

Improving the home buying and selling process

LSB submission in response to the Department for
Communities and Local Government's Call for Evidence

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Contents

Summary.....	3
Our interest in this issue	3
Regulatory data and research evidence on conveyancing.....	4
Improving competition in the conveyancing market	5
Referral fees	7

Summary

1. The key points we make in this submission are as follows:

- LSB and the relevant approved regulators of legal services have considerable data and research evidence on the conveyancing market. The LSB's information is published in full on our website.
- We share DCLG's ambition to improve competition in the conveyancing sector. Following the CMA's legal services market study in 2016 there is a concerted and coordinated effort underway by the legal services regulators and the LSB focused on increasing transparency by providers around price, service, redress and regulation.
- The LSB acted to improve transparency on referral fees by issuing statutory guidance following a two-year policy review that we conducted in 2009-11. The policy review found that there was not sufficient evidence of consumer detriment to justify a general ban on referral fees.
- We would need to see new evidence of consumer detriment to change the view we took following our policy review that a ban on referral fees in conveyancing cannot be justified on purely regulatory grounds.
- We would welcome action by government as necessary to ensure adequate transparency on referral fees by intermediaries such as estate agents.

2. We would be happy to meet DCLG officials to discuss our response.

Our interest in this issue and the link to our regulatory objectives

3. The Legal Services Board (LSB) is the independent oversight regulator of legal services within England and Wales. We regulate the eight 'approved regulators' that directly regulate legal services providers, some of which regulate firms active in the residential conveyancing market.¹ Further, 'Reserved instrument activities', which includes aspects of conveyancing, is a reserved activity under the Legal Services Act 2007 ('the Act'). This means that only persons authorised by one of the approved regulators can offer services captured by this definition.²
4. We and the approved regulators have eight statutory regulatory objectives. The regulatory objectives of most relevance to improving the home buying and selling process, include the protection and promotion of consumers' interests, promoting competition and promoting and maintaining adherence to the professional

¹ The Solicitors Regulation Authority and the Council for Licensed Conveyancers are the two biggest regulators of conveyancing providers. However, conveyancing is to smaller extent also provided by individuals and entities regulated by the Bar Standards Board (barristers) CILEx Regulation (chartered legal executives) and Master of Faculties (notaries).

² See s12 and Schedule 2 to the Legal Services Act 2007. Note the definition does not cover all aspects of a conveyancing transaction. This creates scope for providers not authorised under the Act to operate and sub-contract the reserved elements of the work to providers authorised under the Act.

principles.³ Given the wider economic importance of smooth transfer of property rights, our regulatory objective of promoting and protecting the public interest is also relevant. It is to further those objectives that the LSB submits this response to the DCLG.

5. We can assist the DCLG in the following areas:

- Signposting to regulatory data and research evidence on conveyancing
- Improving competition in the conveyancing market
- Referral fees

6. We have not commented on the issue of buyers and sellers using the same conveyancing provider, which is a matter for individual regulators to consider.

7. It falls outside of our statutory remit to comment on the conveyancing process itself or other matters of substantive law. However, we note the interrelationship between these issues and regulatory requirements, for example in the area of education and training. Further, the quality of service provided by conveyancers is influenced by the conveyancing process and the wide range of actors involved. Many of the factors shaping the consumer experience of the home buying and selling are thus beyond the control of conveyancing providers (or regulators).

8. Finally, we note that the call for evidence is focused on buying and selling homes. Of course, other types of consumers, including small businesses, also regularly require conveyancing services and would potentially be affected by any reforms. Our evidence is that about 50,000 SMEs use conveyancing services every year.⁴

Regulatory data and research evidence on conveyancing

9. We understand that the Solicitors Regulation Authority and Council for Licensed Conveyancers both plan to submit responses to the call for evidence so we will not duplicate their information on the supply side of the conveyancing market. However, we note the market is characterised by a large number of providers, including many small businesses. The market has also witnessed consolidation in the context of fewer conveyancing transactions since the 2008 financial crash.

10. The LSB has commissioned the following research which offers useful insights:

- Our individual legal needs survey contains a sample of 634 consumers who have experienced issues relating to owning or buying residential property.⁵

³ Three of the professional principles are particularly relevant to referral fees: act with independence and integrity; maintain proper standards of work; and act in the best interests of their clients.

⁴ BMG Research, The legal needs of small businesses 2017: Prepared for the Legal Services Board (forthcoming). The figure is extrapolated based on 0.01% SMEs reporting a conveyancing legal need in the last 12 months.

