XXXX, another leading light in PI litigation, and you receive the files and there is no evidence whatsoever that any referral arrangements have been disclosed by anyone".

(No referral arrangements, PI, <5 partners)

"I deal with XXXX ... they are a shambles of the first order ... they are incompetent and should not be allowed out ... and more and more people are beginning to realise this. What they are doing ... they are attracting a lot of people first time round and I have heard it on more than one occasion "I used XXXX, never again!" I've got one at the moment (acting on the other side of a house sale/purchase) they don't know what they are doing, they don't know how far the chain goes, they have not made proper enquiries, they should be shot ... but they are cheaper than I am ... they are grossly inefficient ... they are appalling!"

(No referral arrangements, Conveyancing, <5 partners).

"XXXX" was acting for the other side. Then we get a letter from a factory firm in South Wales saying "Hello we're acting" and they're telling the vendor a load of nonsense – "I hear you've got the papers and we're going to exchange contracts next week". That's what he's been told – there's no way we've just had the paperwork. I don't trust these solicitors because they have let me down through their carelessness and I'm potentially suffering the consequence".

(No referral arrangements, Conveyancing, <5 partners).

4.3 Impact of referral arrangements on firms practising PI since the ban was lifted in 2004

A decline in the PI market is commonly felt in non-referral firms, and two factors (arising before the lifting of the ban) are highlighted as significant contributors to this decline.

- the abolition of legal aid for PI
- the number of introducers already in the market

“The lifting of the ban was no more than the formalisation of a situation which has prevailed for a good number of years before as a result of the abolishment of legal aid for PI”.

(No referral arrangements, PI, 5 or more partners)

“The decay started a long time ago when legal aid was removed from PI, a path was started to be trod to end up where we are today. High street firms doing a mixture of crime, probate, conveyancing, landlord and tenant and PI was going to come to an end. When they abolished legal aid and brought in Conditional Fee Arrangements (CFA), effectively overnight it was everyman for himself..”

(Has referral arrangements, PI, <5 partners)

In general, refusing to pay for referrals, or not being on an introducer’s panel, results in a considerable amount of work being unavailable to non-referral firms.

“[There are an] enormous lot of firms doing a lot less PI than there used to or not at all. You wouldn’t get the clients coming in and saying I’ve had an accident, not the way they would have. Local practice is less likely to be working on PI. You have to be so quick, even when you get a client call you up from yellow pages you know you’ve got to get out and see them quickly, as the referrers will try and get there fingers on them. If you get a client ringing up 3 or 4 you know XXXX[claims management company] will have someone round there in the same evening. So you’ve got to move quickly to keep hold of the work”.

(Has referral arrangements, PI, 5 or more partners)

“What one is tending to find is that, either the claims farmers or the before-the-event insurers will Hoover up all the routine stuff. So the only work that we get is via former clients, i.e. repeat business, or recommendation. Very few referrals from the Accident Line scheme because I think they probably only get the third or fourth bite at the cherry, and the odd referral from other solicitors and the Citizens Advice Bureau locally. So yes, there has been a significant decline in volume, which I attribute to the marketing by claims farmers. Also I think probably nowadays the main capture is probably third party captured by insurers. So if you’re insured by XXXX they will tell you who to use. It’s decimated our business, we used to have three partners in PI, and we now only have one”.

(No referral arrangements, PI, 5 or more partners)

As it is very difficult to get PI work unless payment is made, some firms have made the decision to carry on conducting PI work on a reactive basis, and to actively pursue other areas of work. However, non-referral PI firms managing to maintain their levels of

business either pursue high value cases only or have a very good reputation attracting their work by recommendation.

4.4 Impact of referral arrangements on firms practising residential conveyancing since the ban was lifted in 2004

The impact of lifting the ban in the residential conveyancing market has not resulted in a loss of business for conveyancing firms which do not pay referral fees as appears to be the case in PI. A few firms feel this is partly owing to the buoyancy of the housing market. However, there is increasing pressure being put on firms to pay referrals to introducers, even from those introducers they have always had relationships with.

“We’ve been asked to and we heard that one of our competitors was paying agents £50 for referrals...they invited us to do the same and we declined”
(No referral arrangements, conveyancing, 5 or more partners)

“Some agents who used to refer work to us, now no longer do”
(No referral arrangements, conveyancing, 5 or more partners)

The impact has been greatest for firms with less than 5 partners, which have seen a reduction in the amount of business they get.

“There has been a gradual decline, exacerbated by referral fees. It’s rare now to get a recommendation from an estate agent because they want a bung – why wouldn’t they when it’s allowed. They can’t believe their luck, when they need a solicitor they can give it to the highest bidder”
(No referral arrangements, conveyancing, <5 partners)

“At least three of the six independent estate agents have some kind of arrangement, two are very certainly receivers of cash”
(No referral arrangements, conveyancing, <5 partners)

The firms with 5 or more partners interviewed have seen little impact on their market as a result of the lifting of the ban, because:

- No one else locally is paying referral fees
- They work at the high value end of the market
- They offer a high quality service.

“There is certainly pressure to pay referral fees, but I think the bottom line is quality of service. If you offer a high quality service you’ve nothing to fear from referral fees. Our business has continued to increase; it hasn’t adversely impacted on us. It’s difficult to know if we’ve grown by 20% in 2 years, would we have grown by 30% if we’d paid referral fees?”
(No referral arrangements, conveyancing, 5 or more partners)

Interestingly, some firms have mentioned that work from introducers is returning to them following the introducer having received poor service from firms which have paid for referrals.

"We are getting one or two agents ringing us and saying we'd like to start recommending you again. And I say I'm not prepared to pay, and they say we know, but some of these firms that are paying referral fees are so bad that the deals aren't going through"

(No referral arrangements, conveyancing, <5 partners)

5. Impact of referral fees on the market

This chapter focuses on the firm's views of the PI and residential conveyancing markets. It covers current and future competition in PI and residential conveyancing and the impact referral fees have had on the local and wider markets. In this chapter the responses for the two practice areas are reported separately.

5.1 The PI market

5.1.1 Competition in the PI market

Most firms agree that there is very little work in the PI market unless referral fees are paid. Cases do not "walk in through the door" as they used to and the alternative of spending vast amounts on advertising does not guarantee casework or income.

The main competition in PI comes from:

- ❑ Large firms indirectly or directly processing their own work. These firms are processing high volumes of cases which they either acquire from introducers panels or have had the resources to set up their own capture companies or mechanisms to identify potential clients.
- ❑ Insurance companies who are the first point of contact, particularly in RT As. The insurance companies have control over who gets their before-the-event cases. The number of firms on these panels has reduced over the last few years, accelerating the reduction in number of firms in the market.

"A few years ago, PI was seen as the boom industry and lots of firms moved into that. I think now a lot of firms are moving away from that because of certain financial pressures. The main competitor now, as I see it, is actually the insurance industry. And they are very sophisticated now at capturing their own policyholders, and other policy... you know, the third party, they call it third party intervention. And they control, certainly in terms of road traffic accidents, they control a significant proportion of what you'd call the claims market out there, because they're usually the first port of call for the policyholder. They will refer them to their own panel of solicitors, if there is a PI claim or non-fault injury claim to pursue. And therefore there's less of that type of work available for non-panel firms".

(Has referral arrangements, PI, 5 or more partners)

"Unless you are on one of these panels there is 35% of the market for you. There are 650,000 motor accidents a year, so that's 225,000 cases to go to other firms. It's a serious exclusion for those firms".

(Has referral arrangements, PI, 5 or more partners)

- Claims management companies which are well placed to identify potential cases far more quickly than most solicitors firms. If a solicitor identifies a client they need to race against claims farmers to get an instruction. Claims management companies have been far more successful than solicitors in identifying potential clients.

Firms which are not paying for referrals may be in competition with other local firms, however, they are “picking up what’s left” after the large firms, insurance companies and claims management companies have taken the major market share. Smaller or high street firms cannot compete with the larger firms on high volume referrals and / or pay for extensive advertising. Therefore, the PI caseload has reduced for those firms, or firms are no longer working in PI. A few have managed to continue to get their work from recommendation or have specialised in particular areas of PI, for example the high value end of the market.

“The market has polarised a little, there are some very large players who are processing a lot of their own work and they are increasing in size working within the current regulations and guidelines. Firms of this size, but with more partners, and there are very few small firms doing any amount of work – you still have a few high street firms doing a bit of PI”.

(Has referral arrangements, PI, <5 partners)

“We can’t compete with the larger firms on price, they can pay more and the smaller firms are being pushed to the side. Big city firms get their work in bulk 400 or 500 claims a month so they’d have no quarrels in paying someone a bigger fee and they just call it an “arrangement fee” or a “setting up fee” something like that”.

