



Schedule 4 Rules Change Application – Disclosure of Profits and Advantages Code

LSB Application Requirement	Case for amendment of Disclosure of Profits and Advantages Code and Guidance
<p>a. Contact</p>	<p>Victoria Swan, Policy Advisor Email address: victorias@clc-uk.org Tel no: 01245 349599 CLC, 16 Glebe Road, Chelmsford, Essex. CM1 1QG</p>
<p>b. Details of the proposed alteration/regulatory arrangements</p>	<p>The proposal does not alter the CLC’s general standing on referral arrangements. We have always permitted CLC-regulated firms to enter into referral arrangements, subject to a number of safeguarding the client’s interest provisions. In light of the LSB’s analysis and findings regarding the impact of referral fees, as well as our own, we do not propose to change that stance. We have however, reviewed our declaration, publication and compliance monitoring provisions in light of those findings and consider they do not currently go far enough. We need to ensure consumers are consistently provided with sufficient and timely information in order that an informed choice can be made and as a result, we propose a small number of changes to the current regulatory requirements.</p> <p>The LSB Decision Paper required regulators to be able to demonstrate that their approach promotes good regulatory practice, including,</p>

'the type of information and data they collect, including the need to collect details of: the amount of individuals and entities pay for referral of work (including an assessment of the value of work undertaken in place of a referral fee); the % of turnover made up from referral fees and arrangements; the number of referral contracts that firms/individual have.....'

- *whether timing and information provision should vary for different market segments,*
- *whether disclosure should highlight all exchanges or monetary exchanges,*
- *whether form/medium of disclosure should be prescribed or guidelines issued*

The LSB specifically recommended regulatory arrangements which state

'what information Authorised Persons are required to provide (including price, identity of recipient and a reminder of the consumer's right to shop around'

Current regulatory requirements upon CLC licensees (see the [CLC Disclosure of Profits and Advantages Code](#) for the full detail): the current CLC regulatory provisions are high-level, and require that a particular person, business or product is only recommended when to do so will not impact upon the delivery of specified, positive Outcomes regarding good quality information, representation and advice, enabling clients to make informed decisions, and delivery of an honest and lawful service. Those we regulate are required to act in a principled way, which includes the following provisions:

- You keep the interests of the Client paramount (except as required by the law or the CLC's regulatory arrangements);
- You only recommend a particular person, business or product when it is in the best interests of the Client; and
- You provide the Client with all relevant information relating to any fee arrangements or fee changes;
- when accepting instructions, you inform the Client in writing:-
 - Of the existence of any arrangement for the introduction, or if not, practicable to inform the Client

of the exact sum, the maximum sum which may be paid.

- The same requirements apply when the body introduces a Client to another person.

Proposed alteration to regulatory arrangements (see attachment A for the proposed CLC Disclosure of Profits and Advantages Code – all suggested amendments are tracked):

i) Consultation Proposals

A dedicated cross-directorate workshop interrogating the evidence bases confirmed that the biggest threat to the consumer interest posed by referral arrangements was judged to be the level and timing of information given to consumers. As a result of the workshop and subsequent Council meeting, the CLC referrals consultation (Dec 2012 – March 2013) proposed the following (consultation paper provided at Attachment B),

Arrangements

- All referral arrangements between the CLC practice and a third party will be required to be in writing
- The practice periodically reviews its referral arrangements to ensure they deliver the appropriate outcomes for clients

Declarations

- Clients will be provided with information on the nature of the arrangement, the name of the referrer/referee, how any payment was calculated, how they are affected in monetary and other terms by the arrangement
- The client is informed of the existence of the arrangement no later than when accepting instructions
- The client is informed of any restriction or limitation affecting the introduction; and of their right to shop around.

ii) Revised proposals

Though stakeholders' responses endorsed all of the proposals (an overview of the consultation findings is

provided at Attachment C), there were a number of suggestions proposing variations to the proposals which went along a polarised range of themes,

- a) Proposals go too far – create unnecessary red tape, ‘removing the CLC’s common sense and helpful approach to regulation’; if displayed openly and transparently, existing arrangements provide proportionate protection for clients’
- b) Too onerous – specifically the requirement to identify referrers, set out the amount of the referral fee and the ‘shop around reminder’
- c) Proposals do not go far enough – need to specify exact monies paid and more detail re: making of disclosure.

These were discussed at Council and as a result it was agreed that the initial proposals, in adding yet more specific requirements, were not in keeping with our direction of travel - which should be streamlining the regulatory arrangements, rather than adding to them – nor proportionate to the low-level risk. Consequently, we are proposing to apply a number of high-level principles, rather than the specific requirements, and to remove some of the current specific requirements. In keeping with this ethos, though we will be introducing a new requirement for referral arrangements to be written, we are not seeking to provide an agreements template. The suggested new provisions,

- Where you enter into an arrangement, including any fee sharing agreement, with an introducer, the agreement is in writing.
- You periodically review referral arrangements/fees to ensure they deliver the Outcomes identified at the outset of this Code.
- You inform the Client in writing of the existence of the referral arrangement no later than when accepting instructions, or when introducing a Client to another person.
- You advise the Client that they have a choice of provider.
- You inform the Client of the nature of the arrangement (including any payment made), with whom it is made, and any impact (including any legal costs they are charged).

Should these amendments be approved they would replace the current specific requirements,

	<p>You must also comply with the following specific requirements:</p> <p>11. When accepting instructions, you inform the Client in writing:-</p> <p>11.1 of the existence of any arrangement for the introduction of the Client to the body by another person; and</p> <p>11.2 any sum paid in connection with the introduction, or, if it is not practicable to inform the Client of the exact sum, the maximum sum which may be paid.</p> <p>12. When introducing a Client to another person you inform the Client in writing:-</p> <p>12.1 of the existence of any arrangements for the introduction of the Client by the body to another person; and</p> <p>12.2 any sum received in connection with the introduction, or if it is not practicable to inform the Client of the exact sum, the maximum sum which may be paid.</p> <p>iii) <u>Other:</u></p> <p>Though CLC monitoring activities had not identified referral arrangements as an area of particular concern, they had identified that some firms had a reluctance to follow all responsibilities conferred by the Code. The risk was not specific to referral arrangements, but the accurate representation of fees – and steps have been taken to mitigate this risk and continue to monitor the level of compliance.</p>
<p>c. How and why the alteration will help to promote, be neutral towards or be detrimental to the Regulatory Objectives</p>	<p><u>I. Protecting and promoting the public interest/improving access to justice/ increasing public understanding of the citizen’s legal rights and duties</u> - the commitment to increased transparency set out in the proposals should help increase public confidence as the individual is afforded timely and appropriate information to inform their choice as to whether or not to become a consumer, providing them with the information most relevant to their potential purchase. The provisions seek to deliver the LSB-specified Outcomes:</p> <ul style="list-style-type: none"> • Reduce the likelihood of detriment to consumers as a result of allowing referral fees, referral arrangements and fee sharing; • Consumers know when referral fees and/or referral arrangements are, or may be, in place in order to inform their choices

