

APIL members' views on LEI panels and payment for referrals

On-line survey undertaken
by
Opinion Leader Research (OLR)

Key findings

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Background and objectives

Two of the key issues for APIL members currently are the related issues of Legal Expenses Insurance (LEI) and the payments of referral fees.

LEI panels are the payment of referral fees are contentious issues for many practitioners for a number of reasons. One of these reasons is that terms and conditions of LEIs stipulate that the policy holder must use a solicitor from the insurers' panel of lawyers. This can limit client choice and can arguably prevent clients from receiving the best quality service. Furthermore, LEI referrals represent a key source of new clients for panel firms. This means, however, that those firms not on panels can miss out on business as potential clients may not be able to use their services under the arrangements of their insurance policy. Smaller firms may be further disadvantaged because they may be less financially capable of paying referral fees to the type of companies mentioned above.

Against this backdrop APIL wishes to understand fully the reality of its members' relationships with and views on LEI panels and the system of payment for referrals. APIL therefore commissioned Opinion Leader Research (OLR) as an independent research agency to carry out an on-line quantitative survey to investigate these issues.

Specifically, the research will help APIL understand:

- The reality of APIL members' involvement with LEI panels and payment of referral fees
 - Which members are on LEI panels and which specific panels they are on
 - Which members pay referral fees and what level of fees are paid
 - What terms and conditions are imposed for panel membership
- Members' views on what the advantages and disadvantages of LEI panels and payment of referral fees are for
 - Practitioners
 - Clients

Methodology

- On-line approach study.
- Quantitative approach was considered essential due to its ability to provide robust statistical data on members which APIL does not currently have.
- It was structured in such a way that allowed the collection of specific information on members' use of panels and involvement with the referral fee systems. It also gives members some freedom to express their views on the advantages and disadvantages of the system through open ended questions.
- 5000 email addresses of APIL members were supplied to OLR.

THE RESPONSE

- 787 interviews were successfully completed constituting a 16% response level.
- The study achieved a good spread of interviews throughout England as shown above and appears with the largest proportion of respondents from London, the South East and the North West.
- The geographical spread of LEI panel and non panel members follows a similar pattern to the sample overall but a slightly higher percentage of the fee paying/and or sharing respondents are in the North West. 31% of all fee paying only and 33% of both fee paying and fee sharing members are in the North West whilst North West firms make up only 20% of the sample overall. There are no major variations in other regions.
- The majority of respondents to the study are partners. The other key categories who have responded are assistant and associate solicitors, these are more likely to be employed in the larger firms with 15 or more partners.
- The largest group of respondents come from the 2-5 partner firms (37%).
- In general the sample profile is predominated by smaller firms – the largest response is from firms with 1-5 fee earners (18%).

THE FINDINGS

1. LEI panels

- 19% of respondents said the personal injury work of their firm was linked to an LEI panel.
- Almost half (48%) of those working in firms with 100+ fee earners state their firms carry out work linked to LEI panels.
- Only three firms are mentioned by 10% or more respondents – Allianz Cornhill, Accident Line and DAS. Other panels mentioned by 3% or less respondents included AA, Freeclaim/Freeclaim IDC, RBS, 80e, Angel Assistance, Co-op/CIS, Benchmark.

2. Referral Fees

2.1 Payment

- Just over half (53%) of respondents' firms were involved in some form of referral fee or fee sharing arrangement.
- Arrangements where firms pay referral fees only are much more common than fee sharing only arrangements or any combination of fee sharing and paying.
- Larger firms (31+ partners) are more likely to pay referral fees and/or have fee sharing arrangements. Sole and one partner firms have quite a high level of involvement with referral fees and fee sharing (57%).
- The vast majority (80%) of firms who carry out personal injury work linked to LEI panels also pay referral fees and/or have a fee sharing agreement. However, almost half (49%) of firms not linked to LEI panels still pay referral fees or have fee sharing arrangements.

2.2 Amount paid

- The majority of firms paying referral fees pay £200-£600 per case (77%). The highest level of mentions is in the £401-£500 category.

2.3 Fee sharing arrangements

- Half of respondents who have fee sharing arrangements (50%) base their fee sharing arrangements on a percentage of net profit costs.

