

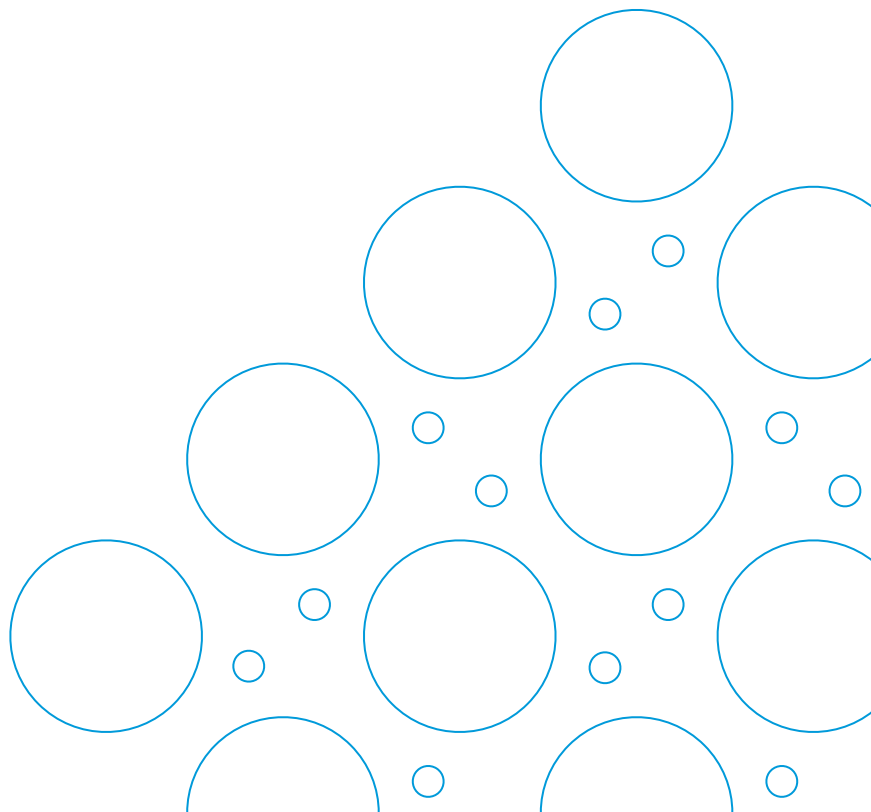


Ministry
of Justice

Claims Management Regulation

Referral fee ban guidance note

July 2015



Referral fee ban

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) introduced a regulatory offence for Claims Management Companies (CMCs) to pay or receive payment for a referral of personal injury cases. This note intends to provide advice and guidance on areas where we are finding common failings by some CMCs that result in a breach of LASPO.

LASPO

Since 1 April 2013, it has been a regulatory offence to pay or receive referral fees for personal injury cases. This means that you or a third party must not receive a payment (or any other form of consideration) for giving details of any client to a solicitor or third party who offers legal services to claim for personal injury damages. The name and contact details of a client will be sufficient information needed by the provider of legal services.

You will also be unable to receive payment for referring details of potential clients to solicitors where the claim for damages involves the storage, credit hire and vehicle recovery and repair that relate to or are a result of a personal injury claim. This would in turn be a breach of the Conduct of Authorised Persons Rules 2014 (General Rule 5), which provides the basis for the Claims Management Regulator to take statutory action. You can however, carry out other work for solicitors for a fee that does not arise from, or is as a result of a personal injury claim.

Business models

We are aware of a range of non-compliant business models – the key ones which are described below.

Marketing fee business model:

Business A is paid a monthly marketing fee by a firm of solicitors. Business A advertises in its own name and sends the details of potential claims directly to the solicitor. It is identified that Business A has received varying amounts of monthly payments. Invoices are identified that show additional payments to Business A from the solicitors. The invoice states that it is for additional services. Looking at documents and the services provided by Business A, they do not provide any further services but the volume of claims has increased and therefore it appears that the payments are for additional claims. This is a breach of LASPO.

If you supply additional services to a solicitor that you intend to be paid for you must be able to demonstrate that the payments have been received in compliance with the requirements of LASPO. If you are unable to show what the payments are for it is likely that we will deem you to be in breach of LASPO as well as the Conduct of Authorised Persons Rules 2014, General Rule 2(d):

"A business shall conduct itself responsibly overall including, but not limited to, acting with professional diligence and carry out the following: Maintaining appropriate records and audit trails."

Recommendation business model:

Business B advises potential clients of a recommended solicitor and "hot-keys" the client by telephone to the solicitor. Business B provides the client name and telephone number to the solicitor before transferring the call through. The solicitor pays the business a fee for each client. This is in breach of LASPO as contact details of potential clients is deemed to be sufficient to be a referral to enable a solicitor to make an offer to the client to provide relevant services.

When marketing for personal injury claims you must ensure that you comply with the relevant rules and regulations for direct marketing. You can find the marketing and advertising guidance note using the following link:

<https://www.gov.uk/government/publications/claims-management-companies-marketing-and-advertising-guidance>

If you are making telemarketing calls to potential clients they must not be unsolicited if the claim will be dealt with by a solicitor. If you contact a potential personal injury client in this way and the claim ends up with a solicitor, you will put the solicitor in breach of their rules. In turn you will be in breach of the Conduct of Authorised Persons Rules 2014, Client Specific Rule 8:

"Where business is introduced to a solicitor, the business must not act in a way that puts the solicitor in breach of the rules governing solicitors' conduct."

Damages-based agreement business model:

Business C refers potential clients to a solicitor and provides translation services, credit and storage hire and vehicle recovery to the client. Business C uses a damages-based agreement to contract with its clients. This would be in breach of LASPO as the payment would be deemed to be for the referral of the client details to the solicitor and could also be in breach of the Damages-Based Agreements Regulations 2013.

Only regulated claims management services can be paid for under a damages-based agreement. A breach of the Damages-Based Agreements Regulations 2013 will make agreements unenforceable. If you have a contract with the solicitor to take your fee from the client's compensation, you must amend your contract otherwise this practice will put your solicitor in breach of their rules as detailed in the warning published by the SRA:

<http://www.sra.org.uk/solicitors/code-of-conduct/guidance/warning-notices/Referral-fees-LASPO-and-SRA-Principles--Warning-notice.page>.

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