	<p><u>II. Supporting the constitutional principle of the rule of law</u> – should our re-application to be designated an Approved Regulator in litigation services be successful we would obviously ensure that the Personal Injury referrals ban is applied; we consider the regulatory approach proposed here to be in keeping with the ethical principles around which our regulatory arrangements are framed;</p> <p><u>III. Protecting and promoting the interests of consumers</u> – LSB-commissioned research found that a referral arrangement can potentially result in swifter resolution and an overall cheaper transaction;</p> <p><u>IV. Promoting competition of services provided by Authorised Persons/ encouraging an independent, strong, diverse and effective legal profession</u>– the proposals have been amended so they are less prescriptive than initially proposed; we would now not require information on the exact sum paid and how calculated. Firms will also not be required to publish their service level agreement as this is unlikely to be of relevance to the consumer who is interested primarily in the effect the referral arrangement will have upon them (see item I above).</p> <p><u>V. Promoting and maintaining adherence to the professional principles</u> – these amendments seek directly to support the following Overriding Principles set out in our Code of Conduct,</p> <ul style="list-style-type: none"> • Clients receive good quality information, representation and advice; • Act in the best interests of your Clients;
<p>d. Compliance with Better Regulation Principles</p>	<p>Proportionate: as both the Consumer Panel research and our own investigations have identified little evidence of significant consumer detriment, we have approached the revisions with caution and have applied only that which we consider necessary/proportionate to the risk. We considered publication of individual referral arrangements by individual practices to be unnecessary as the agreement itself is unlikely to assist the individual consumer who will be interested primarily in the effect the referral arrangement will have upon them (and have therefore amended the disclosure provisions to cover this).</p> <p>We also considered, following consultation and corporate discussion, that the prescription which we initially proposed – see the consultation paper (attachment B) - should instead take the form of higher-level principles. In keeping with an outcomes-focused approach to regulation, we concluded that we would not provide a template for arrangements as this would be too prescriptive and would not take into account the breadth of possible arrangement and organisation types. We also considered that to provide a template within guidance presented a risk that it could become a default arrangement and though we have historically provided templates for some areas - such as complaints, anti-money laundering procedures, equality policy -</p>

this has been because these areas have particular regulatory concerns (e.g. complaints-handling is an important after-the-event indicator, the risk to client monies/keeping client money safe, the new equality of access and service duty etc.), whereas we consider that the transparency and declaration provisions are sufficient to the risk. However, we allow ourselves the discretion to review this decision and should we, following inspection of arrangements - and combined with any lessons learned as per the ARR data - identify that there is need for guidance, or consistency of approach, this may be revisited and a template created.

Targeted: historically, we did not apply any collection or publication requirements upon licensees regarding their referral arrangements. As of Spring 2013 the Annual Regulatory Return has segmented the markets, requiring information on the types of referral arrangements applies, the organisation type involved and the proportion of work received as a result of this. The information this procures will enable us to profile providers involved in referrals and to ensure they comply with the new regulatory arrangements when in place and identify any businesses with possible sustainability, or quality, risks owing to their dependence upon referral arrangements.

Transparent: the proposed disclosure provisions should widen the information provided to clients to help inform their purchasing decision (the information should be provided in an arguably timelier manner). The proposals also seek to ensure that any arrangements are documented, enabling us to access and monitor the service level agreement to gauge how the arrangements are consistent with clients' best interests.

Accountable: it remains the responsibility of the CLC-regulated firm to ensure their referral arrangements deliver the positive Outcomes sought by the Code of Conduct/Disclosure Code. The new Annual Regulatory Return asks for information on the arrangements in place, such as the proportion of work received from referrals arrangements and the organisation type. Should the proposals be approved, firms will be required to have in place written agreements which will be subject to review.

Consistent: provision of high-level principles is in keeping with the outcomes-focused, principles and risk-based approach which the sector is applying and allows licensees some element of discretion as to how they meet the requirements. Permitting referral arrangements to exist is also likely to be consistent with the general regulatory approach applied in the legal sector, as per the LSB's recommendation.

<p>e. Desired outcome of the alteration and how we will assess whether this has been achieved.</p>	<p>The desired outcomes are:</p> <ul style="list-style-type: none"> • would-be consumers are provided with sufficient information in which to make an informed decision as to whether to procure the services from the referred agent or to choose another provider; • all referral arrangements are documented and can be subject to CLC review.
<p>f. Effect on areas regulated by other Approved Regulators.</p>	<p>We do not believe that our proposals will have any direct effect on any of the other Approved Regulators. There will be some differences in approach (e.g. regarding a particular activity, such as personal injury), but we consider that permitting referral arrangements to exist is likely to be broadly consistent with the approach of other regulators as the LSB will be applying a high evidence threshold should anyone seek to apply provisions to the contrary.</p>
<p>g. Implementation timescale.</p>	<p>Following LSB approval of this application we would publicise the revised Code and its regulatory impact for a minimum of 12 weeks prior to the new requirements going live. We would then allow a further 12 weeks within which formal enforcement action would not be taken should a firm not yet meet the requirement. The Annual Regulatory Return information will help inform these monitoring activities.</p>
<p>h. Consultation processes undertaken and responses received.</p>	<p>The CLC published its Consultation in December 2012 and applied a 12 week consultation timeframe. The consultation paper was sent out to the CLC regulated community, Approved Regulators and the Legal Services Consumer Panel. Notice of the Consultation was posted on the news section of the CLC website and a copy of the Consultation paper was made available on the download section of the website. The Consultation Period ended in March 2013.</p> <p>The consultation (see attachment B) set out the CLC’s proposals on referral arrangements, as informed by internal cross-directorate workshops and Council sanction. Stakeholders were directed to a secure online survey facility (though 2 consultees provided responses through different means). Attachment C provides an overview of the responses received. This was published on the CLC website in April 2013. As set out in this application, those consultation responses in turn informed the draft Disclosure Code provided at Attachment A. Subject to the LSB’s determination on this Schedule 4 application, we will publish a ‘you said, we will’ response to the consultation announce the new Code.</p> <p>The response of one of the representative body for solicitors, the Law Society, considers the use of referral</p>

