



**LSB discussion paper**  
**Referral fees, referral arrangements and fee sharing**  
The CLC's response  
December 2010

## **The CLC's response to the LSB discussion paper referral fees, referral arrangements and fee sharing**

### **Introduction**

1. The Council for Licensed Conveyancers ("the CLC") was established under the provisions of the Administration of Justice Act 1985 as the Regulatory Body for the profession of Licensed Conveyancers. As set out at section 28 Legal Services Act 2007 the CLC must, so far as is reasonably practicable, act in a way—
  - (a) which is compatible with the regulatory objectives (set out at section 1 of the Legal Services Act 2007), and
  - (b) which it considers most appropriate for the purpose of meeting those objectives.
2. Further, the CLC must have regard to-
  - (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and
  - (b) any other principle appearing to it to represent the best regulatory practice.

### The purpose of the CLC

3. To set entry standards and regulate the profession of Licensed Conveyancers effectively in order to:
  - secure adequate consumer protection and redress;
  - promote effective competition in the legal services market, and;provide choice for consumers
4. The CLC welcomes the opportunity to respond to the LSB's discussion paper on referral fees, referral arrangements and fee sharing.

### **The CLC's Response to the Discussion Paper**

#### **CHAPTER 5 CONCLUSIONS – PERSONAL INJURY AND CONVEYANCING**

##### **1. Do you agree with our analysis of the operation of referral fees and arrangements?**

Although it regulates conveyancing and probate and does not regulate the provision of personal injury services, the CLC agrees broadly with the conclusions in Section 5 of the discussion paper.

##### **2. Do you have additional evidence about the operation of referral fees and arrangements that should be considered by the LSB?**

No.

## CHAPTER 6 CONCLUSIONS – CRIMINAL ADVOCACY

### 3. Do you agree with our analysis of the operation of referral fees or fee sharing arrangements in criminal advocacy?

The CLC has no comment.

### 4. Do you have additional evidence about the operation of referral fees or fee sharing arrangements that should be considered by the LSB?

No.

### 5. In particular, do you have evidence about the impact of referral fees or fee sharing arrangements on the quality of criminal advocacy?

No.

## CHAPTER 7 RECOMMENDATIONS FOR IMPROVING TRANSPARENCY AND DISCLOSURE

### 6. Will the proposals assist in improving disclosure to consumers?

#### Recommendation 1

The CLC agrees Recommendation 1. As the discussion paper records at paragraph 2.27, licensed conveyancers are already required

to tell consumers, in writing and as soon as it is known, about the existence and amount of money that is payable by or to the licensed conveyancer, arising directly or indirectly from the consumer's instructions. Licensed conveyancers are also provided with guidance that requires consumers to be informed about the existence of arrangements for introduction and any sum to be paid in connection with the introduction.

It would need to insert into its regulatory arrangements an additional requirement for practices specifically advising the consumer's right to shop around for an alternative legal services provider.

#### Recommendation 2

The CLC is sceptical of the conclusion at paragraph 7.20 that the recommendation "will help promote competition because it will aid general economic efficiency and assist innovation". This conclusion is at odds with evidence referred to in the discussion paper and particularly the conclusions of the CRA Report (so far as conveyancing services are concerned):

There is therefore no evidence that referral fees lead to consumers paying more for conveyancing than would otherwise be the case<sup>1</sup>

and

Overall there is therefore no evidence that national conveyancers who use referral fees offer a lower quality of service than local conveyancers or that there have been concerning reductions in the customer's view of overall level of services due to referral fees<sup>2</sup>.

Further, the approach proposed in its specificity appears to run counter to the approach it commends in the regulation of ABS to be principles based and outcomes focused. In many ways the proposed approach seems to reinforce a view that principles based and outcomes focused approach is only applicable in non complex situations.

The CLC believes that this recommendation is disproportionate to the identified risks to consumers and the proposed policy option can be perceived as a 'lazy' option because it does not demonstrate how the proposed approach improves outcomes for consumers. The suggestion that the market, consumer organisations and consumers should scrutiny published agreements is in effect placing an undue and unnecessary burden on those stakeholders.