(Has referral arrangements, PI, <5 partners)

5.1.2 Impact on the PI market

There is no longer a local market in PI; firms operate on a national basis taking cases from any locality. The competition from the introducers has been so successful in capturing work that only the firms which can process a high volume of work and have the resources to sustain the heavy cash flow burden, compete at any level.

“I don’t think there are any local firms working in PI, well no volume of PI anyway”

(No referral arrangements, PI, <5 partners)

As a result of paying referral fees the wider market has changed. The firms to benefit from their introduction are generally firms with national coverage rather than local high street firms, as they have the financial resources to set up:

- case management and IT systems to process high volumes of work
- their own claims capture companies to compete with the insurance companies

This has led to a change in the way PI firms are structured. They are able to function with fewer qualified solicitors and more non-legal or administrative staff.

Other professions have emerged as a result of referral fees. A few firms say solicitors are responsible for this because of their lack of marketing skills. However, most firms are disgruntled at the amount of money other professions are making from the fees they are paying.

“People would rather go and see a double glazing salesman about their claim than a lawyer. Referral guys are very slick, advertising, whereas we’re not, we’re idiots when it comes to marketing. If we stood up for ourselves it might be a good thing, not to outlaw referral arrangements but let the public know what’s really going on, grabbing hold of them and flogging their names to a solicitor because he can’t market himself properly”.

(Has referral arrangements, PI, <5 partners)

“I think it would be of advantage for the profession as a whole to get their house in order, because the reality is that if everyone is using them then nobody is getting an advantage and somebody is sitting in the middle and skimming off the top. It seems to give a dirty hands impression overall, whether that’s true or not I don’t know. From what you hear, it is not a good thing, but people don’t know where to go and solicitors have traditionally been very poor at advertising themselves”.

(No referral arrangements, PI, 5 or more partners)

Some decision makers in firms feel that as a result of being associated with referral fees and the “compensation culture” solicitors have gained a poor reputation. A few mentioned that they do not socially mention which area of law they work in.

“It’s generally accepted that people in PI are ashamed to tell people what they do. No win, no fee has become a term of abuse. Twenty years ago you would have been proud you were fighting for the injured person. The moment you say you deal with accident claims, it’s almost as if you’re a murderer. I’ve read articles by senior barristers, it’s an embarrassment. It’s largely without justification, solicitors are getting involved in what are fraudulent claims”.

(Has referral arrangements, PI, 5 or more partners)

5.1.3 Views of TLS

Some firms feel TLS has let them down by not standing up to government on:

- ❑ Trade unions being exempt from disclosing referral fees
- ❑ Allowing larger firms of solicitors to “get into bed with insurers”

“I don’t feel TLS has enough power. Even commercially, the reality of the matter is that unions and insurance companies are more important to the government than solicitors are, in terms of a lobbying group. And that is a fact. We’ve seen it

happening, and the Compensation Bill is a perfect example. That unions were exempt, and not only that unions were exempt, you had a decision of the House of Lords overturned following pressure over asbestosis claims, following pressure by unions. So you got direct intervention by the government to overturn a decision of the House of Lords, that compensation is not merited in certain cases of mesophaelioma cases. Direct intervention. And that is political. And we haven't got that power"

(Has referral arrangements, PI, <5 partners)

"I find it offensive that unions are being told that they can be exempt from the rules and not say to the client how much referral fees they are receiving. In fact they offer a litigation alternative, or funding alternative to the client which is on a par to what I can offer, yet they are allowed to enter into an arrangement with a solicitor, who must under the rules, in any event, disclose to the client how much he is paying and what the arrangements are. And in fact must not accept the introduction from the union if the client has been told he cannot choose his own solicitor. That is a rule within the rules of professional conduct. Now, I want to know what is being done against XXX in that regard. Nothing. After being investigated, nothing at all. So how can you then go back to a small firm and say, 'You know what? You've breached the rules.' That's unfair. That's clearly in my view discriminating between one and the other. Is it going to be sorted? I'm very, very pessimistic".

(Has referral arrangements, PI, <5 partners)

There are also a few firms which think that some of the actions by TLS are made in the interest of larger firms and that the individuals within TLS make decisions that benefit the firm they work for and may not be of benefit to the wider profession.

"I think TLS is more interested in what XXXX and YYYY have to say. In my view they are the biggest offenders, with their relationships with the unions. And the whole thing starts from there. You've got people who want to introduce rules that benefit themselves through arrangements which they say to me are no good.... Which is unfortunate because we're one profession where possibly we're entitled to our say. The reason why things are not being done, or changes are not being made (correct changes in my view) is because it doesn't suit those who drive the forces. If it suited them, the changes would have been had".

(Has referral arrangements, PI, 5 or more partners)

"I think TLS is corrupt...I mean certainly one of the big names is a former president of TLS. One increasingly forms the view that these people get in these things and they influence what TLS does for their own benefit".

(No referral arrangements, PI, 5 or more partners)

Another example, given by two firms of TLS adapting the rules for their own benefit is the disappearance of Rule 12 and solicitors using the Accident Line having to use a certain insurer named by TLS.

"I don't think the Society has helped at all. For example, I have raised an issue, historically, off the back of insurance mediation directive regarding Rule 12. Rule 12 of Practice Rules prohibits solicitors from effectively acting as a tied agent. The Society's own arrangements with insurers were that all the solicitors on the panel would use a certain insurer. Suddenly, I see the other day, and I only had a brief look, on the Rules of Professional Conduct, the Code of Conduct has been amended,....Rule 12 disappeared. And it seems they are suggesting now it's appropriate for solicitors to use only one insurer. This is a load of nonsense. I want to know what arrangements the Society has with these insurers. Are they receiving any commissions?"

(Has referral arrangements, PI, <5 partners)

5.1.4 Future competition in the PI market

In the future, firms envisage a market dominated by the insurance companies, trade unions and a few large law firms. These large firms will have adopted “alternative business models” enabling them to process a high volume of cases. They will either be owned or “in bed” with insurance companies. A few firms may have managed to set up capture companies to compete with the insurance and claims management companies. However, smaller firms will disappear and there will be “no place for PI on the high street”.

“There are a small number of super big firms who are getting bigger and bigger all the time and they’ve got into bed with all the big insurance companies. Maybe they’ll be taken over by the insurance companies, you hear rumours that XXXX will be taken over by YYYY. That’s what will happen, the big insurers, law firms and legal expenses companies will dominate the market between them and they’ll either become one in the same or links will be so close that they are virtually the same unit. You’ve got into the situation now, for a firm like us its virtually impossible to get into an insurance company market that we would have got into 10-20 years ago”.

(Has referral arrangements, PI, 5 or more partners)

“It’s people with, essentially, political power – like unions, insurers, big [blue-chip] marketing machines. Their marketing power compared to a small firm like ours is almost like David and Goliath. We don’t stand a chance at all. And the difficult part, the sad part in my view, is that solicitors have a bad reputation with the public. The public don’t feel confident enough or able to go to a solicitor. Yet what seems to be happening is that the people who know how to market themselves and present themselves properly, as the good guys (we’re always perceived as the bad guys) are able to market that and take advantage of that, because, at the end of the day, solicitors end up doing the work. And solicitors, being who they are, will do the work for lower margins, if they can, simply to keep the work. But you can’t do that unless you’re a big firm like a XXXX. So what you tend to find is that the big firms end up doing deals with people like YYYY and the rest of it. If you look at YYYY, YYYY never did the work. All they did is come back to a number of firms of solicitors and say, will you do it for us? And we’ll pay you less. So if you like, the rewards are being taken away from solicitors, yet they continue to do the work, simply because we are not good at selling ourselves”.

(Has referral arrangements, PI, <5 partners)

“It’s very uncertain, because there is the Legal Services Bill, which is dragging its way through Parliament at the moment. At the earliest, it might be enacted next year, but some people say it’s going to go on the back burner and won’t become law until two thousand and ten or beyond. That, following the Clementi review, will mean that insurers, claims management companies, Joe Bloggs Accountants, whatever, will be able to set up and own a law firm within new regulations, so it will no longer be the sole province of solicitors to run and own legal practices. That will probably be the absolute end of panel schemes run by

insurers. It's already happening now. They've got captive firms with all bar their name over the door".
(Has referral arrangements, PI, 5 or more partners)

5.2 The residential conveyancing Market

5.2.1 Competition in the residential conveyancing market

Competition in residential conveyancing appears to be much more localised than in PI but the role of the high street firm is still thought to be diminishing. Although nowhere near as apparent as in the PI market, there are other organisations entering the “local” market

They are:

- big providers with call centres, described by many as “factories”
- firms in other parts of the country advertising locally both large and small in size

Firms are also identifying the role of the estate agent as a competitor, as they are capturing clients to sell onto their “preferred suppliers” before solicitors can get clients’ business. The methods used are creating competition between firms which are trying to get work from the same introducers e.g. chains of estate agents.