	<p>fees to be contrary to many of the regulatory objectives, particularly in the context of conveyancing. Its concerns include leaving the client little autonomy, the potential for the overall fee to be increased as a result of the arrangement, anti-competitive and the referring agent opting for the conveyancer willing to pay the highest referral fee (rather than a decision informed by the clients' best interest). We would consider the banning of referral arrangements – especially in the absence of evidence of significant detriment - would be anti-competitive. We are also minded that the proposals made within this application proactively seek to mitigate the other concerns identified.</p> <p>It also considers the requirement to have written arrangements to be too onerous. We consider the requirement to have a written arrangement to be central to the accountability agenda; and the position that we are not prescriptive in the form this should take to be in keeping with a regulatory focus upon outcomes.</p>
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Attachment A – Proposed Disclosure of Profits and Advantages Code & Guidance
(proposed amendments tracked)



In this Code 'you' refers to individuals and bodies regulated by the **CLC**; all individuals and bodies regulated by the **CLC** must comply with this Code. You must not permit anyone else to act or fail to act in such a way as to amount to a breach of this Code.

Outcomes-Focused

The **Code of Conduct** requires you to deliver the following **Outcomes**:

- ***Clients receive good quality independent information, representation and advice; (Outcome 1.1)***
- ***Clients receive an honest and lawful service; (Outcome 1.2)***
- ***Clients have the information they need to make informed decisions; (Outcome 3.3)***
- ***Clients are aware of any referral arrangements and that they are consistent with your responsibilities both to them and to the CLC. (Outcome 3.4)***

Transparent referral arrangements help you deliver these **Outcomes** and act in a principled way:

1. **Act with independence and integrity. (Overriding Principle 1)**
2. **Maintain high standards of work. (Overriding Principle 2)**
3. **Act in the best interests of your Clients. (Overriding Principle 2)**
4. You do not allow your independence to be compromised. (CoC P1a)
5. You act honestly, professionally and decently. (CoC P1b)
6. You do not conduct yourself in a manner which may result in a breach of the law nor in any other manner which may bring the legal profession into disrepute. (CoC P1c)
7. You promote ethical practice and compliance with regulatory requirements. (CoC P2g)

8. You keep the interests of the **Client** paramount (except as required by the law or the **CLC's regulatory arrangements**). (CoC P3b)
9. You only recommend a particular person, business or product when it is in the best interests of the **Client**. (CoC P3f)
10. You provide the **Client** with all relevant information relating to any fee arrangements or fee changes. (CoC P3j)
11. Where the entity represents parties with different interests in any transaction each party is at all times represented by different **Authorised Persons** conducting themselves in the matter as though they were members of different entities. (CoC P3n)
12. Where you enter into an arrangement, including any fee sharing agreement, with an introducer, the agreement is in writing.
13. You periodically review referral arrangements/fees to ensure they deliver the Outcomes identified at the outset of this Code.
14. You inform the Client in writing of the existence of the referral arrangement no later than when accepting instructions, or when introducing a Client to another person.
15. You advise the Client that they have a choice of provider.
16. You inform the Client of the nature of the arrangement (including any payment made), with whom it is made, and any impact (including how the arrangement affects any payment they are asked to make).

Attachment B – Consultation Paper



**CLC Consultation -
Referral Arrangements:
disclosure and publication provisions**

Issue Date: Monday 3rd December 2012

Consultation ends: Monday 1st March 2013

Executive Summary

1. The current lack of evidence of consumer detriment leads the CLC to consider a ban on referral arrangements/fees as unjustifiable.
2. We do however consider it would be in the consumer interest for increased disclosure requirements to be placed on firms. This should help ensure the consumer can make an informed choice as to whether or not they use the referee.
3. We propose that all referral arrangements should be in written form. However, we consider there is little to be gained from requiring these individual agreements to be published.

Background

4. Last year the government made a decision to ban personal injury claim referrals. The ban stemmed from the perceived need to curb the compensation culture in this area. The ban is to be enforced as a regulatory offence rather than as a criminal one. Among other stakeholders, the Law Society has called for conveyancing to be added to the ban.
5. A review of referral arrangements across the legal services sector began in 2009 when the Legal Services Board (LSB), the oversight regulator, responded to calls from the Law Society to ban all forms of referral fees across the profession. It commissioned two substantial pieces of analysis:
 - i) to explore the impact of referral fees in relation to conveyancing, personal injury and criminal advocacy markets; and
 - ii) asking the Legal Services Consumer Panel for advice from a consumer interest perspective.
6. The [findings of the Panel and the analysis](#) recommended that referral arrangements could be retained, provided they were disclosed to the client/published and properly regulated. The LSB has announced that it considers there to be no regulatory case for a blanket ban; its own [review](#) of the legal services market found there to be little evidence that referral fees cause actual or potential harm to the interests of either consumers or the public. The LSB has declared its intention to review regulatory approaches to referral arrangements/fees in 2013/14. It also published Guidance under s.162 Legal Services Act 2007¹. This review is being undertaken in that context leading to publication of this Consultation Paper.
7. We are reviewing our approach to referral arrangements to determine whether our current disclosure and publication requirements, and compliance monitoring provisions, are fit for purpose i.e. they deliver the following Outcomes:

Reduce the likelihood of detriment to consumers as a result of allowing

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http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/20110531_guidance_referral_fees_final.pdf

referral fees, referral arrangements and fee sharing;

Consumers know when referral fees and/or referral arrangements are, or may be, in place in order to inform their choices.

CLC Current requirements

8. Current disclosure requirements are provided in the CLC's [Disclosure Of Profits And Advantages Code](#) which requires that when accepting instructions, or when introducing a client to another person, the client is informed in writing of the existence of any introduction arrangement and any sum paid in connection with it.
9. Our regulatory provisions in this area include the following principles:

You keep the interests of the Client paramount (except as required by the law or the CLC's regulatory arrangements);
You only recommend a particular person, business or product when it is in the best interests of the Client; and
You provide the Client with all relevant information relating to any fee arrangements or fee changes.