⁵ <https://research.legalservicesboard.org.uk/wp-content/media/Online-survey-of-individuals-legal-issues-REPORT.pdf>

The survey presents findings on many aspects of individuals' experience including the strategies adopted to resolve these issues, the factors which shaped individual choices, satisfaction and how issues concluded

- We have published two waves⁶⁷ of research into the prices of common legal services, including five conveyancing scenarios. As well as information on prices, the research provides insights into transparency in the market
- We surveyed providers regarding innovation in legal services and we are in the process of updating that survey. While not specific to conveyancing, it contains insights relevant to the call for evidence, for example in relation to technology⁸
- We commissioned independent economic analysis of the impacts of referral fees to inform a policy review during 2009-11.⁹ The review also considered independent advice from the Legal Services Consumer Panel (LSCP) which commissioned consumer focus groups on this issue¹⁰
- The LSCP publishes an annual tracker survey¹¹, which includes a sub-sample of users of conveyancing services. This covers a range of issues such as choice factors, billing methods and satisfaction.

11. Our practice is to publish anonymised raw data from our surveys on our website so that it can be accessed by policymakers and others. Therefore, DCLG will be able to access more data than is summarised in the main written reports above. We would of course be happy to discuss our research data with officials.

Improving competition in the conveyancing market

12. We share DCLG's ambition to improve competition in the conveyancing sector. Data from our latest research on the price of conveyancing reveals that while prices have fallen for two property purchase scenarios we tested, there remains a very wide spread of prices and low levels of transparency by providers on price.¹² For example, the price difference between the middle 50% of firms was about £250 for a freehold purchase, and £500 for a freehold sale and purchase. Although about 80% of conveyancing firms quoted fixed fees, only 11% advertised any prices on their websites. And 74% of those who did not advertise prices on their website said they had no current plans to start doing so.

⁶ 2016 survey <https://research.legalservicesboard.org.uk/wp-content/media/Prices-of-Individual-Consumer-Legal-Services.pdf>

⁷ 2017 survey <https://research.legalservicesboard.org.uk/wp-content/media/Prices-of-Individual-Consumer-Legal-Services-2017-FINAL-MAIN-1.pdf>

⁸ <https://research.legalservicesboard.org.uk/wp-content/media/Innovation-Report.pdf>

⁹ <https://research.legalservicesboard.org.uk/wp-content/media/2010-Investigation-into-referral-fees-report.pdf>

¹⁰

http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Vanilla_Research_ConsumerResearch_ReferralArrangements.pdf

¹¹ http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/index.html

¹² <https://research.legalservicesboard.org.uk/wp-content/media/Prices-of-Individual-Consumer-Legal-Services-2017-FINAL-MAIN-1.pdf>

13. DCLG will be aware of the legal services market study carried out by the Competition and Markets Authority (CMA) during 2016. In our role as oversight regulator we are playing our full part in a coordinated and concerted effort to improve competition which is focused on increasing transparency in the market. In particular, we have accepted a specific recommendation to:

- Monitor and engage with the frontline regulators on their progress in implementing the CMA's recommendations directed to them
- Report publicly, at appropriate intervals, on the sufficiency of action plans published by regulators individually and collectively and the progress in delivering those action plans
- Take appropriate action where regulators fail to address information gaps.

14. In implementing this recommendation, in line with the CMA's conclusions, we have asked the regulators to focus on achieving four high-level outcomes:

- Action to deliver a step change in standards of transparency to help consumers (i) to understand the price and service they will receive, what redress is available and the regulatory status of their provider and (ii) to compare providers
- Promotion of the use of independent feedback platforms to help consumers to understand the quality of service offered by competing providers
- Facilitation of the development of a dynamic intermediary market through making data more accessible to comparison tools and other intermediaries
- Making better information available to assist consumers when they are identifying their legal needs and the types of legal services providers (both regulated and unregulated) who can help them.

15. Our work on this recommendation is well underway. We have assessed the action plans produced by the regulators in response to the CMA's final report. Our assessment was that all the action plans provide a sufficient starting point from which the transparency reforms can be delivered. Of relevance to the call for evidence, we are encouraged to see plans for a significant redevelopment of the Legal Choices website. This is a joint initiative among the regulators which is designed to support consumers make better choices.

16. We are confident that improved market transparency can be delivered without government intervention. However, consistent with the wider open data agenda, government could help by facilitating publication of data held by its agencies which may indicate the quality of providers. For example, we are pleased that the Land Registry's new Business Strategy 2017-2022 includes looking at publishing its comparative conveyancer data to provide consumers with a real picture of how well their conveyancer is performing, and to enable firms to track their relative

performance.¹³ The CMA has also made a recommendation to the Ministry of Justice that it coordinates changes to content on GOV.UK and introduces signposting to the Legal Choices website across its content.