“[The competition is] divided between, local firms who operate in the traditional manner and who do a fair amount of work, we are seeing increasingly the really big providers who are located in the North of England who operate a call centre type approach – you come across this a lot when people have been sold a re-mortgage, conveyancing package and they are quite difficult to deal with because you can’t actually speak to anyone who knows anything particular about the case.... And then you have a number of firms like ourselves, who are moving away from the high street firm model, but not wanting to be a factory or a call centre. Gearing up and setting up case management systems like we are, teams of people and they are beginning to start to dominate the market “.
(Has referral arrangements, Conveyancing, 5 or more partners).

“The factory firms who are paying fees to estate agents. We have at least 6 out of the 8 firms in the town who are paying referral fees and have arrangements - large national firms, they’ve nearly all got arrangements for referral fees”.
(No referral arrangements, Conveyancing, <5 partners).

“So our competitors are those people who would seek the same referral sources as we do from XXXX [national estate agent]”.
(Has referral arrangements, Conveyancing, < 5 partners).

For a few firms, particularly those located in the South the market is the same as it always has been, despite the presence of some firms paying for referrals.

'We actually think we are dominant here ... in the residential I don't see a very obvious competitor for us. We have been fortunate ... to have remained very strong and I think it is partly because we have remained very firm about non-referral fees, we have always been very clear about that.'
(No referral arrangements, Conveyancing, <5 partners).

There remain some areas where referral arrangements have had little impact and firms believe there are only a few firms paying for referrals.

"Most firms I come across do not get involved with referral fees, they are mentioned from time to time but I have no reason to believe that more than a handful of firms do pay them. The vast majority are totally against it"
(No referral arrangements, Conveyancing, 5 or more partners)

5.2.2 Impact on the residential conveyancing market

In the main, however, changes in the local market over the last few years have been noticed, especially in respect of firms' relationships with local estate agents. Firms which are not paying for referrals are not getting as much work from estate agents and the local chains are sending clients to firms outside the locality, *"Estate agents are dictating whom we do business with"*.

Of the conveyancing market in general, the view is that it is very competitive and undervalued. As a direct result of referral fees:

- Solicitors are having to reduce prices
- Get the job done more quickly, but not necessarily to the benefit of the client
- Residential conveyancing is being viewed as a commodity

Referral fees have generated poor press for the profession and some firms, especially non-referring firms, feel that further loss of professional status will result.

"I'm sure it has an adverse impact because it diminishes from your professional and independent status. People just have to go where they're sent and they know there is an arrangement for it. I don't think it lies very happily with the professional status of what we're trying to do"
(No referral arrangements, Conveyancing, 5 or more partners).

5.2.3 Future competition in the residential conveyancing market

There are mixed views on what competition will be like in the future. Some firms believe the market will be driven by “factory firms”, while others believe there will be a move away from volume processing towards a quality service.

“I can see a lot of companies trying to bring in what they would call slick competition. Electronic conveyancing is not going to help the competent practitioner, the responsible practitioner ... the Land Registry, the Gestapo of the United Kingdom ... are introducing more and more electronic conveyancing ... it will end up with electronic signature, which I think is wholly wrong. I think electronic conveyancing will be perceived by many as making conveyancing “easier”,.....

(No Referral Arrangements, Conveyancing, 5+ partners).

“My experience is that because conveyancing is such a traumatic and important thing for people, its up there with bereavement and divorce, people will not put up with a service delivered from 200 miles away, where it’s “press one for this, two for that” and you’re dealing with someone who hasn’t even heard of you. Properly provided service will endure”.

(No referral arrangements, Conveyancing, 5 or more partners).

There are two potential legislative changes impacting on the future of residential conveyancing:

- Legal Services Act. This will open up the market to competition, non-legal providers will be able to offer residential conveyancing. ‘Tesco law’ etc are seen by a few firms as a potential threat to the legal sector, however other firms think they will not impact on firms which offer a high quality service.

“All these rumours about Tesco Law, XXXX and YYYY. I’m old enough to think probably there’ll be an element of it, but will it have the dramatic effect on firms that is being threatened. I’d like to think not, as they can’t offer what we do. We trade heavily on looking after our clients, whatever they want to do in life. I understand that if they’re offering £80 for conveyancing there will be takers. I’ve tried to build a caring, communicative firm, trained on that basis”.

(Has referral arrangements, Conveyancing, < 5 partners).

“I think there will be a flurry of activity, or a flurry of interest, people saying we are going to buy up solicitors firms we are going to set up in Tesco’s conveyancing department. They (Tesco’s) are perceived as a threat but I don’t think that they will be. ‘I do perceive Tesco Law as a threat but we are slightly lucky down here, says he selfishly, it is quite a wealthy area a lot of clients value personal service, and they value the fact I am in here at 5 am some days ... or will see them at the weekends ... we are flexible and they value personal service.”

(No referral arrangements, Conveyancing, 5 or more partners).

- HIPS are seen as a threat by some firms and an opportunity for others. Those who are negative about its introduction think it will increase the strength of estate agents' relationships with clients. Clients will have another reason to contact estate agents before solicitors and, along with referral fees, add to estate agents' advantage over solicitors. Those firms which are more positive see it as a potential tool for trying to get solicitors to be the first point of contact for clients.

Most firms agree that traditional domestic conveyancers and high street firms will find it increasingly difficult in this market and some firms could disappear.

“Traditional high street firms will find it more difficult. There will always be clients who want to pay a bit more and get the service that goes with that but I think it is a price sensitive area and few will remain loyal to their traditional solicitor. . “
(Has referral arrangements, Conveyancing, 5 or more partners).

6. Impact of referral arrangements on clients

This chapter covers the location of clients, feedback received from clients about referral fees and whether clients are interested in disclosure. Firms with and without referral arrangements outline advantages and disadvantages to clients of firms paying for referrals. As responses are fairly similar by type of cases, responses from PI and residential conveyancing firms have been reported together. Any differences by type of case or size of firm have been highlighted.

6.1 Location of clients (All with referral arrangements)

The location of the referred clients base is very polarised, either firms are operating locally or nationally. How far afield clients come from depends on the location of the firm. All the firms interviewed which were based in the North have a national client base, whereas the firms located in the South receive more local referrals.

“I think in this day and age, physical boundaries aren't relevant any more. It's an interesting point, but before the Court of Appeal, Lord Justice Brook in the test case, was absolutely amazed that practitioners don't meet clients. There's no need. We only meet with a client where there are serious issues to discuss, or we want to meet the client in person to see if he's genuine, or we've got concerns.”

(Has referral arrangements, PI, <5 partners)

“But to be honest over the last 20 years I have seen the need for clients to visit slowly slide away. Most of them these days, with email – there's no need for them to come in any more”.

(Has referral arrangements, Conveyancing, < 5 partners).

One firm has consciously developed work outside the local area (home counties) because residential conveyancing is so competitive in the local area.

“The area is blessed with a number of good firms and there isn't enough work to keep everybody going. We only pay for work out of the area. It's scattered from Cornwall to Newcastle”

(Has referral arrangements, Conveyancing, <5 partners)

One London firm with 26+ partners has moved its PI referral work to offices in Manchester.

“We do everything from the Manchester office, this is where the connections are made”.

(Has referral arrangements, PI, 5 or more partners)

6.2 Advantages of referral fees for clients (All)

In the main, both firms with and without referral agreements struggle to see what advantages paying referral fees gives to clients. Possible advantages, where identified, include:

- ❑ easier access to solicitors and the legal market
- ❑ and/or improvements in levels of service.

6.2.1 Easier access to law

In the PI market some firms feel that referral arrangements have made legal solutions to problems more accessible to the public.

- ❑ Some clients find it intimidating and difficult to talk to solicitors. Claims management companies are more approachable and talk to clients in “their own language”.
- ❑ Cases which might have otherwise fallen by the wayside have been pursued

“I’ve no doubt that there are a lot of cases that as a high street solicitor I would not touch. I want a higher prospect of success 60-70%, while claims management companies will sweep up cases 50:50, its those clients that the high street would not have bothered with - its too marginal. They are still better off than if the case had not been brought at all”.