These are underpinned by the following specific requirements:

When accepting instructions, you inform the Client in writing:-

- of the existence of any arrangement for the introduction of the Client to the body by another person; and
- any sum paid in connection with the introduction, or, if it not practicable to inform the Client of the exact sum, the maximum sum which may be paid.

The same requirements apply when the body introduces a Client to another person.

10. Legal Ombudsman complaints data for April 1st 2011 to March 31st 2012 illustrate that 15.6% of complainants regarding the services provided by the CLC regulated community complained about a failure to advise (compared to 16.8% across all regulators) and 9.8% concerned deficient costs information (compared to 8.3% across all regulators). The granularity of the data does not allow us to determine the extent, if any, to which this is connected to referral fees or arrangements.
11. There are currently no collection or publication requirements regarding referral arrangements within the CLC regulatory provisions.

CLC Proposals

Insufficient justification for a ban

12. We acknowledge that referral arrangements is an area marked by strong views and that opponents of them may consider they create choice barriers. However, the analysis commissioned by the Legal Services Board provides little evidence of consumer detriment. Given the relatively little evidence of actual or potential harm

the LSB considers that Approved Regulators would have to provide a high standard of justification should they wish to impose a ban on referral arrangements.

13. Our own monitoring activities have reached a similar conclusion to the LSB i.e. there is little evidence of significant detriment. As suggested by research commissioned by the LSB, the fact of a referral arrangement may result in swifter resolution of difficulties which are commonly encountered in a transaction and in lower overall cost to the client. This possible benefit is obviously only achievable as long as the client is made aware at as early a stage as possible, of the implications of the arrangement (particularly in financial terms to the referrer and to the lawyer) and of the client's entitlement to instruct a different lawyer. Please see item 17 below for the proposed additions to the current declaration provisions.
14. We have provisionally concluded that a blanket ban on referral arrangements would not be justified by the evidence we have seen. In addition, we would be concerned that a ban could create perverse incentives which lead to more harmful behaviour, such as 'under the counter' inducement fees.
15. That is not to say, assuming this conclusion is reached, that the CLC may take a different view if we identify evidence of significant consumer detriment as a result of our compliance monitoring, or consumer engagement activities.

Question 1 – Do you agree or disagree with the current proposed policy position that based on the evidence available a ban on referrals is not justified. Please explain the view you have reached and how it impacts on the consumer interest.

Promoting transparency and choice

16. Though we have provisionally concluded that a ban to be not justified, we do not consider that the current regulatory requirements go far enough to ensure consumers are consistently provided with sufficient and timely information in order that an informed choice can be made. We propose to expand upon the current requirements in the following ways:

Arrangements

All referral arrangements between the CLC practice and a third party will be required to be in writing
Referral arrangements should be periodically reviewed by the CLC practice to ensure they deliver the appropriate outcomes to clients

Declarations

Clients will be provided with information on the nature of the arrangement, the name of the referrer/referee, how any payment of calculated and how they are affected in monetary and other terms by the arrangement
The client is informed of the existence of the arrangement no later than when accepting instructions
The client is informed of any restriction or limitation affecting the introduction; and of their right to shop around

17. This should increase transparency, both widening the information given to clients and enabling us to monitor the actual agreements made between the CLC practice

and the third party. It would also ensure that the client is informed as early as possible of their right to shop around. The CLC would be entitled to see service level agreements and require CLC practices to provide details of the activities they outsource. It remains the responsibility of the CLC-regulated firm to ensure these arrangements deliver the Outcomes required by our Code of Conduct.

Question 2. Do you agree or disagree with the suggested disclosure provisions? If not, please explain why.

Collection

18. We considered what information would be of benefit to be gathered through the annual regulatory return. The CLC is working with professional indemnity insurers as far as possible to avoid the duplication of data requirements.

Publication

19. We intend to make it mandatory for all referral arrangements to be in written form. This provides transparency and will enable the CLC to determine how the arrangements are consistent with the clients' interests. However, we have provisionally concluded that there is little to be gained from requiring individual referral agreements to be published; the disclosure proposals at item 16 seek to provide the consumer with the information which is the most relevant to their sale or purchase (i.e. the impact upon them should they opt to use the referral agent) and seeks to ensure that such information is provided in an accessible fashion; the agreement itself is unlikely to assist the individual consumer who will be interested primarily in the effect the referral arrangement will have on them. We also consider that a requirement that CLC practices publish details of referral arrangements they have with third parties (which will be commercially sensitive) will be inconsistent with the regulatory objective to promote competition². We welcome comments on these points.
20. We also considered whether we should set out the information which should be included in a referral agreement (either as a mandatory requirement or as guidance). It was suggested that this could be applied, particularly to ensure that referrals from third parties to lawyers were operated in accordance with the best interests of the client. However, we have provisionally concluded that this was not likely to be in keeping with the ethos of principles-based and outcomes-focused regulation. As long as the Code of Conduct Outcomes are delivered (as per item 17) it is considered that it is at the firm's discretion as to the form the arrangement takes.

² S.1 Legal Services Act 2007

Question 3. Do you agree or disagree with the suggested publication provisions? If not, please explain why.

Question 4a. Do you consider there would be benefit in publishing an overview of the arrangements in place across the profession?

Question 4b. If so, what should this include?

Question 5. Do you agree or disagree with the decision not to provide an agreements template?

Question 6. Do you have any other comments about any of the proposals?

21. The proposals outlined above would result in a number of changes to the current version of the [Disclosure Of Profits And Advantages Code](#). The proposed tracked changes can be viewed by clicking [here](#).

Next Steps

22. The consultation will last 12 weeks. A summary of the responses received will be published within 4 weeks of the consultation's end. Consultation responses will help inform the policy approach discussed at CLC Council. The agreed policy approach will be announced within 12 weeks of the consultation's end. Should the Disclosure of Profits and Advantages Code be revised in light of this, there will be a 12-week lead-in from its publication to its requirements going live.

Please click on this [link](#) to respond to this consultation.

