

## **Guidance**

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#### **Offering inducements to potential clients or clients**

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Updated 25 November 2019 (Date first published: 25 June 2013)

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### **Who is this guidance for?**

All authorised firms and their employees.

### **Purpose of this guidance**

To highlight your professional obligations and issues which need to be considered with the offering of inducements to existing or prospective clients.

### **Inducements are banned in personal injury claims**

The Criminal Justice and Courts Act 2015 (CJCA) bans the offer of a benefit made by authorised firms and individuals (defined in [section 60 \[http://www.legislation.gov.uk/ukpga/2015/2/section/60/enacted\]](http://www.legislation.gov.uk/ukpga/2015/2/section/60/enacted) of the CJCA) to a potential claimant where the benefit offered is an inducement relating to a personal injury claim, and is not related to the provision of legal services in connection with the claim.

[Section 58 \[http://www.legislation.gov.uk/ukpga/2015/2/section/58/enacted\]](http://www.legislation.gov.uk/ukpga/2015/2/section/58/enacted) of the CJCA confirms that the offer of a benefit is an inducement if the benefit is intended to encourage, or is likely to have the effect of encouraging, someone to make a personal injury claim or to seek advice from a legal service provider with a view to making such a claim.

Section 58 also confirms that offers of benefits provided through third parties in these situations are to be treated as having been offered by the legal service provider.

The CJCA defines 'benefit' as something that could be money or other property. It could be temporary or permanent and it also includes opportunities to obtain a benefit (for example, an offer to be entered into a prize draw).



The ban applies no matter how or when the offer is made, whether it is conditional on other factors, and even when the benefit is to be received by a third party.

If you or your firm were to breach this ban you would be in breach of the [Principles](https://indemnity.sra.org.uk/solicitors/standards-regulations/principles/) [https://indemnity.sra.org.uk/solicitors/standards-regulations/principles/], in particular Principle 1, which requires you to act in a way that upholds the constitutional principle of the rule of law and the proper administration of justice.

A breach of the ban on inducements by you or your firm would also very likely be a breach of Principle 2 which requires you to act in a way that upholds public trust and confidence in the solicitors' profession and in legal services.

Paragraph 8.8 of the [Code of Conduct for Solicitors, RELs and RFLs](https://indemnity.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/) [https://indemnity.sra.org.uk/solicitors/standards-regulations/code-conduct-solicitors/] and 7.1 ( c) of the [Code of Conduct for firms](https://indemnity.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/) [https://indemnity.sra.org.uk/solicitors/standards-regulations/code-conduct-firms/] requires you to ensure that any publicity in relation to your practice is accurate and not misleading. This means that you must make sure that your personal injury claims publicity is accurate. It must not mislead the public by offering, suggesting or implying that you are offering any inducement in breach of the ban.

The Financial Conduct Authority's [rules](https://www.handbook.fca.org.uk/handbook/CMCOB/3/2.html) [https://www.handbook.fca.org.uk/handbook/CMCOB/3/2.html] also confirm that claims management companies must not offer cash payments (or 'money's worth' benefits such as free gifts), as inducements for entering into an agreement to make a claim.

## **Are inducements appropriate in cases other than personal injury matters?**

If you are considering whether it is appropriate for you or the business you work for to offer an inducement in cases other than personal injury matters, you might consider the following questions:

- would offering an inducement influence someone's decision to instruct you, as opposed to making a decision based on your expertise and the quality of services you offer?
- would you be offering an inducement that is aimed at vulnerable members of the public? How would you manage any risks associated with that?
- could offering an inducement potentially result in you or the business you work for taking on improper or spurious claims? Could that lead to increased costs to businesses and consumers, and to indemnifiers to cover the expense of defending those claims?

If you do decide to offer inducements to clients or potential clients, you should take steps to ensure that:

- they are not taken advantage of or placed at risk of harm;
- they do not instruct you or your business to act for them as a result of misleading information or publicity;
- they have sufficient information to make informed decisions about instructing you;
- they receive independent advice and a proper standard of service;
- their interests do not conflict with your or the interests of the business you work for, and
- their fiduciary relationship with you is not adversely affected.