(No referral arrangements, PI, <5 partners)

6.2.2 Improvements in levels of service

Improvements in the level of service are another advantage. Firms which have referral arrangements with large blue-chip and some on-line companies say the service they offer clients has improved under referral arrangements because the firm has been required to be:

- ❑ more efficient
- ❑ more client focused
- ❑ able to offer more regular updates

“Once we’ve qualified their case we’ll pursue it with some vigour and we won’t let their case go to sleep. We’ll try and move their case as quickly and as smoothly as possible. There are two things bearing on us, we’ve paid a referral fee and unpredictable costs. We won’t want to lose the client or let them drift away. We stay focused on the job in hand as we’ve paid for the case. It makes it service and client focused.”

(Has referral arrangements, PI, <5 partners)

“As far as I can see it’s all good for everybody. It’s good for us, it’s good for the client. You know, their case is being progressed, they’re being regularly reported to so they know what’s going on. Technology helps us to do that”.

(Has referral arrangements, Conveyancing, 5 or more partners).

One person mentioned that it means the PI market is now regulated and this can only be a good thing for the client.

6.3 Disadvantages of referral fees for clients (ALL)

Most firms with and without referral agreements can cite disadvantages to clients of firms paying for referral fees. The three main disadvantages are:

- lack of freedom of choice of solicitor

“Clients get directed to firms they might not otherwise choose. It takes away their freedom of choice because of the panel solicitor approach. You can have an accident in Devon and be referred to a solicitor in Liverpool. The firm in Liverpool is prepared to pay good money for your accident case, so they’ll get the case.”
(Has referral arrangements, PI, 5 or more partners)

“The problem with these arrangements is that you might have been perfectly satisfied with the solicitor you have used in the past, but you’ve walked into an estate agent and they are persuading you to go elsewhere and you might not be terribly happy about that”.
(Has referral arrangements, Conveyancing, 5 or more partners).

“If a client is referred by a blue chip brand, a major bank, building society, or insurer, then generally they would feel as though they’ve got the comfort of that brand supporting them and that this brand would not enter into arrangements which were anything other than in their best interest. But they forget that most of these brands are Public Limited Companies (PLCs) and their main interest is serving the shareholders and not the client. I find it very difficult to see how you can reconcile the two”.
(No referral arrangements, PI, <5 partners)

- some solicitors are tied by the introducer to use other organisations such as “after the event insurance”

“The important thing for the client, in my view, is Rule 1. In other words, that solicitor’s act independently at all times and that the retainer is not interfered with. That is the one that is difficult to comply with in my experience in the market at the moment. I do not allow it to happen to the extent that if I know that a claims management company is likely to try and exert that influence, I’ll just say ‘no’. I’d rather close the practice than allow somebody to interfere with my retainer. That is the most difficult part of compliance. Some firms do it successfully. I think we do it successfully, because of our relationship with these claims management companies. They know that we are highly ethical. They know that if they start saying to us, ‘Well, do this, do that, do the other.’ We’ll just simply terminate the relationship. Is everybody like us? No. That’s where the problem starts”
(Has referral arrangements, PI, <5 partners)

“The more referral fees you get involved with the more it draws you into a relationship with the person to whom you pay the fees and the more it destroys your independence on behalf of your client.”

(No referral arrangements, Conveyancing, 5 or more partners)

- poor quality service, from staff that are not qualified. There is also little face-to-face contact so relationships are not built. The service is treated as a commodity and often more complex issues can be handled badly or the issues not recognised in the first instance. These views are cited by firms which do not pay referral fees.

“From the consumers point of view it’s very unhelpful because largely these firms are staffed by young ladies with (pc) screens and by telephone link and they’ve not got a lot of experience. So my suspicion is you very rarely deal with a Solicitor or even a licensed conveyancer. They know how to conduct an administrative process but have no training in the law. Ultimately there will be far more in the way of problems, which hopefully we’ll be there to sort out – but at a cost -presumably paid by the factory Solicitor....I don’t know.”

(No referral arrangements, Conveyancing, <5 partners).

“The job won’t be done at the appropriate level of expertise. All sorts of problems can happen. If something’s missed, if somebody hasn’t spotted problems on a planning permission or don’t know what they’re looking for you’ll get problems down the line”.

(No referral arrangements, Conveyancing, <5 partners)

6.4 Feedback from clients (All with referral arrangements)

In general, firms which have referral arrangements have not been given any feedback from the client about the firm paying fees. It does not appear that firms are proactive in asking clients for feedback, if feedback is sought this is done via a satisfaction questionnaire.

"I tend to send a customer feedback form to every client. There's about six or seven questions. And we ask 'Were you told about the referral fee (we tell them in writing) but were you told about them before introduction was made by the claims management company?' and we actually repeat the amount. We've never had a client ring and say, 'Well, hang on a minute. Why are you paying that much money to them?' None of them are concerned by that at all"

(Has referral arrangements, PI, <5 partners)

Firms, which have received feedback, said:

"Sometimes when we send our bill out they will say, "What is that?" and we will say, "That is our referral fee and if you remember you don't pay that, we do". They will read the letter and send it back signed. Other times they will ring and say what's that and say OK when we explain it. It doesn't make any difference to the client

(Has referral arrangements, PI, <5 partners)

"Out of the thousands of cases we've opened since the new code came in, we've had one client question it. And just on a slight aside, he was a Scouser and he was switched on, and he said, 'Why aren't you paying me for the case instead of the claims company?' [laughing] But no one apart from that has batted an eyelid".

(Has referral arrangements, PI, 5 or more partners)

In the firms' opinion, clients are not interested in referral fees, as they:

- are not liable for the charge
- just want the job done
- are used to other businesses paying referrals to get work.

"No they're not interested because they don't get charged, I win their case. They're happy, as they've got all their money, they haven't paid me anything and if they think I'm silly enough to pay someone £350 for their case. Its never discussed, other than the fact the referral fee is payable, as long as they know I'm paying and I'll deal with their case exactly the same as if they'd come direct they're not interested. Going direct or through a travel agent, the travel agent gets commission and you end up going to exactly the same place. I don't see it as a talking point for clients – they would say its up to you".

(Has referral arrangements, PI, <5 partners)

"It's right at the start of a transaction, but no, I mean I think people just seem to accept. I'm not aware of a single telephone conversation with a client raising it as an issue. Because I think what happens is. When they ring up initially they're given a complete breakdown of fees, it's explained to them, the marketing fee is

explained to them so it's all there upfront. They choose whether they want to use that service or not ”.

(Has referral arrangements, Conveyancing, 5 or more partners).

6.5 Interest in disclosure (All with referral arrangements)

Firms paying referral fees think clients are not interested in disclosure. This is based on their assumption that the client is more interested in getting their compensation or the job done. However, some firms imply that disclosure might not be as transparent as it could be as:

- ❑ the referral fee is hidden among other documentation
- ❑ by the time they are told about the referral fee, the firm has contacted the client or they have received a letter of instruction

“We’ve had no feedback from clients. They have not cottoned on. You do not write in big black print we pay £750 for your case its there, but there is a lot of other information we have to include in client letters, this is one of things that clients have to be told, it has to be prominent”.

(Has referral arrangements, PI, 5 or more partners)

“I don’t believe it’s my purpose or position, given that the service we’re dealing with has a time requirement and the rest of it, they need to crack on with what they’re doing. It’s not my firm’s position to say, ‘Hey, we’re paying a referral fee of £75 here against a fee of £425. Do you want a cooling-off period of two weeks, or would you like to go and consider this. I mean, that isn’t how any market works in relation to any product – manufactured or professional services”.

(Has referral arrangements, Conveyancing, < 5 partners).

One firm working in conveyancing did not realise that the referral fee has to be disclosed to clients.

“We have never heard from any client about referral fees, but then to be fair they don’t know about referral fees, you’re not obliged to tell the client that you have an arrangement – that’s my understanding”.

(Has referral arrangements, Conveyancing, < 5 partners).

A few firms feel clients will not think through the implications of firms paying a referral. However, some think they will at some point realise what is going on in the market and will question referral fees.

“Not about the referral, clients aren’t interested provided they believe its transparent and they can see what’s happening. All they are interested in is getting their transaction through as quickly and as cheaply as possible. They would not think about this objectively – consumer groups would have a more valid point of view”.

(Has referral arrangements, Conveyancing, 5 or more partners).

“Its bizarre, going back to trade unions, the average member of a trade union thinks fantastic they sorted out my case, but did not realise the trade union got paid £300 from a firm of solicitors for it. XXXX have 25,000 accident cases per year and they are charging £300 a case that’s £7.5 million. I think sooner or later when the public realise what a state we’re in, when you have a serious accident someone would pay £10,000 it’s just obscene. It takes the public a few years to come to its senses”.