Referrals Consultation – Overview of Responses

In the period of December 2012 to March 2013 we consulted upon our referral arrangement provisions. 65 stakeholders responded in total, thank-you to all who contributed to the consultation. This document sets out the findings of that consultation exercise:

The majority consider that:

- the CLC should continue to permit referral arrangements;
- the disclosure and publication provisions we have proposed are appropriate and proportionate;
- it would not be proportionate for the CLC to provide an agreements template or to publish an overview of the arrangements in place.

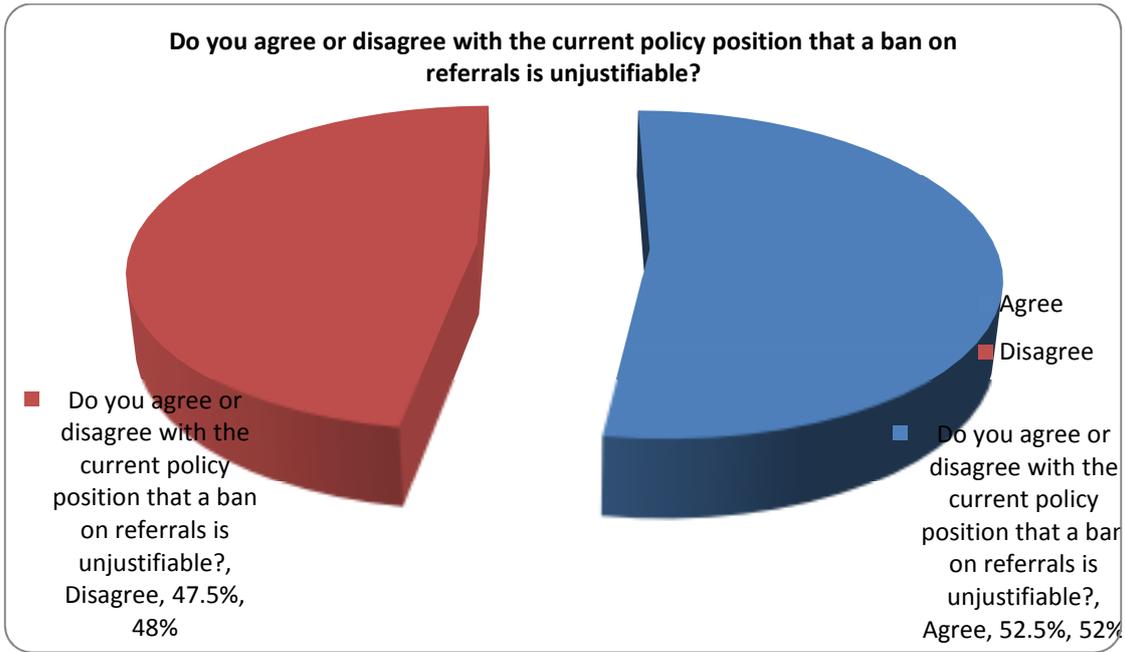
These findings, and the opinions behind them, will help inform our direction of travel, which will be determined and published over the next few months.

Stakeholder demographics

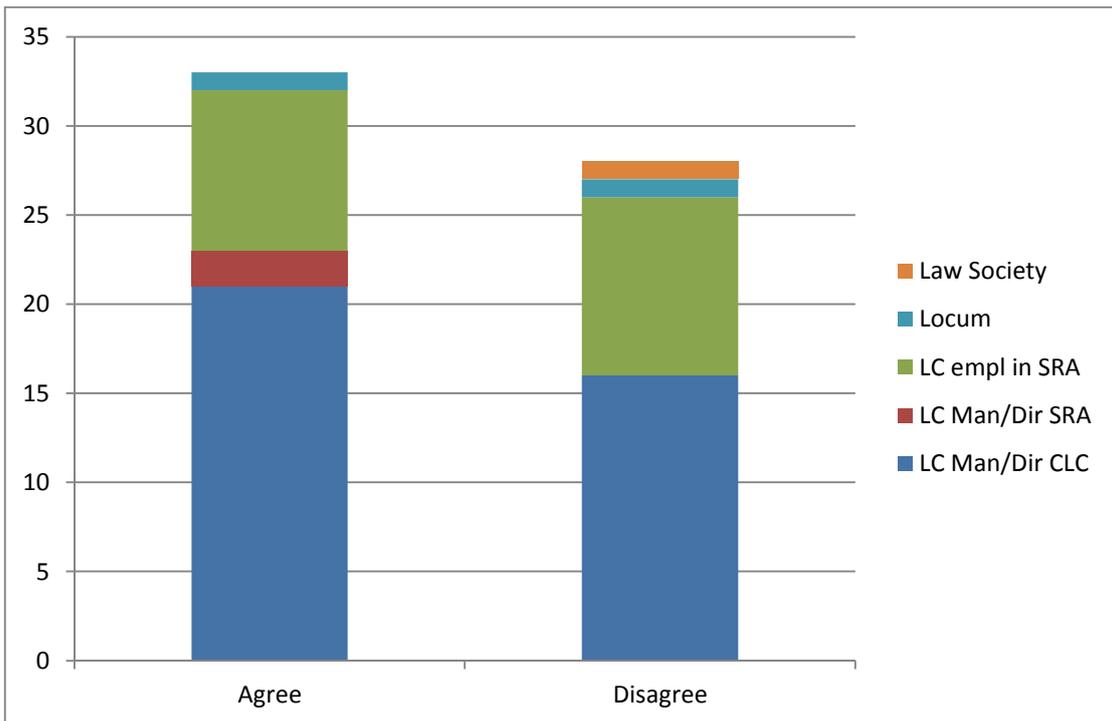
- Of the 55.4% of respondents who were responding on behalf of their firm, the majority, 59.5% did not have referral arrangements in place.
- Of the 65 respondents, 36 were managers of CLC Practices, 20 were licensed conveyancers employed in SRA practices, 3 were managers of SRA practices, 2 were licensed conveyancers employed in industry, 2 were licensed conveyancers who act as locums, 1 used to practise as a licensed conveyancer and 1 was the Law Society.
- Of the 36 managers of CLC practices, 14 respondents are in practices with turnover of less than £100,000, 16 are in practices with turnover of between £100,000 and £500,000, 2 are in practices with turnover of between £500,000 and £3,000,000 and 4 are in practices with turnover of more than £3,000,000.

