

EDITORIAL

Opinion

Once more into the breach

The polarised views of board members were evidence of how thorny an issue referrals is


In December 2007, when the board of the Solicitors Regulation Authority first debated the referrals rule, there was shock at the level of non-compliance. A year on, and with non-compliance still high, comes the realisation that solicitors who breach the rule often do so wilfully. The saving grace, such as it is, is that typically the breaches have not caused great harm to clients.

It has also taken a year for the SRA to rule out many of the

possible measures to improve compliance that it outlined after the 2007 meeting – such as providing model agreements. So a new compliance and enforcement strategy is to be drawn up, which needs to be completed and brought into action quickly.

The polarised views of board members were evidence of what a difficult issue this continues to be, so it is no surprise that the board is backing a Law Society bid to put referrals high on the agenda of the

Legal Services Board. Chancery Lane argues that a common approach is needed across the sector, because even if solicitors were banned from paying for referrals, introducers would turn to other legal services providers who are not.

This is what the LSB is there to do. Once the board is formally *in situ* at the apex of legal regulation, we will be interested to see if it has the stomach for this hottest of potatoes so early in its life. 

Comment

Two-way street is the right road



It seems highly likely that a more flexible market for legal services will, by reason of such flexibility, generate more work for all

Direct access to the bar is an opportunity to strengthen the solicitor-barrister relationship, argues Marc Beaumont

increasingly been instructing the bar first. Now the bar Public Access scheme has begun to generate real interest and gather momentum. There is considerable public take-up and much better knowledge of the scheme among barristers, solicitors and the judiciary.

The recent Access to the Bar Day (A2B), held on 27 November last year, comprised three events targeted at opinion-formers from politics, business, the bar, the judiciary and at organisations which may qualify under the Licensed Access scheme. Its success means that it may well become an annual event.

But is all this a threat to solicitors? Far from it. Public Access creates a two-way street of referral of work between barristers and solicitors, as research by Professor John Flood of the University of Westminster, published on A2B day, now reveals.

Of all the Public Access work I receive direct from clients for the purposes of advice and drafting, about half finds its way back to solicitors at some point. That is because I send it to them. I have to send it to solicitors. I cannot conduct litigation. I cannot interview witnesses. I cannot make disclosure. I cannot go on the court

record. I cannot pay court fees. And I cannot issue process.

But I can and do advise clients who come to me direct. I do so orally and in writing. I negotiate settlements and draft consent orders. I arrange and conduct mediations. I help clients to write letters to their opponents. I draft and amend pleadings. I draft skeleton arguments. And I go to court. When my client needs a solicitor, that will be my recommendation. But when they do not do so, they will conduct their own case and effectively use me as a consultant.

There is no statistical evidence as to whether the bar scheme takes work away from solicitors. On the contrary, it seems highly likely that a more flexible market for legal services will, by reason of such flexibility, generate more work for all.

And there are other gains for solicitors. Barristers are not permitted to apply for civil public funding for their clients. The public rarely knows this. All intending direct access clients who approach the bar first but require legal aid are sent by us to solicitors.

It is the same with family, immigration and criminal work. As a general rule, this work cannot be done under the bar scheme. Many firms will

therefore receive referrals from the bar in these spheres. Most barristers and their clerks welcome the opportunity, at least for commercial reasons, to send work to chambers' solicitors. What better way of cementing a business relationship?

So, to *Gazette* readers I say: please do not be threatened by the bar Public Access scheme. In fact, by befriending a Public Access barrister, there may be unexpected advantages. It may not be long before sets of chambers invite tenders for solicitors to be on chambers' Public Access panels, so that they are in pole position to receive referrals of clients who have initially come direct to the bar on Public Access. I already operate such a panel. Such solicitors are badly needed to assist in the conduct of Public Access cases. Nor will it be long before such panels evolve into legal-disciplinary partnerships, with barristers and solicitors maintaining their differences of function, while cooperating and coexisting in a way which is to the benefit of the public.

Marc Beaumont is vice-chairman of the Access to the Bar Committee of the Bar Council and chairman of the Public Access Bar Association (www.paba.org.uk)