(Has referral arrangements, PI, 5 or more partners)

7. Compliance and disclosure (All with referral arrangements)

This chapter discusses which aspects of the rules on referral arrangements are easier to comply with and which are more difficult. It also focuses on introducers' compliance with the rules.

7.1 Aspects of the rules that are easier and more difficult to comply with

The general consensus is that compliance is straightforward. The areas easiest to comply with are:

- Advising the client how much the referral fee is
- Putting together contractual agreements with introducers

"They are all easy, they are here for the benefit of all of us"
(Has referral arrangements, Conveyancing, <5 partners)

"Well, I don't see it's a problem. It's clearly stated in our paperwork we send to the client. The rule 15 letter - there's a whole paragraph in there in terms of the referral code compliance, why we're paying the referrer, how much we're paying the referrer and what for"
(Has referral arrangements, PI, 5 or more partners)

"Well obviously at our end, making sure we tell our clients exactly what the situation is"
(Has referral arrangements, Conveyancing, 5 or more partners)

"The easiest is getting the letter and documentation right, probably even getting the contractual agreement right"
(Has referral arrangements, PI, <5 partners)

The most difficult aspect to comply with, particularly in residential conveyancing, is making sure introducers comply. Firms find it difficult to really monitor if their introducers are informing clients, particularly in the case of estate agents. Smaller firms, mainly sole practitioners, find it difficult to exert pressure on larger organisations.

"It is difficult for a small firm to have any influence over them if you are hoping for them to refer, the introducer won't give you specific information and you don't want to jeopardise the relationship".
(Has referral arrangements, Conveyancing, < 5 partners).

"It's difficult to make sure whether the people that you are working in partnership with are doing what they say they are doing. It's the estate agents who are getting these people in the first place, but we have no direct control. We ask for assurances that they are complying and I hope and believe that they are. That's the potential weak link, as we have no direct control. Six monthly monitoring is not onerous. Estate agents have a high turnover of staff, young people and their job at the end of the day is sales. We have no effective control over it".

(Has referral arrangements, Conveyancing, 5 or more partners).

“The hardest bit is onerous obligation on me to police the referral arrangement which is out of my control. I’m required to make sure that you are telling your insured, my client about the referral fee you may say you do, but I’m put on this constant enquiry to make sure you are. It’s a fractured piece, that’s giving me an undertaking on something I can’t physically control. That’s why I’ve gone down the route of written contracts, contractually it’s in there, as introducers are comfortable about signing the contracts. As of the 6th, claims management companies will have to comply with Claims Standards Council which will make my life easier because there’s a sanction from those organisations”.

(Has referral arrangements, PI, <5 partners)

Firms which are working with the larger insurers find that they are regulated by the FSA and the claims management companies are about to be regulated as a result of the Compensation Act. A few firms suggested these organisations’ regulations are just as, if not more, strict than TLS rules.

7.2 Introducers and the disclosure rules

Disclosure by introducers in the PI market is clear. The larger introducers in the market will be regulated themselves either by the FSA or by the recent introduction of the Compensation Act. Most firms working in PI say the introducers they use comply with the disclosure rules, but they have come across introducers who have not. Some firms:

- ❑ have chosen to no longer receive referrals from organisations which did not disclose the referral fee
- ❑ have found introducers surprised when asked to sign contracts.

“We’ve not taken work from two referrers, one sometime ago and one more recently because they would not contractually comply whereas the others are more than happy to”.

(Has referral arrangements, PI, <5 partners)

In the PI market the recent Compensation Act will force organisations to follow the same disclosure rules. Most feel this will take the duty of making sure introducers are disclosing the referral and its details away from solicitors. This will help in their relationship with introducers, as organisations will be geared up to disclose and it will be more transparent as to which organisations are not complying.

“I think the Compensation Bill is having the same effect, thankfully. Certainly some of the claims management companies I’ve been dealing with have received enquiries from the regulator about their business and how they do it. And they’ve become more conscious about the fact that they are now fully regulated and so on and so forth. So I think that helps at the moment. I think Mr XXXX said, and I totally agree, that the only reason that the Compensation Bill is required is that solicitors didn’t do their job. I agree hundred per cent”.

(Has referral arrangements, PI, <5 partners)

“When I've provided the type of documents that I would require them to sign, there were a few eyebrows raised: 'Well, no one else requires us to'. So my answer was, 'Well, I do. In any event...., now you are actually regulated and it's an offence for you not to do this, then that's the way you need to do it professionally. If you want it to be professional, then you must do it.' Certainly the ones I deal with ...want to be seen as more professional without exception. Maybe it's the type of people I deal with. But my gut feeling is that all those applications that we receive by the Department for Constitutional Affairs, all the management companies have applied, all have an aspiration to go up the ladder and become slightly more professional. And I hope, I sincerely hope, that this new move is going to make a difference in terms of the way claims management companies operate...now the law tells them to do it”.

(Has referral arrangements, PI, <5 partners)

“The Compensation Act is going to insist on compliance with disclosure. I hope, because I think, not because solicitors (that's the sad point) will be strict, because strictly speaking, if I know this claims management company does not disclose, I must terminate the relationship. Obviously, there's nothing I can do about it if they've failed to disclose and I didn't know, although I've got my own responsibilities. But as soon as I discover, my obligation is to terminate. I bet that most solicitors won't and be accepted by silence and move on, because they need the work. So my view, being cynical about the profession, and generally, is that compliance with disclosure, hopefully will be aided by the Compensation Act, not by solicitors complying with the introduction and referral code”.

(Has referral arrangements, PI, <5 partners)

For firms working in residential conveyancing, whether or not introducers follow the disclosure rules is less clear. Not one firm could emphatically confirm that their introducer follows the disclosure rules. Firms use phrases such as “we believe so” or “we hope they do” in answering whether their introducers disclose referral fees to clients.

“I'm not sure if they do in every case. I've seen standard literature, which says we refer cases and obtain a fee for referral, but I don't know if they do it in every specific case. I hope they do”.

(Has referral arrangements, Conveyancing, <5 partners)

Suggestions about what solicitors can do to make introducers follow the rules include

- solicitors being required under the code to have copies of letters for files
- monitor introducers on an ad hoc basis / make more frequent checks
- make it a legally binding obligation

All feel that lack of disclosure has no impact on clients. As discussed in the previous chapter firms feel their clients are not interested in disclosure.

Most firms working in residential conveyancing think it is a good idea for solicitors if introducers are required by law to follow the same disclosure rules. This would allow

them to quote the law to introducers if they are not complying. However, there is some cynicism about:

- getting estate agents to change the way they work and
- how it would be policed

“If they were required by law? I think it would be, I don’t think it would be a bad idea. But, you know, estate agents aren’t particularly good at following the law at the best of times”.

(Has referral arrangements, Conveyancing, 5 or more partners).

For clients it might make them more aware of what is actually happening and how referral fees work.

“It would automatically go into the public domain. There’d be a lot of publicity and somebody would jump on the bandwagon... saying, “This is an unnecessary layer of cost. Why is it there?”

(Has referral arrangements, Conveyancing, 5 or more partners)

8. Enforcement of the rules

This chapter focuses on enforcement of the referral arrangement rules. Those without referral arrangements were asked what they knew about the rules and whether paying for referrals was in the public interest. All firms, whether they had referral arrangements or not, were asked if they were aware of any recent enforcement or crackdown on the rules.

Firms we interviewed which do not pay for referrals are aware of the rules but, in general, do not know about the rules in detail. There are so many rules they need to abide by that any which are not of direct concern are not studied in any depth.

According to firms, the two main public interests the rules are thought to protect are:

- transparency by disclosing that the firm has paid a referral fee for their business and how much the fee is
- and that the firm acts in the client's best interests

There is a concern amongst firms which do not pay referral fees that the rules do not protect the public interest because they are not in clients' best interests since, in paying for a case, "there is a clash of principles between making a profit and doing what's right for the client".

"The rules I am guessing, that they serve to protect the public if they are honoured, in as much as the public is then made aware that there is a financial inducement taking place and that any suggestion that the person that is being introduced is better than a colleague or another competitor is on that basis presumably spurious. I don't think any reasonable person would say that was a sensible conclusion."

(No referral arrangements, Conveyancing, <5 partners).

It has been noted that the new conduct rules may have further undermined public protection.

"They have left out one of the things which is kernel to being a solicitor and with no discussion – 'to do nothing which would impair individual members of the public's ability to choose a solicitor of his or her choice'."

(No referral arrangements, Conveyancing, <5 partners)

The main concern, however, is the lack of regulation of the rules.

“Well it’s always been obvious TLS have never done anything about it. They never enforced the ban. I can’t ever remember reading in the Gazette that a firm had been sanctioned in any way for paying referral fees even though they were paying them.”