1. Should the CLC ban referral arrangements?

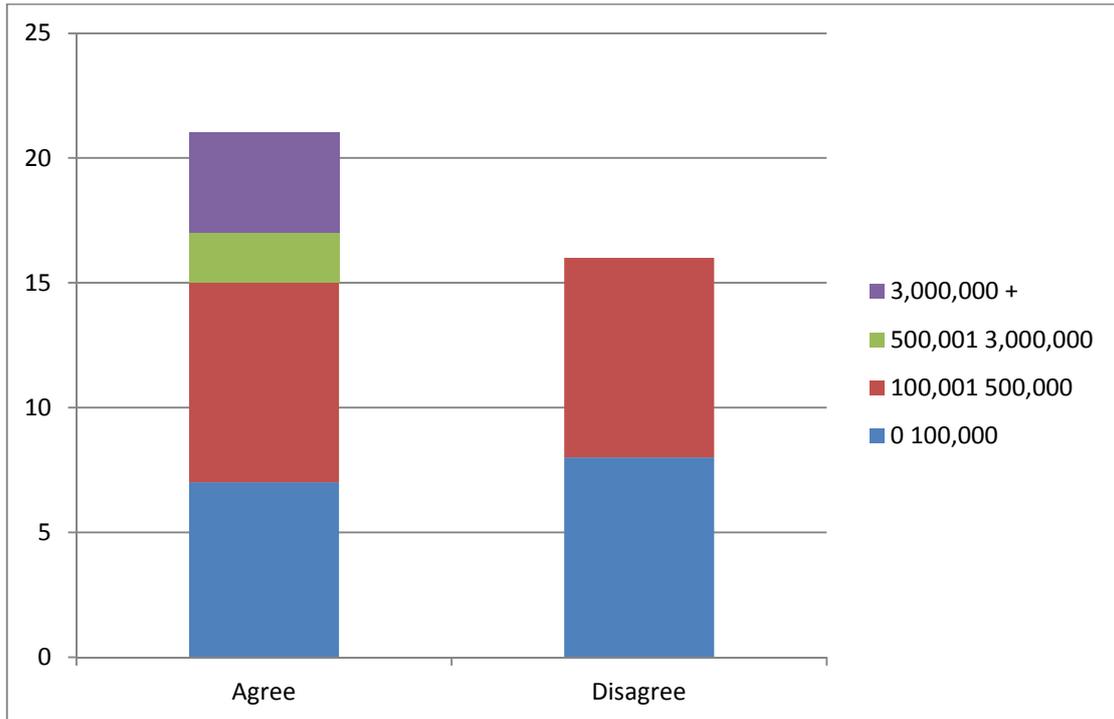
Majority (52.5%) answered – No:



Applying the categories set out above the respondents can be broken down as follows:



And for the managers of CLC Practices, the respondents can be further broken down by the turnover of practices:



Whilst, as might be expected, the larger practices by turnover favour retention of referral arrangements, the smaller practices by turnover are fairly evenly divided on the issue (see in particular comment below that banning of referral arrangements would mean that smaller practices would not survive).

Why the CLC adopted the provisional policy position that referral arrangements should be retained: the government's 2011 decision to ban referrals of personal injury claim was prompted by the perceived need to curb the compensation culture in this area. In contrast, the Legal Services Board, having commissioned two substantial pieces of analysis, found there to be little evidence of significant detriment to the client or public interest. As our own monitoring activities have reached a similar conclusion, we considered there to be no regulatory case for a blanket ban.

Themes of responses which considered referral arrangements should continue to be permitted:

Consumer benefits:

- one stop-shop;
- value for money;
- purchasing power; and
- an introducer will not wish to be associated with a firm of lawyers that does not meet high standards.

Transparency:

- any potential harm to the client is mitigated through the disclosure of the arrangement;
- if banned, such arrangements will go underground, will not be monitored and will not have VAT applied.

Competition concerns:

- to ban such arrangements outright would amount to a restraint of trade;
- the legal services sector should be focused upon generating growth and focusing on clients, not on increasing red tape;
- 2 responses suggested that the banning of such arrangements would mean that some small firms could not survive, (in direct contrast to the responses of several sole practitioners and smaller firms which judged such arrangements as threatening their existence – see below); and
- one respondent considered that the popularity of online comparison sites – which take a referral fee – demonstrates public support for the referral approach.

Forward planning: the ability to forecast the volume of new instructions with some degree of certainty encourages practices to invest in the continuing development of systems and processes which, ultimately, improves the service and experience to the customer.

Themes of responses which considered there should be an outright ban:

Conflicts of interest:

- referral fees compromise independence and are not in the best interests of the client
 - referral agents are given too much control about how the work should be undertaken; and
 - lawyers look to keep the referrer happy rather than the client.
- 3 respondents suggested that referral arrangements generated issues such as higher costs, dishonest methods, lower conveyancing standards, and capacity and capability shortfalls resulting in slow and poor service.

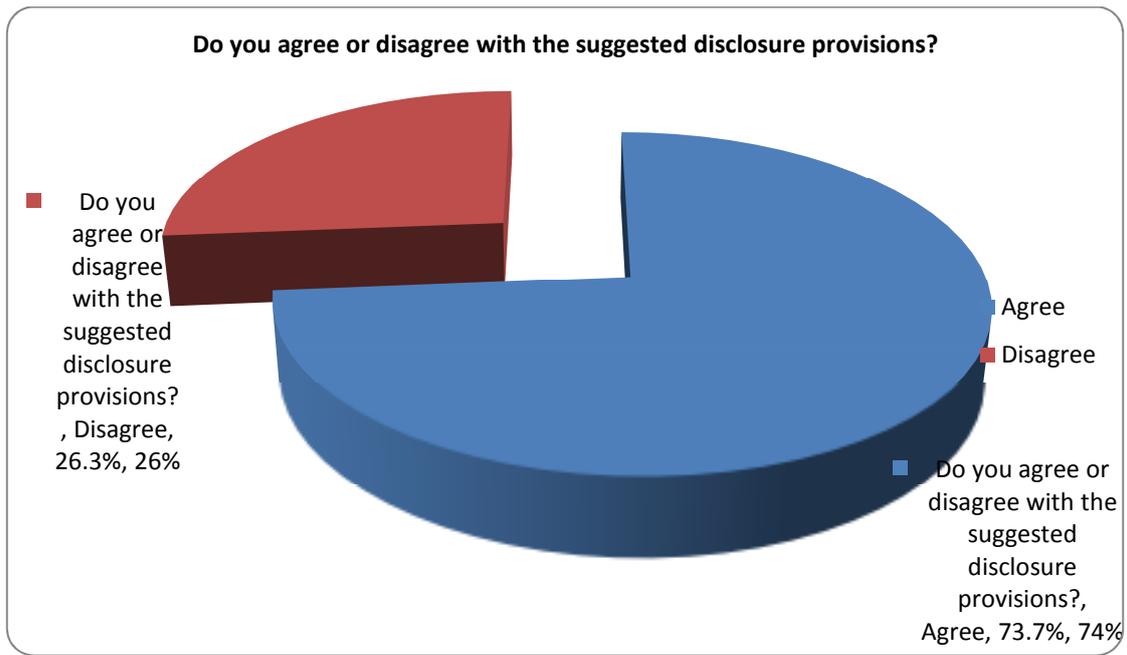
Competition concerns:

