

LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012

EXPLANATORY NOTES

COMMENTARY

Part 2: Litigation funding and costs

Referral fees

Section 57: Effect of rules against referral fees

329. *Section 57* requires relevant regulators to have arrangements in place to monitor and enforce the prohibition on the payment or receipt of referral fees. It also permits regulators to make rules and to use existing powers to enable them to monitor and enforce the prohibition. Under this section, some payments by or to a regulated person may be treated as a referral fee, unless the regulated person can show that the payment was for the provision of a particular service or another reason, and not for the referral – this might include, for example, the payment by a solicitor to a CMC for the obtaining of a medical report prior to 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.
330. The provisions in section 57 referred to above do not apply where the Financial Services Authority (FSA), which is responsible for the regulation of insurers, and in respect of whom section 58 makes similar provision, is the relevant regulator. However, *subsection (5)*, which provides that a breach of the prohibition does not make a person guilty of an offence and does not give rise to a right of action for breach of statutory duty, and *subsection (6)*, which provides that a contract to make or pay for a referral or arrangement in breach of the prohibition is unenforceable, apply to all regulated persons.