(Has referral arrangements, Conveyancing, 5 or more partners).

It is difficult for firms to suggest ways that the rules could be enforced, either they cannot think of ways to do it or in their view the rules are not enforceable, in particular the rules relating to the solicitor regulating the introducer to ensure they have disclosed the referral to the client.

“How do you prove it was said in that first conversation? It’s too late by the time the letter is sent out with the terms and conditions as the solicitor has been instructed. They’ve been the victims of a skewed recommendation and they didn’t know it. How are you going to prove that the conversation made by the estate agent. The rules say the introducer must do it, I’ve asked the solicitors Regulation Authority (SRA) what control have you got over estate agents, they are not beholden to you. Agents can do exactly what they like, you can’t tell agents what to do you can only control the solicitor. You’ve created a supposed rule for the estate agent, you have no authority - so agents do not comply. How on earth is the solicitor supposed to make sure the agent has done it?”

(No referral arrangements, Conveyancing, <5 partners).

“I don’t know unless, unless you have an army of people to investigate”

(No referral arrangements, Conveyancing, 5 or more partners)

A few suggestions of how the rules should be enforced are as follows:

- ❑ Regularly checking solicitors’ files on a random basis
 - Checking all client documentation including the introducers letters
- ❑ Disciplining solicitors with:
 - heavy fines
 - further action if they persistently do not comply
 - publicising those firms which persistently break the rules
- ❑ Making the public more aware of what is going on

“I think that the best way would be to educate the public about them....then people can make an informed decision as to what they want to do. I know that the Office of Fair Trading (OFT) view to referral fees has always been well they are actually in the public’s interest, although I’ve never seen anything from the OFT that explains the rationale behind that opposition, other than the implication that somewhere costs can be driven down by adopting a pile them high and sell them cheap approach. But when you actually look at it the difficulty for the public is that the referral fee is normally hidden away and not transparent, and they don’t therefore understand the impact that it potentially has”.

(No referral arrangements, PI, <5 partners)

- ❑ Other solicitors informing on those who do not abide by the rules

“The rules should be enforced by people “shopping” other people to the Trading Standards Department. I have not done so up until now, I intend to do so in future if I discover that a former client has been ‘seduced’ to another firm and I ascertain that the client was not informed that a referral fee would be paid”.
(No referral arrangements, Conveyancing, <5 partners).

8.1 Recent enforcement of the rules

Firms working in PI, and paying for referrals, are most likely to have noticed recent enforcement of the rules. The two main ways all firms have heard about recent enforcement of the rules are:

- ❑ having received a warning card
- ❑ and the most likely source, any information that had been publicised in The Gazette. Many firms mentioned the publicity in relation to the SRA study findings that most firms are not complying with the rules.

“ I’ve heard that TLS are taking a strong view with only 6% of firms complying, but my faith in TLS is at a pretty low level. I wish they would”.
(Has referral arrangements, PI, 5 or more partners)

Some of the PI firms, which are paying referrals, have recently been visited by the SRA.

When asked about “a recent crackdown”, the level of awareness varied. There was some unprompted and prompted recall of the warning cards, while other decision makers had not seen or heard of the warning cards. Decision makers in a few firms either:

- ❑ circulated it to everyone in the firm
- ❑ put it in their “referral fees” office manual / binder

There are mixed views about the warning cards, but firms, even those paying referral fees, are positive about SRA taking some action. The warning cards:

- ❑ make everyone aware of their obligations
- ❑ leave nothing open to ambiguity
- ❑ Include clear summary information
 - The “ask yourself list” covered the main points
- ❑ Encouraged one decision maker to go on a course.

“What they have done is serve notice, so from here on ... if you are in breach of the code it is no good saying you didn’t really know about it.”
(No referral arrangements, Conveyancing, 5 or more partners).

“I’m fine with it,..it’s basically helped everyone know their place, in the sense of what we have to do. If there was any ambiguity before there’s not now, so it’s all very open”.
(Has referral arrangements, PI, <5 partners)

Negative comments about the warning cards included:

- ❑ too little too late
- ❑ sent to the firm at a difficult time – during an SRA visit
- ❑ too heavy-handed
- ❑ a waste of money.

“I just find it abhorrent that TLS has gone to the expense of sending everyone round warning cards about three weeks ago. The only time I'd previously seen a warning card on any issue was when the money laundering regulations came out, which is a serious issue, and everyone should be warned about it. To go to the same effort about compliance with the referral code is quite frankly a sledgehammer to crack a nut. It's just a ridiculous waste of resources”.

(Has referral arrangements, PI, 5 or more partners)

9. Reintroduction of a ban

This chapter focuses on views surrounding reintroduction of a ban on referral payments. Firms were asked their views on whether the ban should be reintroduced, and how this would impact on:

- their ability to compete particularly with non-solicitor providers of legal services,
- public interest if the ban is reintroduced,
- and how enforceable a reintroduction would be.

9.1 Firms practising in PI

There are mixed views as to whether the ban should be introduced. Firms which are paying referral fees feel strongly that the ban should remain lifted, while firms which do not pay referrals in general think the ban should be reintroduced but outline caveats:

- Can the ban be enforced and monitored?
- Would there be a level playing field with non-solicitor organisations?

The main reasons put forward against reintroducing the ban are detailed below.

- It would put firms at a competitive disadvantage, as the work would be taken over by the insurers and claims management companies. Firms are concerned that if solicitors are banned from paying referral fees they will not be able to compete.

“It's exactly the same principle. If we can no longer buy work in, then how can we get instructions in? How do we survive as a PI practice? It's absolutely, in my view, as clear-cut as that. The world has moved on: it can't go backwards. And I'm seriously concerned that if the regulatory authority did consider re-imposing a ban, then there would be a serious case to be made out to the Competition Commission, because all of a sudden the private, independent legal services market could not compete. The insurers would start doing the work in-house, or they would acquire their own captive law firms, or claims management companies would set up their own law firms, or front their own law firms. And they'll be able to do that within regulations within eighteen months, whereas I, an independent owner of a business for the provision of independent legal services, cannot buy the work in. That puts us at a competitive disadvantage, and I would suggest does not, therefore, probably operate in the public interest. And there's probably a case to be made to the OFT. I think they did warn TLS two or three years ago, when they were considering a relaxation of the referral code, that if they didn't consider it, there would be a case to be answered”.

(Has referral arrangements, PI, 5 or more partners)

“It would be mad. All other businesses can pay commissions so why can't solicitors. Insurance brokers, advertising agencies live off commissions and they're legitimate businesses, TLS and members haven't traditionally paid for it, and they have a hang up about it. I don't think there's anything wrong with it at all. I wish it didn't exist so we didn't have to pay lots of money out, but it's a matter of reality, just doing what other businesses do. OFT will knock them for six

if they try and ban it – that’s why they did away with the ban to avoid legal action.”

(Has referral arrangements, PI, 5 or more partners)

- It would not be in the clients’ interests as independent firms of solicitors practising in PI will cease to exist

“You would have less access to independent legal services, and if they're not independent, then that's what we're all supposed to be about. We would be captive: somebody else would own us. We would offer a very narrow range of services. We would not be able to either exist or to offer any of the services that many high street firms do now. We wouldn't be able to subsidise any other marginal or loss-making activities, because if you close down the avenues by which law firms can make a profit, then you are restricting their business, and you will no longer be doing marginal work, such as family law, crime, more and more so after competitive tendering”.

(Has referral arrangements, PI, 5 or more partners)

- Some firms will ignore the ban. Many firms think it is better to allow referral fees but to monitor and regulate referral fees in the PI market.

“If TLS banned referral fees it would be a disaster, because you’d just get certain solicitors completely ignoring the rules, I’m convinced that people would find what they consider were loop holes and one way or another they would pay referral fees in some other way. That was definitely what was happening before they became legitimate. I imagine legal expenses insurers would eat up more of the work and take it away from smaller firms. We’re a medium sized firm, managed to survive, a lot of our former smaller competitors have given up on PI cos they can’t get the work anymore or they can’t afford to pay the referral fees”.

(Has referral arrangements, PI, 5 or more partners)

- Paying for referrals is no different to advertising.

“I see no difference in me marketing through yellow pages or marketing through a claims management company or a marketing agent”

(Has referral arrangements, PI, < 5 partners)

The two main arguments in favour of banning referral fees for PI cases (from non-referral firms) are:

- to give all solicitors a level playing field so competition is based on reputation rather than how much they can pay for a case and,
- that it is in the public's best interest.

"It will be on merit, opening-hours, location, approachability of the individual lawyers, the seniority of them. Clients will be making an informed choice as opposed to being steered to a firm whose sole reason for getting the client is because they're paying to take the case."