- 5 respondents suggested that such arrangements disadvantage the sole practitioner, essentially ‘killing the smaller practices’ and forcing them to lower their fees; and
- a couple of respondents were clear that workload should be based upon reputation rather than referral.

Fee misrepresentation: although not directly the subject of the consultation, concern was expressed by 2 respondents concerning inconsistencies between fee estimates and final charges and disbursements presented as other.

2. Should firms disclose more information as standard?

Majority (73.7%) answered – Yes:



Provide overview of the suggested disclosure provisions: though we provisionally concluded that a ban could not be justified, we also considered that the current regulatory provisions did not go far enough to ensure consumer choice. We therefore suggested that clients should be provided with information of the arrangement’s nature, the name of the relevant third party, how the payment is calculated and the impact of it on the client. The client must be notified of the arrangement no later than when accepting instructions, be informed of any restriction or limitation affecting the introduction, and advised of their right to shop around.

- Themes of responses which considered the suggested disclosure provisions appropriate:**
- if referral arrangements are to remain they must be disclosed;
 - advising the client they can shop around is an adequate protection; and
 - if no ban to be bought in, set the bar as high as possible.

- Themes of responses which considered the suggested disclosure provisions were not appropriate:**
- Proposals go too far:
- if displayed openly and transparently, already existing arrangements provide proportionate protection for clients;
 - the current provisions are in keeping with outcomes-focused regulation;
 - the proposals are a step backwards, creating unnecessary red tape and removing the CLC’s common sense and helpful approach to regulation;
 - a simple statement explaining a fee might be paid is sufficient;
 - too onerous to give specific name of referrer, instead provide generic description (e.g. ‘your estate agent/financial adviser’);
 - provide generic statement of amount paid and confirmation this does not affect the quote;
 - remove requirement to say how sum is calculated: this is a commercial matter for the business and may be subject to change due to changing volumes; and

- 'shop around' reminder and wording unnecessary.

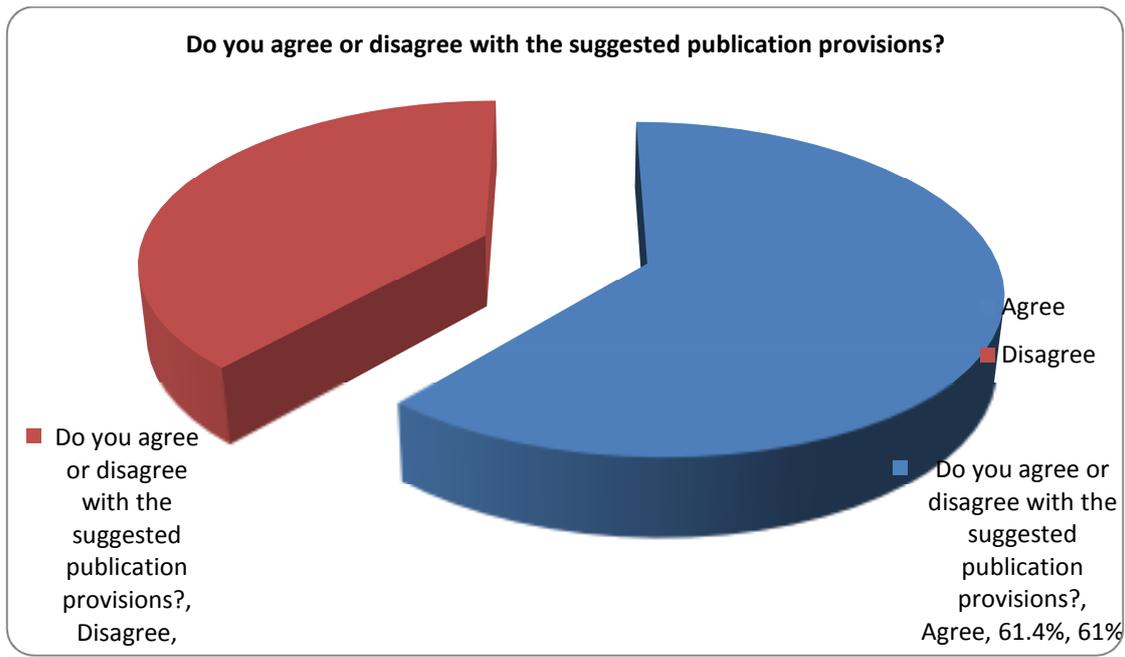
Proposals do not go far enough:

- the exact monies paid need to be specified and more detail is needed about how the disclosure is made; and
- One respondent considered the real issue to be the 'lies and malpractice' of estate agents rather than the extent of the information the legal firm is required to provide.

3. Publication

3a. Should the arrangements be in writing and periodically reviewed?

Majority (61.4%) answered - Yes



What the CLC proposed: our provisional policy proposal was that all such arrangements should be in writing and subject to periodic review. We did not consider it appropriate for firms to publish individual referral arrangements as this would be inconsistent with the regulatory objective to promote competition. In addition, the proposed disclosure provisions would require a client to be informed of the impact the arrangement has upon them.

