

No room for compromise

The Legal Services Consumer Panel's study into referral fees calls for transparency to enable consumers to make informed choices about service providers. Here, **Christopher Hamer** explains.

The Legal Services Consumer Panel defines referral arrangements as any arrangement under which business is received from, or referred to, a third party. The third party in this definition could well be an estate agent referring a seller or prospective buyer to a licensed conveyancer or a solicitor.

Agents should therefore be aware of the overall view of the LSCP, which was established under the Legal Services Act 2007 to provide independent advice to the Legal Services Board about the interests of consumers of legal services in England and Wales.

Compromise

The LSCP identified that consumer interest in connection with referral arrangements related to how the payment of a referral fee to, for example, an estate agent, might lead to a recommendation to use an unsuitable provider of other services. It might also compromise the ability of the consumer to benefit from competition on quality, price and choice of supplier.

The LSCP's research uncovered allegations of problems such as conveyancers seeking to protect a property sale – and therefore the estate agent's commission – by



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turning a blind eye to a planning issue. Such a situation, it implied, could arise because both parties would be keen to protect their income flow and the referral fee bound them together.

However, in testing these allegations the LSCP found no evidence to substantiate such claims. Further, while it identified that three in 10 consumers are referred to their conveyancer or solicitor by an estate agent, its research showed that consumers were not paying more for work because those conveyancers or solicitors had to pay the agent – in fact, consumers' average payment was considerably lower.

The report from the LSCP also identified other examples of possible conflicts between parties arising from a referral, but these were in relation to personal injury claims.

Reservations

Despite its lack of evidence to support allegations of unfair practice in regard to the payment of fees, the LSCP nonetheless has some reservations about referral arrangements, concluding that action is needed to regulate this area. It suggests active enforcement and to ensure transparency exists to enable consumers to make informed decisions.

The report is intended for the Legal Services Board, which is responsible for progressing any recommendations. However, given the coalition government's aversion to regulation, I think that a regulatory framework is unlikely to be considered a priority.

Permission

The main thrust of the report makes it clear that referral arrangements should continue to be permitted.

Agents should nonetheless ensure that they apply best practice in this regard. It is paramount that buyers or sellers of residential property should always have the choice of who acts for them in the conveyance of the property. The LSCP may not have any evidence that choice is being compromised, but it is always possible that payment of referral

fees and the level of fees will influence the referring party.

Code

Our code of practice clearly states that buyers or sellers cannot be required to use any associated service an agent may offer, and there must be no refusal to progress a transaction because the buyer or seller has opted out of an arrangement where the agent would have received a referral fee.

I suspect that many consumers readily accept the availability of an associated or recommended service as an easy option in achieving their desired goal of moving house. But agents should, in order to avoid any dispute or allegation of unfairness, provide buyers or sellers with a clear explanation of the terms of any recommendation to use a linked service, however that linking has come about, and the options open to them.

Agents must equip buyers and sellers with appropriate and adequate information with which to make an objective decision, and that explanation should happen before the consumer is committed to any arrangement involving a third party supplier. This will help bring about the transparency that the LSCP considers important.

