



The Hampshire Incorporated Law Society
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Legal Services Board

BY EMAIL: consultations@legalservicesboard.org.uk

22 December 2010

Dear Sirs

Referral Fees

Please find attached the Hampshire Incorporated Law Society's Response to the Consultation Document relating to the above.

I am also attaching a copy of a letter from Churchers which please also take into account.

Yours sincerely

JAMES S MEEKE
President
Hampshire Incorporated Law Society

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The Response of the Hampshire Incorporated Law Society to the Consultation by the Legal Services Board concerning Referral Fees, Referral Arrangements and Fee Sharing

Set out below are the views of the majority of members of the Committee of Hampshire Incorporated Law Society in response to the Consultation Document.

General Statement

The Committee believes that Referral Fees have no place in the provision of legal services. They are a pernicious and unwarranted aspect of commercial life which has no place in a profession that provides legal advice to those who on the whole have little understanding of the Law or the procedures that are involved in delivering that legal service.

Great play is made of the proposition that Referral Fees are helpful in providing the public with access to justice. This proposition does not bear careful scrutiny. Save in the case of personal injury claims where the quite recent emergence of CMCs has to some extent helped the public to realise that they might have a right to make a claim for personal injury, the payment of a referral fee is an unnecessary and unethical cost which has absolutely no benefit to anyone except the party receiving the fee.

The client receives no benefit whatsoever in the property market for example as the client be he or she, seller or buyer receives no benefit from being sold to a solicitor with whom he/she has absolutely no connection. Indeed the client loses in several ways because he/she has no freedom of choice and very little chance to test the quality of the firm to whom he/she is being referred and little or no chance to see how competitive the solicitors fees are in the market place.

The Law Society eventually moved to ban Referral Fees because of the above concerns but by then many solicitors had changed their business model to accommodate the purchase of clients by the payment of large referral fees. In the end the Law Society was too late to move forward with a ban on Referral Fees.

It is obvious that Referral Fees have to be recouped from each transaction and invariably this is done by providing an inferior service using under-qualified paralegals. Some firms only survive by paying higher and higher referral fees to catch as large a slice of the market as possible to make good the considerable outlay that is required to acquire clients they would otherwise have little chance of securing.

This Society does not agree with the conclusion of the OFT. It should be borne in mind that estate agents "sell" both sellers and buyers and this does indeed lead to conflict of interest situations. The solicitor can usually find that he/she is doing the bidding of the agent rather than putting the client first. This is a dangerous situation and is certainly not in the best interests of the client.

We agree with the OFT suggestion that the Government should consider a statutory response in conjunction with tighter regulation of estate agents.

Lord Justice Rupert Jackson recommended that Referral Fees should be banned in P.I. cases but unfortunately they have not been.

We do not agree with the findings of Vanilla Research or the CRA. The main finding of the CRA is disputed especially the claim that there have been very few complaints about Referral Fees. Our members have plenty of evidence that people using solicitors to whom they have been sold/referred found the experience to be unsatisfactory both from the point of view of quality, speed of action and cost.

In our view the comparison with personal injury matters is wrong because the legal costs and the referral fee in such matters is invariably included within the claim and therefore the client does not suffer. It is obviously very different in conveyancing transactions.

Conclusion 5.1 is not sound in our submission. There is still a strong case for banning Referral Fees in conveyancing transactions.

Conclusions 5.8 and 5.9 are not true in the experience of this Committee.

Conclusion 5.13 is surely obvious.

Conclusion 5.14 is not accepted and must have been based upon a very poor sample.

Conclusion 5.15 cannot possibly be correct.

Your access to justice conclusions only apply to personal injury cases. There is no relevant argument when it comes to the choice of a solicitor to handle a conveyancing transaction. We disagree with your conclusion here as, in our view, Referral Fees should be banned in conveyancing transactions.

In reply to question 1, our members would say not so far as it relates to conveyancing.

Question 2, there is plenty of evidence of “vulnerable” sellers and buyers being pressured into accepting referrals to solicitors without understanding that they were being “sold” to the highest bidder. Estate agents should be more strictly regulated and we would suggest that a cooling off period of 14 days should be introduced to allow the client to reconsider the referral arrangement, to obtain fee estimates from other firms of solicitors and to have the ability to make a free and more informed choice of solicitor.

Seller clients are often pressured by estate agents at the time of giving instructions for a sale and our Committee has considerable evidence of this happening to their clients. In fact buyers are particularly vulnerable to this sort of pressure as quite often the implication is that their offer to purchase will not be favourably considered unless a particular firm of solicitors is used. We find that this is not an uncommon event and it is the worse possible commercial manipulation in our submission.