Themes of response which considered the suggested publication provisions appropriate:

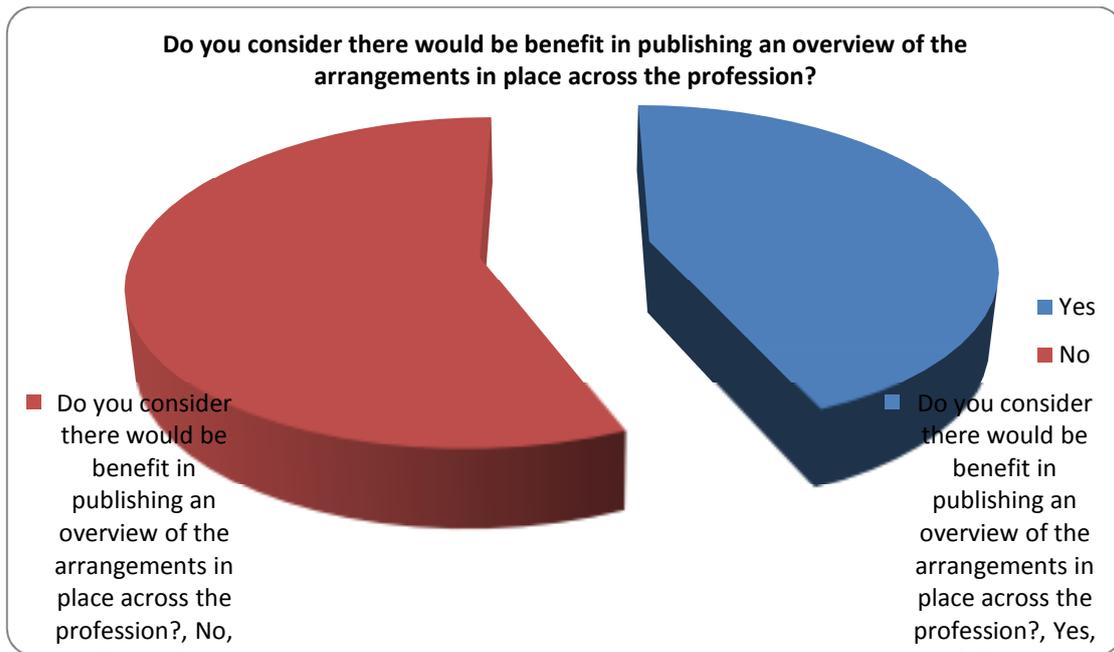
- if endorsing referral arrangements, need to have rigid procedure in place;
- for the sake of clarity we see no reason why referral arrangements should not be in writing and we would support proposal. Clearly they also should be reviewed periodically to see if they are still fit for purpose.

Themes of responses which considered the suggested publication provisions were not appropriate:

- adequate protection already in place, such prescription risks firms moving to another regulator;
- it would be better for the client if the estate agent had to make this disclosure;
- the client would not be interested in the actual arrangement details;
- provide information in annual return to CLC to inform supervision only;
- publishing lawyers' written agreements with introducers does not serve the consumer interest, only the interests of a firm's competitors.

3b. Should the CLC publish an overview of all of the arrangements in place?

Majority (56.4%) answered - No



What the CLC asked: should we publish an overview of the arrangements in place across the regulated community and if so, what could this include?

Themes of response which considered publication of an overview appropriate:

Transparency: in favour, particularly across all parts of the legal profession (should be a requirement of all)

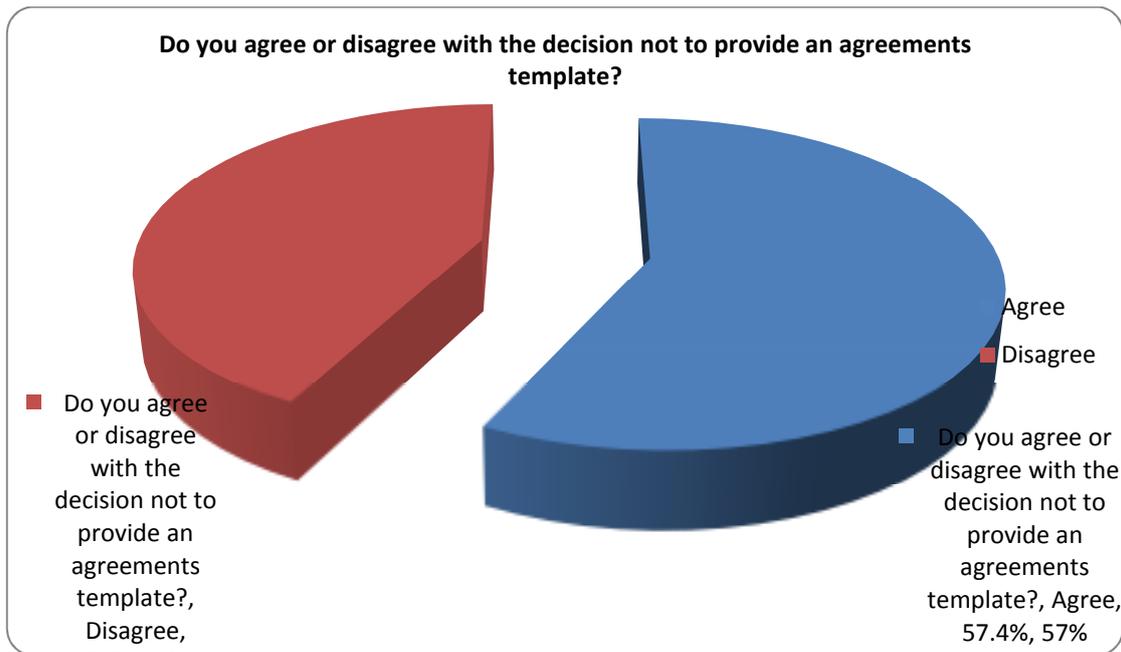
Geographical comparisons: would benefit from knowing the arrangements/fees in a particular area so have idea of what is and isn't reasonable

Themes of responses which considered publication of an overview not to be appropriate:

Misplaced: a couple of responses suggested provision of neutral guidance for public on referral arrangements to be a more appropriate allocation of resources which should help inform the decision of the potential client

3c. Should the CLC prescribe the form of an agreement?

Majority (57.4%) answered – No



Provide overview of the suggested overview provisions: we suggested that provision of a referral arrangements template is likely to be too prescriptive and not in keeping with outcomes-focused regulation.

Themes of responses which considered a template should be provided:

Consistency and specificity: if endorsing referrals, must have a rigid procedure in place so approach is uniform across the profession; if a CLC requirement to have written arrangements, it should specify what they need to include; helpful to see what might be expected in an agreement.

Themes of responses which considered a template unnecessary:

Too much detail: which may result in the CLC being perceived as an unnecessarily prescriptive regulator;

Will be ignored: corporate estate agents will ignore/override these.