



Legal Aid, Sentencing and Punishment of Offenders Act 2012

2012 CHAPTER 10

PART 2

LITIGATION FUNDING AND COSTS

Referral fees

56 Rules against referral fees

- (1) 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, or
 - (b) prescribed legal business is referred to the regulated person, and the regulated person pays or has paid for the referral.
- (2) A regulated person is also in breach of this section if in providing legal services in the course of prescribed legal business the regulated person—
 - (a) arranges for another person to provide services to the client, and
 - (b) is paid or has been paid for making the arrangement.
- (3) Section 59 defines “regulated person”.
- (4) “Prescribed legal business” means business that involves the provision of legal services to a client, where—
 - (a) the legal services relate to a claim or potential claim for damages for personal injury or death,
 - (b) the legal services relate to any other claim or potential claim for damages arising out of circumstances involving personal injury or death, or
 - (c) the business is of a description specified in regulations made by the Lord Chancellor.

- (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, and
 - (c) the person providing the information is not the client;
- and “relevant services” means any of the legal services that the business involves.
- (6) “Legal services” means services provided by a person which consist of or include legal activities (within the meaning of the Legal Services Act 2007) carried on by or on behalf of that person; and a provider of legal services is a person authorised to carry on a reserved legal activity within the meaning of that Act.
- (7) “Client”—
- (a) where subsection (4)(a) applies, means the person who makes or would make the claim;
 - (b) where subsection (4)(c) applies, has the meaning given by the regulations.
- (8) Payment includes any form of consideration whether any benefit is received by the regulated person or by a third party (but does not include the provision of hospitality that is reasonable in the circumstances).

57 Effect of rules against referral fees

- (1) The relevant regulator must ensure that it has appropriate arrangements for monitoring and enforcing the restrictions imposed on regulated persons by section 56.
- (2) A regulator may make rules for the purposes of subsection (1).
- (3) The rules may in particular provide for the relevant regulator to exercise in relation to anything done in breach of that section any powers (subject to subsections (5) and (6)) that the regulator would have in relation to anything done by the regulated person in breach of another restriction.
- (4) Where the relevant regulator is the Financial Services Authority, section 58 applies instead of subsections (1) to (3) (and (7) to (9)).
- (5) A breach of section 56—
 - (a) does not make a person guilty of an offence, and
 - (b) does not give rise to a right of action for breach of statutory duty.
- (6) A breach of section 56 does not make anything void or unenforceable, but a contract to make or pay for a referral or arrangement in breach of that section is unenforceable.
- (7) Subsection (8) applies in a case where—
 - (a) a referral of prescribed legal business has been made by or to a regulated person, or
 - (b) a regulated person has made an arrangement as mentioned in section 56(2)(a), and it appears to the regulator that a payment made to or by the regulated person may be a payment for the referral or for making the arrangement (a “referral fee”).
- (8) Rules under subsection (2) may provide for the payment to be treated as a referral fee unless the regulated person shows that the payment was made—
 - (a) as consideration for the provision of services, or

(b) for another reason,
and not as a referral fee.

(9) For the purposes of provision made by virtue of subsection (8) a payment that would otherwise be regarded as consideration for the provision of services of any description may be treated as a referral fee if it exceeds the amount specified in relation to services of that description in regulations made by the Lord Chancellor.

58 Regulation by FSA

- (1) The Treasury may make regulations to enable the Financial Services Authority, where it is the relevant regulator, to take action for monitoring and enforcing compliance with the restrictions imposed on regulated persons by section 56.
- (2) The regulations may apply, or make provision corresponding to, any of the provisions of the Financial Services and Markets Act 2000 with or without modification.
- (3) Those provisions include in particular—
 - (a) provisions as to investigations, including powers of entry and search and criminal offences;
 - (b) provisions for the grant of an injunction in relation to a contravention or anticipated contravention;
 - (c) provisions giving Ministers or the Financial Services Authority powers to make subordinate legislation;
 - (d) provisions for the Financial Services Authority to charge fees.
- (4) The regulations may make provision corresponding to the provision that may be made by virtue of section 57(7) to (9) (but as if the reference to the Lord Chancellor were a reference to the Treasury).
- (5) The power to make regulations under this section is subject to section 57(5) and (6).

59 Regulators and regulated persons

- (1) In relation to a referral of business within section 56(4)(a)—
 - (a) a regulator is any person listed in column 1 below;
 - (b) a regulated person is any person listed in column 2;
 - (c) a regulator in column 1 is the relevant regulator in relation to the corresponding person in column 2.

<i>1. Regulator</i>	<i>2. Regulated person</i>
the Financial Services Authority	an authorised person (within the meaning of the Financial Services and Markets Act 2000) of a description specified in regulations made by the Treasury
the Claims Management Regulator	a person authorised by the Regulator under section 5(1)(a) of the Compensation Act 2006 to provide regulated claims management services
the General Council of the Bar	a person authorised by the Council to carry on a reserved legal activity within the meaning of the Legal Services Act 2007

Status: This is the original version (as it was originally enacted).

<i>1. Regulator</i>	<i>2. Regulated person</i>
the Law Society	a person authorised by the Society to carry on a reserved legal activity within the meaning of the Legal Services Act 2007
a regulatory body specified for the purposes of this subsection in regulations made by the Lord Chancellor	a person of a description specified in the regulations in relation to the body

- (2) In relation to a referral of prescribed legal business of any other kind—
- (a) a regulator is any person listed in column 1 below and specified in relation to business of that kind in regulations made by the Lord Chancellor;
 - (b) a regulated person is any person specified in accordance with column 2 in relation to business of that kind;
 - (c) a person specified under paragraph (a) in relation to business of that kind is the relevant regulator in relation to a person specified in accordance with the corresponding entry in column 2 in relation to business of that kind.

<i>1. Regulator</i>	<i>2. Regulated person</i>
the Financial Services Authority	an authorised person (within the meaning of the Financial Services and Markets Act 2000) of a description specified in regulations made by the Treasury
the Claims Management Regulator	a person who is authorised by the Regulator under section 5(1)(a) of the Compensation Act 2006 to provide regulated claims management services and is of a description specified in regulations made by the Lord Chancellor
an approved regulator for the purposes of Part 3 of the Legal Services Act 2007 (approved legal activities);	a person who is authorised by the regulator to carry on a reserved legal activity and is of a description specified in regulations made by the Lord Chancellor
a licensing authority for the purposes of Part 5 of that Act (alternative business structures)	a person who is licensed by the authority to carry on a reserved legal activity and is of a description specified in regulations made by the Lord Chancellor

60 Referral fees: regulations

- (1) This section applies to any regulations under sections 56 to 59.
- (2) The regulations are to be made by statutory instrument.
- (3) The power to make the regulations includes power to make consequential, supplementary, incidental, transitional, transitory or saving provision.
- (4) A statutory instrument containing the regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.