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A handwritten signature in black ink that reads 'Dear Diane'.

Referral fees

We have now concluded our review of referral fees. We publish our conclusions tomorrow and I enclose an advance copy of our decision document.

Your advice to us has been invaluable and was central to the proposals we consulted on in September. Your advice set out a persuasive analysis of the impact of referral fees on consumers and was backed by empirical research which has ensured that consumers' views were fed into the process directly. Your conclusion of "reveal, regulate so retain" was the basis for our discussions and has remained fundamental to our final decisions on referral fees.

Our conclusion now is that regulators should act to:

- reduce the likelihood of detriment to consumers as a result of allowing referral fees, referral arrangements and fee sharing
- justify any ban or restriction on referral fees with reference to evidence, regulatory objectives and better regulation principles
- ensure that consumers know when referral fees and/or referral arrangements are or may be in place in order to inform their choices

To help ensure that the outcomes are achieved in practice, the Board is also:

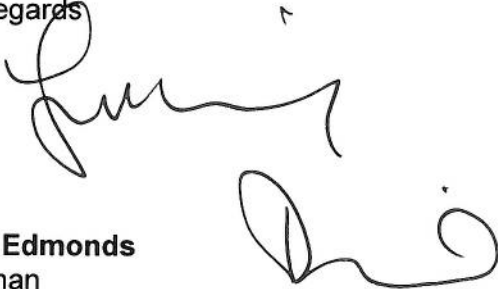
- setting a clear expectation that each Approved Regulator should review their own practice to ensure that the outcomes are achieved
- setting out clear and comprehensive guidance on how that task might be achieved
- ensuring that the guidance has statutory force under S162 of the Act, enabling us to assess the extent to which it has been taken into account
- planning further work to assess implementation in 2013-14

We believe that this is a balanced conclusion. There is clear evidence that current disclosure and compliance arrangements do not function effectively in building consumer and public confidence. Therefore, the case for action is strong,

However, there is relatively little hard evidence of actual or potential harm to consumers or the public interest. The Board therefore believes that a blanket ban cannot be justified as proportionate, but that Approved Regulators should have the discretion – and indeed the responsibility - to respond flexibly to the differing conditions in different parts of the market. We intend to properly hold them to account in doing so.

The Act requires that where we have disagreed with a view or proposal you have made we should let you know why this is the case. I have included a short table showing our response to your recommendations. You will see we have agreed with the majority of them. Where we have not I think that the concerns you have expressed will largely be covered by the guidance we have given to Approved Regulators. However, if there are points which you would like to discuss further, please do not hesitate to let me know.

Kind regards

A handwritten signature in black ink, appearing to read 'David Edmonds', with a large, stylized flourish at the end.

David Edmonds
Chairman

CONSUMER PANEL RECOMMENDATIONS AND LSB RESPONSE

Recommendation	LSB response
Referral arrangements should continue to be permitted, but the LSB should review the market in three years time.	The detail will be considered in the light of the consultation and the business planning process but we are committed to a thematic review in 2013-14.
The LSB should lead a collaborative initiative to achieve a consistent set of regulatory requirements within and outside the legal sector	We will consider this further with OFT, CMC, FSA among others.
The LSB should monitor through surveys the impact of referral arrangements on levels of client satisfaction with outcomes and service	We believe that this should be a function of ARs, steered by the guidance we have issued, rather than the LSB.
The LSB should consider further measures to improve transparency to place the consumer at the heart of referral transactions. This could include obtaining a client's written consent for referred conveyancing work.	We agree that it is important for transparency to be addressed to place consumers at the heart of referral transactions.
Approved Regulators should systematically collect data on referral arrangements.	We agree that ARs should collect data in a targeted and proportionate manner in relation to their own markets.
Approved Regulators should consider prohibiting firms from entering into bidding auctions or similar processes for referred work	We do not believe that there is evidence that bidding processes lead or are likely to lead to consumer detriment, but we do not preclude ARs from considering the issue further.
Approved Regulators should issue guidance on the circumstances under which a dependency on referral arrangements creates a risk of conflict.	We believe that this should be a matter for determination by individual ARs in the light of their own circumstances.
Licensing Authorities should introduce disclosure rules for all types of ABS.	We agree.
The OFT should consider investigating whether competition in relation to introducer panels is working effectively.	This is a proposal for consideration by the OFT. We have asked them to respond direct to the Panel.
The OFT should provide guidance on the likely application of general consumer law to referral arrangements	This is a proposal for consideration by the OFT. We have asked them to respond direct to the Panel.
The OFT, with its partners in trading standards, should carry out mystery shopping of pressure selling by estate agents and, if necessary, take enforcement action	This is a proposal for consideration by the OFT. We have asked them to respond direct to the Panel.
Business acquisition costs should be openly factored into the calculation of fixed fee regimes (developed by the Ministry of Justice) and Guideline Hourly Rates (set by the Master of the Rolls)	These are matters for MOJ and MR. We have made them aware of the Panel's recommendation.