(No referral arrangements, PI, <5 partners)

"The lack of transparency to clients about referral fees is affecting competitiveness"

(No referral arrangements, PI, <5 partners)

9.2 Firms practising in Residential conveyancing

Reintroducing the ban in residential conveyancing would be welcomed particularly, but not exclusively, for firms not paying referral fees.

The main reasons why a ban should be re-introduced are so:

- clients benefit from a better quality of service and
- other organisations are not being paid for doing little other than recommending someone who has paid a referral fee

"In retrospect, yes they haven't done any good. I cannot abide the notion that agencies are receiving money for picking up a telephone and giving a name"

(Has referral arrangements, Conveyancing, <5 partners)

"I would encourage it, bulk conveyancing hasn't improved the standard of service. You should be getting your work on capabilities rather than what you can pay"

(Has referral arrangements, Conveyancing, 5 or more partners)

"There was never any difficulty in finding a solicitor to do conveyancing – they are there in every high street, there was no need for skewered referral fees. You've just created an industry worth £millions going into the pockets of estate agents out of the pockets of the clients and the solicitors. It comes from nowhere else. What is in the public interest?"

(No referral arrangements, Conveyancing, <5 partners).

"Where is the benefit to the consumer? If there is no benefit to the consumer, there certainly is no benefit to the lawyer. The only person who benefits is the estate agent, why on earth allow it? It simply doesn't make any sense really."

(No referral arrangements, Conveyancing, <5 partners).

The two main arguments for not reintroducing the ban are that it:

- Is a backward move, which does not take into account what is happening in the market. If solicitors are not allowed to pay referral fees they will lose business as a result from:
 - Government policy to open up the market
 - Other providers offering conveyancing services

“I think I’m against it, because what the profession is in danger of doing is thinking that we can change the way the market is going to develop. I don’t think we can and no government is going to allow the legal profession to do that. Large institutions will come in and find ways to bypass lawyers, use licensed conveyancers and they’ll use referral arrangement. It may well be less than transparent, in the way that they sell financial products now. Banks use their client base to sell them products they don’t need. [I] think they will do that with residential property services and there’s a danger we are marginalized – we sit in our ivory tower, going no no no we can’t get our hands dirty and we get squeezed out of the market. Can’t turn back the clocks, it’s a fact of life people see these opportunities, they add value as clients see that and estate agents see they add value so its very difficult to uninvent it. People find ways of getting round the rules, those who are tied by TLS regulation will become less relevant – market will move somewhere else. Not going to help lawyers and not in the interest of the public”.

(Has referral arrangements, Conveyancing, 5 or more partners).

“No, I don’t see the need for a ban. There is a whole spectrum of solicitor services, which gives consumer choice, and I applaud it. If people want to use a conveyancing factory or online that’s fine. If there are referral fees attached that’s fine – one or two of our clients have tried it and come running back to us. Not what they want”.

(No referral arrangements, Conveyancing, 5 or more partners).

“We can’t see ourselves in isolation from everyone else. Referral arrangements are the oil of business, lots of others have referral arrangements that’s the way for business, it’s a losing battle to try and ban it. Best we can do is ensure it’s fair, it doesn’t restrict or disable our business in any way – reality is we’re a business we have to earn money and provide all those things we came into the profession for. Have to create an environment to trade”.

(Has referral arrangements, Conveyancing, < 5 partners).

- Would not be enforceable.

“If a ban was reintroduced I think the industry one way or another would ignore it. I mean referral fees have been paid for years. We never paid referrals fees until we were allowed to do so. But referral fees were paid before the rules came in. And they will continue to be paid if a ban comes back. If a total ban came in then we’d stop paying referral fees and we’d probably go out of business. That would be the reality.”

(Has referral arrangements, Conveyancing, 5 or more partners).

"It's not enforceable, and I think it's naïve. It's a knee-jerk reaction. It's like saying you can legislate against fog. How are you going to do that? The problem is, the legislation that's now come in, for example, that HIP thing, militates towards bulk providers, for reasons that I've given earlier in this. And those bulk providers will only be there to get a referral fee. So as usual you've got the irony of government policy acting completely against what the professional regulatory body is trying to ban".

(Has referral arrangements, Conveyancing, < 5 partners).

10. Conclusions

10.1 The operation and impact of referral arrangements

10.1.1 Firms working in PI

Since the abolition of legal aid, and the emergence of claims capture companies, firms were already paying fees to organisations in the guise of administrative or acquisition fees. The lifting of the ban on the payment of referral fees was in some firms' view "*a formalisation of a situation which has prevailed for a good number of years*". Some organisations realised that there was money to be made from the legal profession's inability to market itself to customers. These insurance companies and claims management companies have been very successful in identifying and acquiring potential claimants before the legal profession can. The traditional methods of advertising no longer guarantee suitable clients and unless firms have huge resources they cannot compete with the marketing conducted by introducers. The market is driven at a national level and comprises large law firms, insurance companies and claims management companies taking most of the market share, with local firms conducting very few PI cases.

In identifying firms to take part in the research we found it difficult to find any firms which are not paying for PI cases and are conducting a high volume of PI work. Unless firms are paying for PI work via an insurer's panel or claims company, the number of cases solicitors are competing for is relatively small. Firms which are not paying are relying on previous reputation and recommendation to get work, and most are not proactively looking for work.

All the referral payers interviewed have written agreements with introducers and some of the well-established insurance and claims management companies work within very strict guidelines themselves. As part of the contract, some firms are having to adopt new business models to keep within the introducers' own regulations. This, along with the need for firms to reduce overheads in order to make profits, has resulted in the introduction of new technology and less qualified staff working on cases. There is some debate as to whether these changes have improved or hampered service levels. As well as increased numbers of cases compared to other firms, and changes in service provision, the other impacts of referral fees on the firm are increased administrative burdens, investment in new technology and the need for careful management of cash flow. Firms have to pay referrals within 30 days of instruction at the latest - this can cause considerable cash flow problems. If, for example, a firm pays for 10 referrals a month at an average of £600 and the average case is resolved within 18 months, the firm will have to carry over £100,000. This has resulted in some firms which pay referral fees closing cases earlier than they perhaps should have done and has acted as a barrier to entry for firms which do not have the financial resources to support the initial referral outlay.

Firms pay referrals on a fee-per-case basis. For most firms these costs are not recouped directly from clients and are treated no differently than advertising or marketing

costs. Some firms are able to recoup costs by reducing their overheads. There is a suggestion that firms can recoup money by receiving commission from medical agencies or after-the-event insurers but it is unclear how widespread this is.

Some firms feel TLS has let the legal market down by not standing up to the government, in failing to block the trade unions' exemption from declaring their referral arrangements and allowing larger firms of solicitors to "get into bed with insurers". Some actions by the TLS have led some firms to believe TLS is only acting in its own interests or the interests of large firms whose staff sit on TLS decision making committees.

Firms' predictions for smaller firms look bleak: the market is expected to be dominated by the insurance companies, trade unions and a few large law firms. These law firms will have adopted "alternative business models" enabling them to process a high volume of cases. They will either be owned or "in bed" with insurance companies. A few large firms may have managed to set up capture companies to compete with the insurance and claims companies, but if successful there will be very few of them.

10.1.2 Firms working in residential conveyancing

Compared to the PI market, referral fees do not seem to have had as much of an impact on the residential conveyancing market. The market is still largely local, with local solicitors in the main competing against each other to win business. However, as well as local solicitors, some firms find that they are competing against "factory" firms and firms from other parts of the country who are advertising locally. Firms are also starting to identify estate agents as competitors as well as firms which are trying to get on the same estate agent panels as them. One of the most noticeable changes is in their relationships with estate agents: if firms are not paying referrals then, unless there are local independent chains of estate agents, the firm is unlikely to be referred work.

Even some of the firms which are paying for referrals are tentative about the arrangements. In general, firms have only one introducer, as they are testing the approach or were forced into taking out the arrangement otherwise they would have lost the business. Their motivation for having these arrangements is to grow the business by expanding into different geographical locations and the higher value end of the market.

Most firms have written agreements with introducers, but agreements do vary depending on the type of introducer. As with the PI market, there are some introducers which have agreements with firms on the numbers of cases they will refer and strict service requirements that firms need to abide by. Other introducers are more informal, sending potential clients on an as-and-when basis.

Most fees are paid on a fee-per-case basis, averaging from £75 to £125 a case. Some fees are agreed in advance and others negotiated on a case-by case basis. There is some pressure from introducers on small firms in particular to lower their fees in order to get work. In the main, referral costs are not recouped directly from clients but are treated as overheads. However, there is a suggestion that, in some cases, solicitors' fees might be higher for cases where a referral fee is paid or that they could try and

cross-sell other legal services and charge the client for any work over and above the basic cost.