Referral fees

17. The Call for Evidence asks whether the government should take further action to enforce current transparency regulations regarding disclosure of referral fees. Further, it asks what the impact would be of banning referral fees between estate agents and conveyancers and mortgage brokers. The government is concerned that referral fees increase cost to consumers and may hamper competition.
18. We understand that the SRA and CLC will provide data on the use of referral fees among their regulated communities in their responses to this Call for Evidence. Without repeating this data here we note that referral fees are very commonly used by firms of all sizes in conveyancing work. Further, data from the LSCP's latest Tracker Survey indicates that 28% of consumers choose their conveyancer based on a referral from a commercial organisation. Thus it is evident that a ban on referral fees would have a significant impact on the operation of the market.
19. The LSB acted to improve transparency on referral fees by issuing statutory guidance using our powers under s162 of the Act. This followed a two-year policy review that we conducted during 2009-11.
20. Our statutory guidance is that regulators should deliver the following outcomes:
 - Regulators have arrangements that:
 - reduce the likelihood of detriment to consumers as a result of allowing referral fees, referral arrangements and fee sharing
 - can justify any ban or restriction on referral fees, referral arrangements and fee sharing with reference to evidence, regulatory objectives and Better Regulation Principles
 - Consumers know when referral fees and/or referral arrangements are or may be in place in order to inform their choices.
21. Our statutory guidance applies to conveyancers who are authorised persons under the Act. It does not place obligations on estate agents, mortgage brokers or other intermediaries as these fall outside our statutory remit. We would welcome action as necessary to ensure adequate transparency on referral fees by these actors since they have a key role in steering the consumer's choice of conveyancer. Once the conveyancer has disclosed the referral fee in a client care letter it may be too late to have a material impact on the consumer's choice.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/662811/HM_Land_Registry_Business_strategy_2017_to_2022.pdf (page 15)

22. Our policy review during 2009-11, which had a specific focus on conveyancing, concluded that ‘the *purely regulatory* case for a general ban in the legal services market has not been made out. This is because sufficient evidence of consumer detriment, which would have been needed to merit a ban, has not been found’. We encourage DCLG to review the independent economic analysis and other research which underpinned the conclusions of our review. Of note:

- Independent economic analysis by Charles River Associates¹⁴ found:
 - Over time informal referral arrangements have formalised into estate agents using panels of conveyancers they recommend to clients. Panels would likely still be used if a referral fee ban was introduced
 - Research data shows consumers were more likely to shop around for conveyancing than in other areas of law
 - While there was evidence of the size of referral fees increasing over time there was no evidence that this was increasing conveyancing fees paid by consumers, which had remained broadly constant
 - Average conveyancing fees for those conveyancers paying referral fees were in fact cheaper than those who did not pay referral fees
 - No evidence that the quality of conveyancing was being reduced
 - ‘Creative schemes’ would be used to get around any ban, or large law firms and estate agents could opt to become an alternative business structure (i.e. become part of the same firm)
- Advice by the LSCP¹⁵ was that referral fees could be retained, provided that they were revealed and properly regulated. This was informed by evidence from consumer focus groups¹⁶ which also emphasised transparency.

23. We note the CMA’s view in its legal services market study, that intermediaries can play an important role in driving competition between providers. It found some evidence that they have been able to improve outcomes for consumers as a result of their better knowledge of the market due to repeated engagements with providers and their understanding of prices, services and quality.¹⁷

24. We are concerned to ensure that any action taken to restrict payment of referral fees does not have unintended consequences for digital comparison tools, such as comparison websites. Some comparison websites and similar lawyer matching

¹⁴ <https://research.legalservicesboard.org.uk/wp-content/media/2010-Investigation-into-referral-fees-report.pdf>

¹⁵

http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/ConsumerPanel_ReferralArrangementsReport_Final.pdf

¹⁶

http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Vanilla_Research_ConsumerResearch_ReferralArrangements.pdf

¹⁷ See paragraphs 3.135-3.163

<https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>

services involve referral fees or equivalents, albeit we understand the sums are typically far smaller than referral fees between estate agents and conveyancers. Comparison websites have yet to gain a foothold in the sector but there are recent new entrants that have attracted substantial investment. We are keen to see the growth of comparison websites since they could help to raise public awareness of legal services and facilitate easier choice between providers.

25. In sum, we would need to see new evidence of consumer detriment to change the view we took following our policy review that a ban on referral fees in conveyancing cannot be justified on purely regulatory grounds. We consider actions being taken to improve transparency in the conveyancing market as a whole, alongside existing specific transparency requirements on conveyancers around the payment of referral fees, are the appropriate policy response at the current time. We would welcome action by government as necessary to ensure adequate transparency by intermediaries such as estate agents.