- Of the firms offering fee sharing arrangements based on a percentage of net profit costs, three quarters (74%) of firms are paying 10% or less. The next most common amount is 21+% of net profit costs paid, with 17% of the sample stating that this is the amount paid.
- Only 31 respondents' firms have fee sharing arrangements based on a single fee payment.
- Members were asked to state approximately what proportion of their firm's personal injury work is obtained through paid referrals. A significant minority of firms (27%) are heavily reliant on this stream of business with over 80% of their personal injury work coming through this route.
- LEI panel members are more likely to have a high proportion of their personal injury work come through paid for referrals. 59% of firms linked to LEI panels gain 61% or more of this work from paid for referrals compared with 44% of firms not linked to LEI panels.

3. Membership of LEI Panels

- Respondents were also asked about the conditions LEI panels impose on members and their views on which LEI panels will/will not allow practitioners to work for them if they are not members of their panels.
- The most common condition attached to a firm's membership of LEI panels is 'not billing LEI for unsuccessful cases'. Use of LEI experts is also mentioned by 43% of the sample. However, 27% of respondents linked to LEI panels said that none of the mentioned conditions were placed on them.
- Direct Line (34%), Capita (34%), Tesco (18%) and DAS (13%) are mentioned most frequently as the firms that are most likely to allow you to act for a client if you are not a panel member. Other firms that were mentioned by the sample were Churchill (10%), Prudential and Natwest (both 9%), Allianz Cornhill, First Assist, ARC and AA (all 3%).
- DAS is mentioned most frequently as the firm which will not allow practitioners to act for them if they are not a member of their panel, with 62% of the sample stating this. Other firms – AA (7%), Norwich Union (6%), RAC and First Assist (both 5%), Capita, Direct Line and Allianz Cornhill (all 4%) and Co-op/CIS (3%).

3.1 Main reasons for not being linked to an LEI panel

- All respondents were asked to give the reasons why they are or are not on any LEI panel(s). Those respondents whose personal injury work is not linked to LEI panels were asked for their reasons why this is the case. Their responses can be grouped into a number of key reasons:

- Problems in getting on to the panels or panels are perceived as a 'closed shop' with 26% of respondents stating this as a reason. This reason also tends to be mentioned more commonly by those who are involved in referral fee paying work.
- The situation of the individual firm.
- Loss of independence. Some respondents (10%) feared losing independence as a result of being tied to a panel.
- Other responses given by less than 10% of the sample included:
 - It not being necessary for a company to be a member because they have enough work and have other ways of generating new business
 - That they don't do enough personal injury work for it to be worthwhile
 - That they are against LEI panels in principal, feel it is not always in the clients best interest to be a member and object to the onerous terms and conditions
 - That they have never sought to be a member of a panel or have not been invited to be a member

3.2 Main reasons for being linked to an LEI panel

- 37% of respondents stated that LEI panels provided work, increased work or guaranteed a volume of work
- 7% of respondents stated a long standing/historic relationship with panel
- 6% of respondents stated LEI provide clients with insurance/cover
- 6% stated they relied on LEI's for advertising and marketing
- 5% mentioned work no longer being available from other sources

4. Attitudes towards payment for referrals

To understand members' views on some key aspects of the referral fees system, respondents were presented with a series of statements of opinion about payment for referrals and were asked how far they agreed or disagreed with the statements. They were presented with statements on four key themes:

- The impact of referral fees on individual firms
- The impact of referral fees on practitioners

- LEI panels, referral fees and clients
- Referral fees regulation

4.1 Impact of referral fees on individual firms

- 76% of respondents agree or agree strongly that fees are too high, 82% agree or agree strongly that they resulted in some firms losing out.
- 41% agree or agree strongly that referral fees are an effective way of growing business, 8% agree strongly with this statement.
- Some differences in attitude can be seen between those firms which are linked to LEI panels and those which are not, and between referral fee paying and non fee paying firms, with respect to how far they believe the system can help grow their business. Firms linked to LEI panels are more likely to see the referral fee system as an effective way for firms to grow their business, with 52% agreeing or agreeing strongly with the statement compared to 38% of those not linked to panels. Unsurprisingly, there is also a difference between the opinions of those who pay referral fees and those who do not in terms of how far they agree that payment for referrals can help grow their businesses. 57% of fee paying firms agree or agree strongly with the statement compared to only 23% of non fee paying/sharing firms.

