

## Guidance

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### Q&As on the ban of personal injury referral fees

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## Status

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

[The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(LASPO\)](#) [<http://www.legislation.gov.uk/ukpga/2012/10/section/56/enacted>] introduced in 2013 a ban on referral fees in personal injury actions.

This will help answer some of the common questions we are asked.

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### **Does the ban apply to arrangements entered into before 1 April 2013?**

### **You might have historic arrangements in place that that were entered into before 1 April 2013 and include the payment of a referral fee. More**

You should have already considered whether you could continue with the arrangement. An agreement that contravenes the ban will be unenforceable as well as potentially putting you in breach of the provisions of The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). We do not consider that a payment made after 1 April 2013 in respect of a referral you received before 1 April 2013 will put you in breach of the ban.

### **Are joint marketing schemes permitted under LASPO?**

### **Although there was discussion of joint marketing schemes during the passage of LASPO, the Act itself**



### **does not deal with these specifically. More**

Some marketing schemes involve referrals being made to participating firms and LASPO clearly envisages some payments legitimately being made to introducers, for example for services provided by the introducer. Any regulated person involved in such an arrangement will need to be satisfied that any payments they make are purely for the marketing or any other services provided and not for the referral of business.

### **Can I set up an ABS to avoid the ban?**

### **Becoming an alternative business structure (ABS) will not necessarily enable you to avoid the ban. More**

The ABS itself will be a regulated person for the purposes of LASPO and its referral arrangements will be subject to the ban and the standards set out in paragraphs 5.1 to 5.3 of the [Code of Conduct for solicitors, RELs and RFLs](https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/) [https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/] and paragraph 7.1 (b) of the [Code of Conduct for Firms](https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/) [https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/]. If you merge your firm with another business to become an ABS, any referrals within the new business will not be caught. However, if the ABS is part of a group of companies, referrals within the group will be caught.

### **Does LASPO prevent me paying another solicitor for referring clients to my firm?**

### **Yes, if the payment is for the referral. Both the solicitor making the payment and the solicitor receiving it would be in breach. More**

However, LASPO does not prevent you paying another solicitor for work they have done on a client's matter before referring the client to you.

### **Are arrangements with trade unions and charities caught by the ban?**

### **There are no exemptions in LASPO. More**

Therefore the same considerations will apply to these arrangements and you will need to be satisfied that you are not paying a prohibited referral fee.



## **Are fee sharing arrangements with an introducer caught by the ban?**

### **Any payment to an introducer of personal injury work is potentially caught by the ban. More**

"Payment" is defined widely as including "any form of consideration whether any benefit is received by the regulated person or by a third party". In our view this would include a proportion of the fees or profits generated by a particular matter.

## **Does the ban apply to defendant personal injury work?**

### **No. "client" is defined as "the person who makes or would make the claim". More**

Therefore we do not consider that the payment of a fee in connection with the referral of a defendant in a personal injury case is prohibited. However, if that person subsequently makes a counter-claim in the matter, they will become a client for the purposes of the ban and this may cause problems if a referral fee has been, or is to be, paid.

## **You have been asked to enter into an agreement for the referral of work which requires you to use a medical agency recommended by the introducer. Is section 56(8) of LASPO relevant in these circumstances?**

### **You have been asked to enter into an agreement which involves clients, who wish to pursue a personal injury claim, being referred to your firm by a claims management company or insurer (the introducer). More**

You say that you will not make any payment to the introducer for these referrals but you will be required (as a term of the referral) to use a medical agency recommended by the introducer. The medical agency will pay a commission to the introducer each time you refer a client for a medical report. You want to know whether this sort of arrangement is allowed under LASPO.

There are two aspects to the ban set out in section 56 of LASPO. Section 56(1) prevents you (as a "regulated person") paying or being paid for a referral of prescribed legal business. Section 56 (2) prevents you being paid for arranging for another person to provide services to your client. The definition of "payment" includes any form of consideration, whether any benefit is received by you or by a third party. (See section 56(8))



The arrangement seems to be for a referral of work to you together with an instruction by you to the medical agency to prepare a report and a commission payment to the introducer. Our view is that your commitment to refer work to the medical agency is of value to the introducer because the introducer will receive a commission as a result. This is therefore likely to be consideration for the referral and a payment as defined by section 56(8). This would suggest there is a breach of section 56(1).

In arranging for the medical agency to provide services to your client, you may also be in breach of section 56(2). There will be a breach of section 56(2) if you make an arrangement for another person to provide services to the client and you receive payment. Receiving the referral could be considered to be payment for making the arrangement referred to above, if the arrangement and the referral or future referrals are linked. In addition, the payment of the commission by the medical agency to the introducer could be treated as a payment to you if it amounts to consideration for you making the arrangement.

You should also consider whether such an arrangement would put you in breach of any of the Principles. For example, Principle 3 requires you to act with independence and Principle 7 requires you to act in the best interests of each client.

You would also need to ensure that you have fully complied with relevant provisions concerning referral arrangements and the standards set out in paragraphs 5.1 to 5.3 of the [Code of Conduct for solicitors, RELs and RFLs](https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/) [https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/] and paragraph 7.1 (b) of the [Code of Conduct for Firms](https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/) [https://upgrade.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/].

## Further help

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