The CLC believes that it is not the role of the regulator to intervene unless there is demonstrable consumer or public detriment caused by a particular development in the market. The CLC is aware that there are already a large range of different methods by which instructions are referred from introducer to provider. It is not a new development. It accepts that in the last few years arrangements for the referral of matters have become more structured so that introducers can take advantage in effect of their ability to make referrals. As the CRA Report has confirmed this development has not resulted in a reduction in the quality of services because the referrer has demanded service level agreements.<sup>3</sup>

The CLC takes the view that arrangements for the referral of instructions from an introducer to a provider are commercially sensitive information which in other contexts would not be considered appropriate matters for disclosure.

Furthermore, if there is resistance to disclosure (assuming such rules were introduced), resources will be required to persuade and perhaps even enforce compliance at considerable cost to the legal regulators without, in the CLC's view, commensurate benefit for consumers.

The CLC believes that implementation of Recommendation 1 is in itself sufficient for the consumer to take an informed choice as to whether to instruct or to continue to instruct a particular lawyer. The CLC agrees with the Legal Services Consumer

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<sup>1</sup> Para 2.5.1 p.31 Charles River Associates Final Report "Cost Benefit Analysis of Policy Options related to Referral Fees in Legal Services" May 2010 at [http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/cra\\_impact\\_of\\_referral\\_arrangements\\_final\\_14may2010%28STC%29.pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/cra_impact_of_referral_arrangements_final_14may2010%28STC%29.pdf)

<sup>2</sup> Para 2.5.1 p.40 ibid

<sup>3</sup> Para 2.5.2 p.39 ibid

Panel that transparency requirements should be accompanied by proactive monitoring approaches such as mystery shopping to ensure that practices comply with the disclosure requirements.<sup>4</sup>

**7. Are there other options for disclosure that ARs should consider?**

The CLC has not identified any other options for disclosure.

**8. What are the issues relating to the disclosure of referral contracts by firms to approved regulators and their publication by approved regulators?**

See response to Question 6.

**9. How should these issues be addressed?**

See response to Question 6.

**CHAPTER 8 RECOMMENDATIONS FOR DELIVERING ACTIVE REGULATION**

**10. Will the proposals assist in improving compliance and enforcement of referral fee rules?**

The CLC is doubtful that all the proposals will assist in improving compliance and enforcement of referral fee rules. Based on the evidence in the discussion paper, we are not convinced that a bespoke compliance strategy is necessary.

The suggestion that greater visibility of action taken by regulators to ensure compliance with rules would lead to increased consumer confidence seems exaggerated and appears contrary to an outcomes focused approach. The CLC questions the assumption that consumers would have increased confidence in the regulatory regime because approved regulators publish their compliance activity even though such activity may be delivering poor outcomes.

The CLC supports the central conclusion that improved disclosure should be backed by proactive monitoring of the underpinning rules/principles where applicable. However, it appears the collation and regular publication of market data (although is unclear what constitutes market data) is unnecessary. Furthermore, the proposed publication of such data does not seem to derive from the analysis of the evidence presented in the discussion paper.

The CLC is concerned that the scope of the information to be collated and published is disproportionate to the detriment identified in this discussion paper. Furthermore, it seems that the LSB is shifting a responsibility for measuring consumer confidence on this issue to Approved Regulators which is a responsibility the LSB should be assuming for itself, as recommended by the Consumer Panel. The purpose of collecting and publishing such information seems unclear. It seems to be contrary to the Hampton principles which recommend risk based collection of information. The implied suggestion that improved transparency of this information is going to result in better outcomes is questionable and the current rationale for placing this additional

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<sup>4</sup> Para 1.37 Referral Arrangements May 2010

burden is inadequate.

The CLC is also concerned about the proposal that Approved Regulators should have consistent rules where possible without clear direction from the LSB as to the minimum standards it expects across the sector. Without such direction there is a risk that some regulators may be forced to agree rules which are unnecessary and disproportionate to the risks to consumers and to the wider public. The CLC therefore encourages the LSB to outline the role that it would take to set clear minimum standards where markets are regulated by more than one regulator.

**11. What measures should be the subject of key performance indicators or targets?**

It depends on what aspect of performance is deemed critical to measure. If the concern is level of compliance with the clear disclosure arrangements then a measure can be framed in those terms. Alternatively, in the short term the measurement could focus on the clarity of the disclosure arrangements.

**12. What metrics should be used to measure consumer confidence?**

The Consumer Panel recommended that the LSB should carry out regular surveys to monitor the impact of referral arrangements on levels of client satisfaction with outcomes and service and it seems sensible that the LSB should incorporate the measurement of confidence when it implements that recommendation.