4.2 Impact of referral fees on practitioners

- Respondents are evenly split in their reactions to the statements that referral fees inhibit practitioners acting in the best interests of clients and that they risk compromising their independence and professional judgement.
- There is a strong level of agreement amongst those who pay neither for referral fees nor have fee sharing arrangements that this system can compromise independence and professional judgement, 69% agreeing or agreeing strongly with this statement. 27% of those who do pay referral fees also agree with the statement.
- There is also a difference between the attitudes of those respondents who are linked to LEI panels and those who are not. 62% of respondents whose firms are linked to LEI panels agree or agree strongly that the payment of referral fees does not inhibit practitioners acting in the best interest of their clients. This is compared to 40% of those not linked to LEI panels.
- Half (50%) of non LEI panel members agree with the statement that 'practitioners who pay referral fees are at risk of compromising their

independence and professional judgement' compared to 31% who are on panels.

4.3 LEI panels, referral fees and clients

- Respondents were asked their views on a number of statements relating to clients in terms of how well informed they are about referral fee arrangements, and the effect that the referral fees system and LEI panels can have on choice and service for clients.

4.4 Attitudes to referral fees

- Almost half of respondents disagree or disagree strongly that clients are kept well informed on referral fees (49%) agree that the system is difficult to explain to clients (41% agree/agree strongly), although 30% still disagree with this statement. 58% agree or agree strongly that referral fees can result in clients not receiving the best service.
- Once again, firms that pay referral fees and firms that are members of LEI panels have differing views from those who do not pay fees and those who are not panel members.
- Those firms linked to LEI panels have more favourable views on the issue of referral fees and clients. They are more likely to agree that clients are kept well informed about referral fee arrangements (47% agreeing compared to 29% for the sample as a whole) and are more likely to disagree that referral arrangements can result in clients not receiving the best possible service (50% disagree or disagree strongly compared to 29% for the sample as a whole).

4.5 Attitudes to LEI panels

- 56% of respondents agree or agree strongly that LEI panel membership can restrict clients' choices of services and experts in personal injury cases.
- LEI panels allow access to justice for claimants who would not otherwise be able to afford to litigate; 67% disagree or disagree strongly with this statement, with only 16% agreeing/agreeing strongly.
- Significant proportions of respondents linked to LEI panels also agree that being on an LEI panel can restrict client choice (44% agree/agree strongly) and disagree that the system allows greater access to justice (39%).
- Respondents who are not involved with referral fees or fee sharing arrangements are the most critical of LEI panels on these aspects; 62% agree/agree strongly that LEI panels restrict client choice and 74% disagree that they allow access to justice for clients who could not afford it in other circumstances.

4.6 Referral fees regulation

- Solicitors Regulation Authority (SRA) needs to go further in terms of enforcing current regulations of referral fees, with 63% of the sample agreeing/agreeing strongly with this statement. Even stronger support for the SRA imposing a cap on referral fees – 76% of respondents agree/agree strongly that this should happen, compared to just 8% who disagree.
- There are no marked differences of opinion between those respondents who personal injury work is linked to LEI panels and those whose work is not in relation to these statements.

5. LEI panels and payment for referrals

Respondents were given a chance at the end of the survey to give their views on what they feel are the main advantages and disadvantages of membership of LEI panels and the payment of referral fees for both practitioners and clients.

Many of the responses given to these open ended questions correlate very closely to the responses to both the attitudinal statements and the reasons for given for membership (or not) of LEI panels.

5.1 Advantages and disadvantages of LEI panels for practitioners

- On balance, it can be said that those who are not involved with LEI panels stress the disadvantages more strongly than those who are LEI panel members. For example, 48% of those whose work is not linked to LEI panels believe that the main disadvantages of LEI panels are the restrictions they can place on client choice, compared to 30% of respondents who are on LEI panels mentioning this as a disadvantage.
- The main advantage of the panel system is connected to the amount of regular/guaranteed work generated through this source. (64%)
- Disadvantages identified by respondents:
 - High/rising referral fees/cost to practitioner/reduction in profits (22%)
 - Lack/loss of work for non-panel practitioners/non-panel practitioners prevented from acting for clients (16%)
 - Restrictions on practitioners (including restricted choice of experts) (15%)
 - Loss of practitioner independence/practitioner controlled by LEI/CMC (10%)