## **Making sure you fulfil your obligations to your clients**

You must make sure that you fulfil your obligation to protect your client's best interests (Principle 7 and Paragraph 3.1 of the Code of Conduct for Solicitors, RELs and RFLs) and that the services you provide are not linked to the incentive which has been offered.

You must also make sure that prospective clients are in a good position to make informed decisions about the services they need. They need to know how their matter will be handled and the options available to them, even if they are interested in taking an inducement from you.

You have an obligation to take account of your client's personal circumstances (paragraph 3.5 of the Code of Conduct for solicitors, RELs and RFLs). You will need to consider the needs and circumstances of each individual client -including, for example, whether they are particularly vulnerable or whether they may have difficulties understanding the relationship between the inducement and the information that you give them about the service you intend to provide to them.

It is also important that you are able to show that clients have made an informed decision to instruct you or your business to act for them and that you have treated them fairly. Any decision to instruct you should not be based on your offer of an inducement in exchange for instructions.

## **Avoiding conflicts of interest**

Paragraph 6.1 of each of the Codes requires you not to act where there is an own interest conflict or a significant risk of an own interest conflict. If you offer an inducement you must make sure that your interests do not conflict with those of your clients or prospective clients.

You must also ensure that your systems and controls for identifying own interest conflicts are appropriate for the size and complexity of the business you are working for and for the nature of the work undertaken.

If you are working for a firm regulated by the SRA there should be checks in place to make sure the firm's managers understand how members of their staff are obtaining work.

You need to be satisfied that the terms and conditions on which an inducement is offered does not lead to your interests conflicting with those of your client or potential client.

You need to be aware of situations which could lead to a conflict of interests arising unless the implications of the situations have been properly explained to the client who has then made an informed decision to instruct you and accept the inducement. These include:

- clients being asked to return an inducement or give up any entitlement to benefit from it, if your retainer with them ends prematurely;
- inducements being taken back if the client makes a complaint about your service to you or to the Legal Ombudsman;
- clients facing a requirement to return an inducement if they have failed to pay professional fees and you subsequently pursue them to recover those fees.

## **Publicity**

Paragraphs 8.6 - 8.11 of the Code of Conduct for solicitors, RELs and RFLs and paragraph 7.1 ( c) of the Code of Conduct for firms highlight your obligations in relation to client information and publicity. These include that:

- your publicity is accurate and not misleading including relating to your charges;
- you do not make unsolicited approaches to members of the public in order to publicise your services.

You should take care to avoid suggesting or implying that, by instructing you or your firm, clients will get a more favourable outcome. Clients and potential clients should make decisions regarding their choice of solicitor or firm based on the skill and expertise which they have to offer and which will allow them to achieve the best possible outcome.

For these reasons it is important that you take steps to ensure that your publicity provides clear information about the nature of any inducement and the terms on which it is offered.

## **Inducements and the Bribery Act 2010**

Bribery undermines the rule of law and poses a serious threat to the proper operation of free markets. The Bribery Act 2010 (the Act) is

intended to respond to this and to the many ways that bribery can be committed.

In very general terms, bribery is giving someone a financial or other advantage to encourage them to perform their functions or activities improperly, or to reward them for already having done so.

Inducements in the legal services sector are normally intended to persuade a client to instruct or remain with a particular provider, which is distinct from bribery. However, it may be possible to commit an offence of bribery if, for example, a client is persuaded to improperly perform functions or activities for which they are responsible in return for 'free services'.

For an inducement to be considered as a bribe it has to be performed in breach of a relevant expectation as defined in the Bribery Act 2010.

## **Further help**

Further advice on the SRA Principles and the SRA Code of Conduct can be obtained from the [Professional Ethics Guidance team](https://indemnity.sra.org.uk/contact-us/) [<https://indemnity.sra.org.uk/contact-us/>].

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