

History and effect of the ban on referral fees in personal injury cases

History of the ban

The Government announced its proposal to ban referral fees in personal injury cases in response to concerns about the high overall cost of civil litigation, rising motor insurance premiums, increasing numbers of claims and the perception of a "compensation culture" which encourages people to make claims for minor injuries or create fictitious injuries which are hard to dispute.

It believed that banning referral fees, along with a variety of other measures would reduce costs in individual cases and prevent activities that encourage people to claim when they might not otherwise have done so, particularly those with weak or spurious claims.

The Act received Royal Assent in May 2012, with the ban effective from 1 April, 2013.

Effect of the ban

The relevant provisions can be found in sections 56 to 60

[<http://www.legislation.gov.uk/ukpga/2012/10/part/2/enacted>]. The main points are as follows:

- The Act prohibits the payment and receipt of referral fees in personal injury cases by "regulated persons" (i.e. solicitors, barristers, claims management companies and insurers)
- A regulated person will also be in breach of the ban if they arrange for another person to provide services to the client and are paid for making that arrangement
- For the purposes of the Act, a "referral" will be the provision by a person (other than the client) of information that a regulated person authorised to provide legal services would need, to make an offer to the client to provide legal services
- A referral fee can be any form of consideration other than reasonable hospitality
- The ban applies to legal services that relate to a claim or potential claim for damages for personal injury or death, or any other claim arising out of circumstances involving personal injury or death
- The Act enables the Lord Chancellor to make regulations to extend the ban to other types of claim and legal services if the case is made for such an extension
- The Act requires the relevant regulators to have arrangements in place to monitor and enforce the prohibition. It also permits regulators to make rules and to use existing powers to enable them to monitor and enforce the prohibition
- The Act allows regulators to make rules providing for payments to be treated as a referral fee unless the regulated person can show that the payment was for the provision of a particular service or for some other reason, and not for the referral of a claim. The Lord Chancellor may make regulations specifying the maximum amount that can be paid for certain services, above which a regulated person will be required to show that the payment is not, or does not include, the payment of a referral fee