

6.6 Referrals from other Professional and Creditors

Practitioners may accept a series of appointments from individual creditors, lawyers, accountants or from another Practitioner. However, Practitioners must always have regard to how an ongoing relationship may affect their independence or the perception of independence.

Networks of referrals between professionals are normal and are acceptable provided the referral and relationship are based on the quality of professional service and expertise. This would invariably have been identified through prior experience.

A Practitioner must not accept an appointment if the Practitioner would not be independent in fact, or would not be perceived to be independent. Regard must be had to this when considering whether to accept the referral of an appointment.

A Practitioner must not accept any referral that contains, or is conditional upon:

- the giving or receiving of referral commissions, inducements or benefits;
- the giving or receiving of spotter's fees;
- the giving or receiving of recurring commissions;
- understandings or requirements that work in the Administration will be given to the referrer; or
- any other such arrangements that restrict the proper exercise of the Practitioner's judgement and duties.

Panel arrangements, ie. where a Practitioner is on a panel of practitioners maintained by a creditor for selection for the appointment, will not in itself result in a lack of independence.

Example

- A Practitioner may undertake work from time to time on behalf of a major bank.
- A Practitioner may be on a panel of practitioners for a major creditor such as the Australian Taxation Office.

The larger the number, size or significance of Appointments referred from a Referring Entity, the greater the likelihood that the Appointment will result in a perceived lack of independence of the Practitioner.

Example

- Regular referrals from a director in relation to a number of her companies may be more likely to result in a perceived lack of independence than regular referrals from a law firm.
- A larger number of referrals from one source could result in a perception that the Practitioner has become dependent on the workflow and thus is no longer independent.

6.6.1 Disclosure of referrals

If a Practitioner accepts an appointment following a Specific referral, the Practitioner must disclose in the DIRRI:

- the Referring Entity (firm/organisation name); and
- the Practitioner's reasons for believing that the relationship with the Referring Entity does not result in the Practitioner having a conflict of interest or duty;

in the following circumstances:

- where a Practitioner is required to provide a Declaration of Relevant Relationships under legislation¹ (or any other similar subsequent or additional statutory requirement under the Corporations Act or Bankruptcy Act); or
- in all other circumstances, where a consent to disclose is obtained from the Referring Entity.

A Practitioner must seek consent of the Referring Entity to disclose its firm/organisation name in all circumstances other than where a Declaration of Relevant Relationships is required under legislation. If consent to disclose is not provided, by the Referring Entity, disclosure in the DIRRI is not required.

Where the Referring Entity is disclosed in the DIRRI and the Referring Entity has a connection with the Insolvent (eg. accountant for the Insolvent), the Practitioner should also disclose in the DIRRI how the Referring Entity is connected to the Insolvent.

Where an appointment is made as a result of a panel arrangement, this must be disclosed in the DIRRI as a Specific referral in accordance with the guidance in this section of the Code.

Example

This appointment was referred to me by XYZ Accountants, Accountants of the company. The reasons I believe that this relationship does not result in me having a conflict of interest or duty are:

- XYZ Accountants has not previously referred any insolvency type matters to my firm; and
- referrals from solicitors, business advisors and accountants are commonplace and do not impact on my independence in carrying out my duties as liquidator.

¹ As at May 2014, a Practitioner is required to provide a Declaration of Relevant Relationships under section 436DA(2) as an Administrator appointed in a voluntary administration, under section 506A(2) in an appointment as liquidator in a creditors' voluntary liquidation and under section 449CA as a Voluntary Administrator to replace an incumbent where the incumbent dies, resigns or is prohibited from acting, except where that appointment is made by the Court.