

Personal Injury & Clinical Negligence

Guidance for VWV Approach Members

This guidance sets out the process for referring personal injury and clinical negligence cases if you require fee share via VWV Approach.

It applies from 1 April 2013 when LASPO came in to force. Referral arrangements for other types of legal work are not affected by LASPO and we ask that you use the standard VWV Approach referral form for those matters.

If you wish to waive fee share for personal injury and clinical negligence cases, you can send us full details on the usual referral form.

However, if you wish to receive fee share for personal injury or clinical negligence cases we ask that you **recommend** VWV to your clients in relation to personal injury and clinical negligence cases, and you must not provide their contact details to us.

Why Is the Process Different for Personal Injury/Clinical Negligence Cases?

Sections 56 – 60 of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* (LASPO) prohibit referral fee arrangements in personal injury and clinical negligence cases referred from 1 April 2013. Referrals of other types of legal work are unaffected.

Under section 56(1) LASPO:

A regulated person is in breach of this section if:

- a) The regulated person refers prescribed legal business to another person and is paid or has been paid for the referral.
- b) Prescribed legal business is referred to the regulated person, and the regulated person pays or has been paid for the referral.

‘Prescribed legal business’ is defined in section 56(4) as claims for damages arising out of personal injury or death, and other claims for damages arising out of the same circumstances.

LASPO defines a ‘referral’ at section 56(5):

There is a referral of prescribed legal business if:

- a) a person provides information to another.
- b) it is information that a provider of legal services would need to make an offer to the client to provide relevant services.
- c) the person providing the information is not the client.

The key point is section 56(5)(c). If the potential client themselves provides us with their details (ie by making contact direct) the arrangement cannot be a referral as defined by the Act.

The SRA states in draft guidance that the communication of a client's name and contact details to or by a regulated person would amount to a referral since this is 'information that a provider of legal services would need to make an offer to the client'. However, arrangements in which the potential client's details are not being provided to the regulated person by anyone other than the client would not amount to a referral within the terms of LASPO.

How Does It Work in Practice?

If you are unable to assist your client in a personal injury or clinical negligence case, simply recommend that your client contact us and ask them to tell us you recommended us when they make contact.

Step 1

Ask your client to contact VWV direct to provide their name and contact details and:

- if your client has email access, you may wish to send an email to your client summarising information relevant to the claim and including VWV's details. Your client can then forward this email to us at vwvapproach@vwv.co.uk. See Appendix 1 for suggested text.

If your client has no email access, ask the client to telephone Jo Campbell at VWV direct to provide their name and contact details or write to them using the suggested text set out at Appendix 1.

- if your client is in your office, it is acceptable for your client to use your telephone to contact us. However, it is particularly important in this scenario that correct disclosure has taken place under the *SRA Code of Conduct 2011* and that the client has been advised that they are free to contact another firm if they so wish.
- Alternatively, you can give your client a Recommendation Card with relevant details and ask them to contact us at their convenience.

We have prepared a Recommendation Card which can be handed to clients in your reception or posted to them containing VWV's contact details plus a section for your business details. This prompts the client to let us know that you recommended them and reminds the client to return to you for their future legal needs.

Provided this procedure is followed we will be able to pay you a fee share for personal injury and clinical negligence recommendations.

Step 2

Email vwvapproach@vwv.co.uk to confirm that you have recommended your client to us but provide only the surname and type of matter for which you have recommended us. In this way when the client contacts us we will be able to identify them as your client recommendation and ensure the non-poaching and fee sharing arrangements are followed.

Please also confirm whether the person is an existing client of your firm and whether fee sharing information has been disclosed. As with other referrals, where you have recommended that your client contact us, we will seek permission from the client to notify you that they have been in touch. We will keep a record that permission has been given by the client.

NOTE: Once this process is complete all other arrangements between you and us will be exactly the same as with other referrals.

How Does This Fit With OFR and the Code of Conduct?

Please note that the SRA's definition of a referral in the *Code of Conduct 2011* is not affected by LASPO ie it 'includes any situation in which another person, business or organisation introduces or refers a client to your business, recommends your business to a client or otherwise puts you and a client in touch with each other'.

This means that the recommendation approach, whilst not in breach of LASPO, will still be considered a referral for the purposes of the Code of Conduct.

Your obligations are set out in Chapter 6 of the Code of Conduct and include ensuring a client is fully informed of any financial or other interest you have in referring the client to another person or business.

FAQs

- a) What if I do not follow this process correctly and provide you with, for example, full details for the client including address/telephone number?

We will be able to act for your client under the VWV Approach scheme in the usual way and the non-poaching agreement continues to operate. However we will not be able to pay you a fee share as this would be a referral under LASPO and payment of a fee is prohibited.

- b) When I email VWV Approach about my client's case under Step 2 how much information shall I give?

The following will be sufficient:

"We have today recommended you to our client Mr Bailey in connection with a personal injury/clinical negligence case. Please advise us as soon as the client contacts you.

Mr Bailey is/is not a client of this firm. We have/have not disclosed information about the fee sharing arrangement."

Please do not give us the client's address or first name or any information that will enable us to contact your client to offer to act for them.

Nothing in the VWV Approach scheme will change in relation to the referral of any other type of legal business.

For more information, please contact:

Jo Campbell

vwvapproach@vwv.co.uk

0845 224 8445

Appendix 1

Draft Text to Client – Recommendation – PI and CN Matters

Dear []

Thank you for your enquiry regarding your potential claim.

We are unable to assist you on this occasion and as a member of VWV Approach we recommend that you contact VWV.

We have set out some details about your case below and if you wish to go ahead please forward this email to VWV at vwwapproach@vww.co.uk.

If you prefer to call VWV, their number is: **0845 224 8445**.

Once VWV has received your call or email they will advise us and we can assist further, if necessary, with any other queries.

Please note we have a financial arrangement with VWV. There is no added cost to you at all as a result of this arrangement. On completion of your case they will pay us a share of the fees as set out below:

- **Clinical Negligence** - £250 +VAT on account when the case is taken on plus 10% of base costs at the end of the case less the initial sum paid (minimum £250 +VAT)
- **Fast Track Personal Injury Claims** - £100 +VAT or 10% of base costs +VAT (whichever is the greater) paid at conclusion of the case
- **Multi Track Personal Injury and Industrial Disease Claims** - £250 +VAT on account when the case is taken on plus 7.5% of the fees at the end of the case less the initial sum paid (minimum £250 +VAT)

If we can be of any further assistance please do not hesitate to ask.

Kind regards

[Member firm]