Paying referral fees seems to increase the number of cases the firm has. Firms maintain that service levels are no different, or have improved, as a result of paying referral fees, but firms which are not paying for cases have noticed poor levels of service when working for the other side. Some work has even started to return to firms not paying referrals, as introducers have been disappointed in the level of service received from firms they have referral arrangements with. It is difficult to establish whether service levels have improved or fallen, as both sides are biased, but it seems that the introduction of new technology and processes has increased service efficiency, but cases which are more complex, or need face-to-face contact, are not serviced properly by some referral paying firms.

At the moment, firms paying referral fees are not reliant on referrals. However, the residential conveyancing market is very competitive. Firms which seem to have been hit by referral fees tend to have less than 5 partners and work in towns where other solicitors are paying referral fees. However, firms with 5 or more partners have managed to retain their business as no one else locally is paying referral fees or they work at the high value, high quality end of the market.

According to firms, the future is very unsure, many are worried about the potential impact of the Legal Services Act and Home Improvement Packs (HIPs) on the residential conveyancing market. However, a few see HIPS as a potential tool to drive clients to solicitors first, before they visit the estate agent. Some firms think the Legal Services Act will have little impact on firms that offer a high quality service. However, most firms agree that the traditional domestic conveyancer will find it increasingly difficult to find work and some firms could disappear.

10.2 Advantages and disadvantages for firms paying referral fees

The main advantage in paying referral fees is the resulting increase in business. However, the emphasis in the PI market appears to be to stay in business and/or to get regular work, while in residential conveyancing it is to grow the business. This difference in outlook reinforces the variations in the two markets. The only other advantage mentioned by a few firms is the improvement in service levels as a result of the introduction of new technologies and processes. This has resulted in greater efficiencies and for one firm, adopting the methods in other parts of the firm.

The main disadvantage to firms paying referral fees is loss of autonomy. Although this is mainly cited by firms which do not pay fees, some firms which are paying did mention the loss of independence and pressure on them to fulfil introducers requirements, even if they might not be in the best interests of the clients.

In paying referral fees, firms often have to invest heavily in new technologies and administrative processes which can be very expensive. Along with payment for cases, particularly in the PI market where cases may run for years before a fee is paid, the firm has to be able to invest large amounts of money for a number of years without any return. This results in:

- ❑ some firms being excluded from, rather than refusing to pay for, referral arrangements because they cannot bear the cost
- ❑ some firms completing cases sooner than they might have otherwise done.

A view held by some firms is that, as a result of solicitors' inability to market themselves properly, other business sectors have emerged by taking a slice of solicitors' fees in exchange for a referral. This has resulted in slim profit margins for firms.

10.3 Advantages and disadvantages for clients of referral fees arrangements

Most firms, whether they are paying for referrals or not, found it difficult to identify advantages for the client in firms paying referral fees. A less widely held view was that, as a direct result of paying referral fees, improvements in the level of service provided has been made. Some of the improvements have been driven by the high service standards expected by the introducers and also by the need for firms to process high volumes of cases efficiently. As many firms which do not pay referral fees state that the quality of service has fallen as a result of paying fees, it is difficult to assess whether service levels have risen or fallen. However, the two main criticisms made on quality of service are lack of qualified staff dealing with cases and solicitors not having face-to-face contact with clients. Those paying referral fees argue that a large proportion of the work does not need a qualified solicitor to complete the task. With regard to location, most of the firms, unless based in the North, operate locally so could see clients face-to-face if need be.

The other two advantages mentioned in relation to PI only are:

- ❑ access to solicitors. Some firms believe solicitors have been poor at marketing themselves and the general public find them unapproachable, unlike introducers.
- ❑ Allowing referral fees means the market is regulated.

The disadvantages to clients far outweigh the advantages, according to firms. As well as reducing the quality of service, they are:

- ❑ the client's lack of freedom of choice of solicitor. Some firms, even with referral arrangements feel customers are persuaded to use particular firms as they are paying for the referral.
- ❑ the independence of the solicitor. Some introducers will tie the firm into:
 - delivering certain service standards which may be efficient, but not in the client's interests
 - and making firms refer clients to particular medical agencies or insurance companies so they receive commissions.

10.4 Compliance, disclosure and enforcement

Most firms feel that complying with the rules is straightforward. The easiest areas to comply with are those where the solicitor has direct control:

- ❑ Telling the client there is a referral fee and how much the referral fee is
- ❑ Putting together contractual agreements

The most difficult area of compliance is the introducer's relationship with the client. Firms find it difficult to regulate the introducer on an action directly out of their control. The regulation is at odds with their relationship with the introducer, as it is difficult for firms to police organisations they are trying to get business from, in a competitive market, without jeopardising that relationship.

Although this is the most difficult area to comply with, most firms, which are paying for referrals in PI say the introducers they use comply with the disclosure rules. The recent Compensation Act will in some firms' view, force organisations to follow the same disclosure rules if they are not doing so already. The insurance companies are already regulated by the FSA. It seems that most firms paying referral fees for residential conveyancing cases have no idea whether introducers are disclosing referral fees to clients. Most firms paying fees for residential conveyancing referrals think it would be a good idea if introducers were required by law to follow the same disclosure rules as solicitors. However, some feel it would be very difficult to change the way estate agents work and to regulate them.

It is interesting that all firms paying referral fees think clients are not interested in disclosure and that they receive little if no feedback from clients with regard to referral fees. However, it seems firms are not proactive in asking clients their views. Firms assume that clients do not mind as they are not liable for the fee, are used to referral fees in other business sectors and ultimately want their compensation or the job done. There is also some suggestion that the disclosure of fees, although the easiest rule to comply with, is not always explicit. At worst, one firm does not realise that they have to tell clients. For most, the fee is stated in the letter of instruction but it is hidden among

other information. A few firms think most clients would not think through the implications of a firm paying for referral fees and are therefore not going to query them.

Firms not paying referral fees are aware of the rules but most do not know the rules in much detail. Some firms feel that the rules are not in the public interest, which, to them, means disclosing the referral and the fee and acting in the client's best interest, and in this respect, they felt the rules are impractical as the supposed critical time for the client to decide which firm to use is when the introducer initially refers the client to the solicitor and the referral and fee are often not disclosed at this stage. This rule is therefore difficult for solicitors to put into effect. Others felt the rules do try and protect the public's interest, but are not enforced properly. A few firms feel the rules are not enforceable, particularly if they work in residential conveyancing.

There was concern that paying a referral fee bases the relationship between the introducer and solicitor on money rather than quality and the most suitable firm for the job; the very fact that a referral fee is paid was seen as at odds with clients' best interests because it is the firm that has paid the fee that gets the job rather than any other criterion.

Not all solicitors are aware of the warning cards. The most likely source of information on enforcement is articles published in The Gazette. In the main, the recent warning cards sent to solicitors were received positively. The literature was clear, unambiguous, and made everyone aware of their obligations.

10.5 Reintroduction of a ban on paying for referrals

The views of the PI market depend on whether firms pay for cases or not. Those firms which pay do not want the ban introduced, and those which are not paying want the ban reintroduced. The exceptions to this are two firms currently paying referral fees:

- one is a firm which is not dependent on referral fees for PI cases
- and a 26+ partner firm which conducts a large amount of PI work with trade unions and also has their own resource for capturing claims.

Two of the arguments for and against the reintroduction of the ban, for firms working in PI, are the same but are viewed to have different outcomes:

- "A level playing field": if banned, all solicitors would be able to compete with each other on quality of service, reputation, and recommendation. However, if solicitors cannot pay for referrals, the claims management and insurance companies will set up their own law firms. Few, if any solicitors would be able to compete with the large blue chip organisations
- "Working in the public's interest": if banned, clients will receive a high quality service, solicitors will not be tied to introducers, and clients will be free to choose any solicitor. Those who do not want a ban argue that there will be no "independent legal services", all PI services will be provided by non-legal organisations.

Some firms also feel that reintroducing a ban will not be enforceable. Some solicitors would ignore the ban, and that it is better to regulate and monitor than ban.

For the firms working in the residential conveyancing market, support for reintroducing the ban was strong. Arguably, this would allow clients to receive a better quality service and would prevent other business sectors from benefiting at the expense of solicitors and clients. However, the market is very uncertain, and the impacts of legislation such as the Legal Services Act and the introduction of HIPS are not known. If the market is open to competition then not being able to pay referrals could put solicitors at a competitive disadvantage with licensed conveyancers or “factory” type operations. As with PI firms, some conveyancing firms think that a ban is not enforceable.

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