5.2 Advantages and disadvantages of LEI panels for clients

The perceived main advantages and disadvantages were:

- Client loses freedom to choose solicitor/discouraged from using non-panel practitioner (45%)
- Practitioner may not be local to client (33%)
- Lack/loss of personal/face to face relationship (27%)
- Poor quality client service/panel member may not provide/cost considerations may impact on quality service (20%)
- Easy access to legal representation/solicitor will be appointed/client doesn't have to search for solicitor (18%)
- Work carried out by low-level/junior fee earners/unqualified staff (17%)
- No/low risk to client/client need not worry about costs/fees (16%)
- No advantages for client (12%)
- Clients encouraged to settle quickly/unfavourably (10%)
- Provide access to good/reliable/suitable/experienced practitioner (9%)

5.3 Advantages and disadvantages of referral fee based arrangements for practitioners

The perceived main advantages and disadvantages were:

- Source of work/regular/increased/guaranteed volume of work (54%)
- High/rising referral fees/cost to practitioner/reduction in profits (46%)
- Poor quality referrals/work (inc dubious/unsound claims) (9%)
- Reduced advertising/marketing costs (9%)
- No long term advantages to members or non members/bad for/damaging to the profession in general (8%)
- Loss of practitioner independence/practitioner controlled by LEI/CMC (8%)

5.4 Advantages and disadvantages of referral fee based arrangements for clients

The perceived main advantages and disadvantages were:

- No advantages to client (20%)
- Client loses freedom to choose solicitor/discouraged from using non-panel solicitor (18%)
- Poor quality of service (14%)
- Provide access to good, reliable/suitable/experienced practitioners (13%)
- Easy access to legal representation/ solicitor will be appointed/client does not have to search for solicitor (13%)

As would be expected, those who are involved in some form of fee paying arrangement are less critical than those who do not have such arrangements. For example, 13% of those who pay referral fees or are involved in fee sharing arrangements (or both) believe that the system can result in restrictions on client choice of solicitor; this compares to 23% of non fee paying/sharing respondents.

CONCLUSIONS

- The results of this survey have given **some insight** into APIL members' relationship with and attitudes towards LEI panels and the system of payment for referrals.
- APIL members who answered the survey are much more likely to be involved in referral fee based arrangements than to be linked with LEI panels. Only 19% of respondents firms' personal injury work is linked to LEI panels, compared with 53% of respondents whose firms have some kind of referral fee arrangement.
- Larger firms are more likely to be members of LEI panels and pay referral fees/have fee sharing arrangements. Being too small a company to cope with the volume of work and not being able to afford to pay referral fees were cited as two of the main reasons for respondents' firms **not** being linked to LEI panels. Therefore, it is possible to speculate that larger firms are more likely to be LEI panel members and involved in fee paying arrangements because they have the capacity to cope with the volume of work LEI panels can generate and are more able to pay referral fees by virtue of them having greater resources. Nevertheless, where the cost of referral fees is concerned, the majority of respondents feel that referral fees are too high as 76% are in favour of the SRA imposing a cap on fees.
- The most frequently given reason for not being a member of an LEI panel is that firms are unable to get on panels or the belief that they are 'closed shops'. A significant proportion of those who pay referral fees state that this as the main reason why they are not on an LEI panel. This, together with the reasons of cost and a firm's capacity to cope with work, indicate that the key reasons why those within this sample of APIL members who are not linked to LEI panels is due more to practical/business reasons than strong ethical objections to panels.
- Whilst respondents are able to see clear advantages for practitioners of membership of LEI panels and the system of payment for referrals, namely that they help increase/guarantee a volume of work, they see fewer advantages of these systems for clients. The systems are felt to be restrictive in terms of client choice and have a potentially negative effect on the quality of service clients may receive, although some benefits are perceived in terms of clients having easy access to solicitors through LEI arrangements.

- Many respondents feel that there is also a lack of transparency about the system of referral fees where clients are concerned, with a significant number (almost half) stating that they do not believe that the system is currently well explained to clients. Almost two thirds of the sample agrees that the SRA needs to do more to enforce current regulations on referral fees, which specify that clients should be fully informed of practitioners' referral fee arrangements.