

BAR STANDARDS BOARD

REGULATING BARRISTERS

Response to the OISC's consultation to amend the OISC's code of standards and complaint scheme

The Bar Standards Board (BSB) welcomes the opportunity to respond to the Office of the Immigration Services Commissioner's consultation on proposals intended to clarify the Code of Standards and the complaints scheme. The BSB would like to comment on two aspects of the consultation in particular:

Referral Fees

1. The BSB remains in principle against the payment of referral fees so would prefer the first option proposed by the OISC – do nothing. The BSB has maintained the prohibition in its Code of Conduct against the payment of any type of referral fee, either in cash, or as benefit in kind.
2. The BSB opposes the use of referral fees for a number of reasons including, that it is of the view they are against the public interest, and in particular, the consumer interest. Referral fees also compromise the independence of legal profession and can lead to distortion of competition in the legal services market, ultimately leading to an increase in the cost of legal services.
3. The OISC will be aware that in the Final Report of his Costs Review¹, Lord Justice Jackson recommended that referral fees should be prohibited in relation to personal injury cases. Lord Justice Jackson highlighted in his report that in personal injury cases solicitors pay referral fees to claims management companies, before-the-event insurers and other organisations to 'buy' cases, which then adds to the cost of litigation, without adding any real value to it. Lord Justice Jackson emphasises that prohibiting referral fees in personal injury cases would be in the public interest and benefit consumers:

"...under the new regime solicitors will compete upon the basis of which solicitors are charging the lowest success fees to clients, rather than which solicitors can pay the highest referral fees to claims management companies or before-the-event insurers. Thus the beneficiaries of competition will be consumers, not claims management companies, before-the-event insurers or similar bodies."

4. Lord Justice Jackson's recommendation was subsequently adopted by the Ministry of Justice and it is possible that it may be extended to other areas of work. In fact Lord Justice Jackson specifically stated in his report that if his ban on personal injury referral fees are accepted, serious consideration should be given to banning, alternatively capping, referral fees in other areas of litigation. In light of this it would be both impractical and premature to amend the code of standards at this stage.

¹ *Civil Litigation Costs Review: Final Report by Lord Justice Jackson* (21 December 2009)

5. The BSB is of the view that it is particularly important to maintain the ban on referral fees in the context of immigration advice and services as the clients OISC advisers/organisations deal with are likely to be vulnerable and less knowledgeable about legal services in general in the UK. In these instances it becomes more important that clients receive the best advisers rather than an adviser who is prepared to pay the most in order to procure the work.
6. Ultimately the client's best interests should be paramount: if legal professionals, including OISC advisers/organisations are prepared to work at less than market rates, that benefit should be passed to the client rather than to the financial benefit of one or other legal professionals in the case.
7. For the reasons set out above the BSB would urge the OISC to maintain the present position and retain a complete prohibition on the payment of referral fees.

Amendment to the Complaints Scheme

8. It is not clear from the consultation paper whether the OISC now applies the civil standard or indeed whether the Complaints Scheme explicitly adopts any standard. It may be that this is covered elsewhere in the scheme. Nevertheless, if the criminal standard of proof is no longer applied when deciding complaints it is important that reference to it is removed. In relation to the change from "will" to "may" in paragraph 30, it is difficult to assess what the impact of this change might be without having further information about the wider scheme and the context in which the oral representations are made. However, in isolation the change would appear to be sensible one that allows for flexibility. Presumably, the OISC will produce supplementary guidance on the circumstances in which a respondent may be invited to make oral representations.

**Bar Standards Board
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