

**LAW SOCIETY – REGULATION REVIEW WORKING PARTY
CONSULTATION**

FEE SHARING

A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

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The executive committee would like to acknowledge the assistance of the following people for assisting with the preparation of this response:

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FEE SHARING

1. The Association of Personal Injury Lawyers (APIL) was formed in 1990 and represents around 5000 solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants. The aims of the association are:
 - To promote full and prompt compensation for all types of personal injury;
 - To improve access to our legal system by all means including education, the exchange of information and the enhancement of law reform;
 - To promote health and safety;
 - To alert the public to dangers in society such as harmful products and dangerous drugs;
 - To provide a communication network exchanging views formally and informally.

2. APIL welcomes this opportunity to express its views on fee sharing. We should stress from the outset that our views relate to the operation and existence of the ban in personal injury practice only.

3. In summary, APIL fully supports the current ban on fee sharing in the context of personal injury practice and would strongly oppose its removal. We believe it operates in the interest of personal injury victims and that it should be retained on this basis. We would urge the Working Party to give particular attention to the interests and needs of injured victims in this debate, as they are highly likely to be more vulnerable and in need of greater protection than clients in many other areas of practice.

4. Whilst solicitors are generally obliged to act in the best interests of their injured clients, the ban on fee sharing adds an additional and crucial layer of protection. Fee sharing arrangements could lead to fee sharers applying pressure on solicitors to settle cases or to handle them in a particular way to maximise profits. It could, therefore, materially increase the risk of solicitors not carrying out their fiduciary duties to act in the best interests of their

clients. Whilst it is by no means certain that all fee sharers would apply such pressure or that all solicitors would be influenced to act against their clients' best interests, the potential for both risks to materialise would be real and not merely fanciful. It is against those potential risks that injured victims should be protected. It is imperative that injured clients can feel confident that their legal representatives are independent and will act in their best interests.

5. We recognise that the ban on fee sharing does not eliminate the potential for other commercial pressures or relationships to influence a solicitor's conduct of a claim. We do not believe, however, that the existence of other commercial pressures justifies the lifting of the ban. The ban prevents the commercial practice with the greatest potential to affect a solicitor's conduct of a claim. The existence of a specific rule in addition to the core duty to act in the best interests of the client is, therefore, justified.
6. In provisionally arguing that the ban on fee sharing should be lifted, much reference is made to the payment for referrals in personal injury practice. It appears to be argued that if the ban on referrals is lifted, the ban on fee sharing should also be lifted. We strongly disagree. In our response to the Working Party's consultation on the solicitor's introduction and referrals code we reluctantly agreed that it would be in the public interest for the ban on referrals to be lifted. We agree that the current ban on referrals is being evaded and that it would be in the public interest for the practice to be legitimised and effectively regulated. In addition, the lifting of the ban would increase the chance of an injured victim being referred to an adequately qualified and experienced legal adviser.
7. We do not believe that the same arguments or justifications can be applied to a lifting of the ban on fee sharing. Whilst some may argue that practices tantamount to fee sharing are currently taking place despite the ban, it does operate as intended to prevent direct fee sharing. That argument largely depends on the definition of fee sharing of which there may be differing views.

8. In addition, some may argue that it is inconsistent to allow payments for referrals but not allow fee sharing. Again, views on this may depend on differing visions of what constitutes a payment for a referral. In our response to the Working Party we made it clear that payments for referrals should in no way be dependent on the outcome of the case as this could lead referrers to influence the conduct of a claim to maximise the referral payment. In the context of fee sharing no such safeguard could be imposed.

9. Nor in our view would other possible safeguards adequately address the dangers posed by a lifting of the ban. Whilst transparency of fee sharing arrangements would certainly assist some clients to make an informed choice about whether they wanted to instruct a particular solicitor, it could confuse and cause suspicion within others. In addition, it may very rarely come to light that a solicitor has been influenced by commercial pressures to under-settle a claim and so acted against his client's best interests. This is because injured clients rely heavily on their legal representatives to advise them of the value of their claim. Even if safeguards were in place, therefore, we do not feel confident that they would necessarily be effective in protecting injured clients. Having said that, if the ban is lifted, we do believe that clients should be informed of any fee sharing arrangements that relate to their affairs as this would, at least, be better than no safeguards at all.

10. In conclusion we do not believe that the current ban on fee sharing exists to justify uncompetitive self-serving practices but believe it exists, and should continue to do so, in the interest of injured victims. It justifiably reduces the potential for commercial pressures to influence a solicitor's conduct of a claim against a client's best interests.