

22 December 2010

Michael Mackay
Legal Services Board
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Dear Michael

Response to the Discussion Document on the Regulatory Treatment of Referral Fees, Referral Arrangements and Fee Sharing

The Royal Institution of Chartered Surveyors (RICS) is the world's leading professional body on all aspects of land, property, construction and the associated environmental issues. An independent, not-for-profit organisation, it regulates, represents and promotes over 140,000 individually qualified chartered surveyor members in over 140 countries worldwide. RICS operates under a Royal Charter which means that we are under a duty to promote the usefulness of the profession for the public advantage. Therefore, client/consumer and public protection goes to the core of everything that RICS, its members and regulated firms do.

We welcome the opportunity to comment on the discussion document. RICS, from the start of June 2007, introduced a new regulatory regime for members and firms. This requires members and firms to comply with professional standards, rules of conduct, ethical principles and good and best practice. The regulatory system is built upon the principles of better regulation, which are proportionality, accountability, consistency, targeted and transparency.

The approach taken to regulation by RICS is a pro-active risk based one. Firms we regulate have to complete an annual return in which they provide us with a range of information, for example, about:

- what their main areas of work are
- whether they hold clients' money
- confirmation that they hold the correct professional indemnity insurance cover
- confirmation that they have a complaints handling procedure with access to independent redress, such as the Ombudsman Services: Property, that is free for consumer clients.

In terms of assessing risk, one of the key risk areas is where firms hold clients' money. Within the UK, RICS regulates around 10,000 firms, of which 2,500 hold clients' money. We have a team of accountants that will visit all these firms to look at their systems and how protected clients' money is within the firms. Firms will be visited at least once every three years and more often if problems are identified. The emphasis is on protecting clients and the public but also ensuring that the firms RICS regulates are fully in compliance with our requirements.

RICS also undertakes other visits to firms to ensure that they are meeting the required rules of conduct and standards. We are currently extending this approach to compliance monitoring into the key area of property valuation. RICS is just introducing a registration scheme for all its members who carry out 'Red Book' valuations. The Red Book contains professional standards and best practice that surveyors need to comply with. Such an approach has, we believe, prompted interest from the European Commission who have expressed an interest in both the high risk and potential need for specialist regulation in this specialism, and from the financial sector in the wake of the credit crunch which was, in part, derived from a lack of effective regulation. RICS members are experts in their field and will soon add an additional layer of market protection for clients through registration and regulation.

As well as this pro-active approach to monitoring what our members and firms do, RICS also has in place a mature and comprehensive system to consider all complaints that we receive about members or firms. So cases have the potential to move from the investigations team into the disciplinary processes and ultimately end up before the Conduct Committee. Sanctions that RICS can take against members and firms range from, for example, fixed penalty fines, consent orders, conditions and expulsions. Our disciplinary structure, of course, includes appeal right for members and firms. Disciplinary hearings are also open to the public and decisions are publicised.

RICS very much considers that, by having in place these regulatory checks and balances around what our members and firms do, we provide good protection for clients, the public more generally and other businesses and charities. Whilst we have professionally led regulation, we do have a majority of independent people and independent chairmen on all our regulatory boards and committees.

RICS' work on transparency

RICS expects all its members and regulated firms to be open and transparent in all their dealings. This includes explaining exactly what the cost of the professional service is that they are providing. RICS recently consulted on the issue of professional fees and commissions in both the residential and commercial property markets. That work consisted of a consultation document, stakeholder meetings, a summary of responses to the consultation and final report. Electronic copies of that material can be found at: www.rics.org/transparency

The final report makes a number of recommendations aimed at regulators, trade associations, governments and consumer organisations. The key themes coming out of the work were that:

- Professionals should be open and transparent in what their services costs and make clear to the client/consumer what commissions they receive or pay and why.

- Commission per se is not a bad thing. However, there should be a clear link between commission being paid and the added value that is being brought to justify that commission.
- The client/consumer must be placed in a position to make an informed choice as to what services they want to procure.

The findings in the report also raised the issue of a lack of consistency in the market place in relation to the residential and commercial property sector. Yes, many practitioners comply with high standards and regulation but not all in the market place do. The report made the case for the Property Standards Board to be given legislative backing and to hold codes of practice that all those working in the residential property sector should comply with. However, the unwillingness to introduce such legislative change by the previous and current government has not helped here.

Legal Services Board proposals

Your proposals on improving transparency and disclosure for consumers appear sensible; especially highlighting the fact that consumer's do have the right to shop around. You may wish to consider whether it is desirable to include a requirement that those receiving a commission payment should explain to consumers why they are getting that payment, i.e. what the added value is that they bring for that commission. It is also appropriate that all referral fees should be in writing. We would support the approach of 'Reveal, regulate so retain'. The goal must be that consumers are put in the position of having relevant and easily understood information from which they can make an informed choice.

Your recommendation that regulators should collect and publish all agreements between introducers and lawyers is an interesting one. On the one hand, it is highly commendable and would introduce excellent transparency, but on the other hand, what will you do with that information? For example, how easy will it be to collect that information and keep it up to date; and how will consumers access and be able to compare and understand that information?

In relation to the approved regulators setting out their compliance strategy for referral fees, will you be trying to promote consistency in how and to what extent regulators monitor compliance and to what measures? The closer they are will probably mean greater consistency in the market place and make it simpler for consumers to know that what ever legal service they use similar protections will apply.

Access to justice

With regard to the information provided in the paper around the review of civil litigation costs, we would like to raise the point around the growth of the compensation culture. I know that the Government is looking at this issue. There is a fine balance to be struck between building a legal system that provides access to all but not building a system where legal services actively seek out potential claimants or go on 'fishing expeditions' or 'ambulance chasing'.

Future working

It seems sensible to keep this under review. RICS would welcome joint working with the LSB and others in trying to bring greater consistency in the market place, increase competition, ensure that the consumer journey is smoother, more straightforward and better informed.

Yours sincerely

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