It is the estate agents that need to be more regulated. Many clients are still being considerably misled over referral fees despite what the agents claim. Obviously much of the deception is verbal and it is that element that is quite often contrary to what is written down and signed by the client. In many cases the clients do not understand what it is they are signing.

It is of concern to our members that regulation of introducers is outside the remit of the Legal Services Board.

Conclusion

Referral Fees should be banned until introducers can be properly regulated.

In view of this conclusion we have not considered Parts 7 and 8 of the Consultation Document although we would require better and stricter disclosure and regulation if Referral Fees are to continue. The most important thing is to regulate estate agents if this unfortunate practice of Referral Fees is to continue.



President
Hampshire Incorporated Law Society
22 December 2010

Mr N Gurney-Champion
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Our ref: JG/SLG/068715-006

Your ref:

14 December 2010

BY EMAIL:

Dear Mr Gurney-Champion,

Referral Fees

I refer to the Legal Services Board Consultation document relating to referral fees, referral arrangements and fee sharing.

I wish to comment, in particular, on the serious issues surrounding the payment of referral fees in the Conveyancing market.

I attach a copy of my previous letter to you on this point dated 11th January 2010 which sets out my views on the subject from careful consideration over a number of years' experience of referral fee arrangements and how they impact on the conveyancing market. My comments on the quality of the product provided by some conveyancing firms and the difficulties experienced in dealing with them remain our frequent experience.

I hope the following comments you assist in view of the desire to have further details of specific cases of abuse of the system:-

1. An 89 year old Client contacted me asking for her Title Deeds in relation to a sale of her present house and purchase of a flat. She was very bemused by having had correspondence from two sets of Lawyers, one relating to the sale and one relating to the purchase, both asking for payments on account, one having been instructed on her sale and the other firm of her purchase, but the Client had no idea why we were not instructed to act for her. She had expressed her wish to have my firm act for her as we had done for some time previously, but the referrals had taken place at the direction of the Estate Agents whom she had instructed on the sale of her property. She had been subjected to a "hard sale" of two firms to act in relation to her two transactions instead of remaining with my firm where we would act on both transactions contemporaneously.

The client did not know why the arrangements had been put in hand as recommended by the Selling Agents. She did not understand that a referral fee would be paid for her business as this had not been adequately disclosed.

My Firm does not pay referral fees to these or any estate agents, and my experience of these particular Selling Agents is that they will seek to divert Clients away from my Firm, notwithstanding that we are recognised as providing a high quality service to Clients and assisting transactions in the conveyancing market generally in the Solent area. The only reason for the recommendation of two separate firms to this elderly Client was that those firms made a referral payment to the Selling Agents concerned. The recommendations were not in the best interests at all.

2. On 8th October 2010 I received a telephone call from a Client of mine who had recently been widowed and was seeking to sell her existing property and move to another property nearer one of her children.

At the time that she telephoned me, the senior Branch Manager of a local Firm of Estate Agents was in her house having been asked to inspect with a view to possible sale.

When this long standing Client of mine (known to me for over 30 years) advised the Agent that Churchers would be acting for her, the Agent purported to require that she instruct their nominated Solicitors. The Client was upset by this, but had the presence of mind to telephone me to advise that the Estate Agent was seeking to insist on other Solicitors being instructed, a position from which he only relented by hearing my Client speak to me on the telephone. I understand this Firm has a reputation for "hard selling" their own referred Lawyers, again, not because this being in the best interests of the Client, but because they are paid a fee for each introduction.

3. Clients are caught unaware when they meet Estate Agents expecting to consider sales and purchases, but only then to find that they are being sold legal services with a Lawyer not of their choice. There is implied pressure on buyers who are making an offer to purchase a property that their offer will not be treated as seriously if they do not accept the choice of Lawyer put forward by the Estate Agent.

4. All dealings between Estate Agents and prospective Sellers and Buyers are, inevitably based on verbal exchanges. They are not recorded in writing until after choices have been made by Clients, and the paperwork may not then reflect the lack of open disclosure of the motivation for a lawyer referral. The above examples are helpful evidence of the working of the marketplace, but I am confident that they are only a small proportion of the diversion of my clients that takes place. Clients are hardly likely to telephone me to tell me they will not be using me!

5. It is impossible to adequately monitor and/or regulate the referral process.

Additional regulatory disclosures imposed on the legal profession do not address the fact that the referral is by Selling Agents and not Solicitors.

Solicitors are only instructed once the Client has been induced to accept the recommendation of the Estate Agent, and the anecdotal evidence I have received is that Clients did not really understand at the time that the recommendation was made for the purpose of procuring a referral fee. Agents' Terms of Business may well refer to referral fees or some form of financial relationship between the Agent and recommended Lawyer, but Clients unfortunately are unlikely to read the detail of these disclosures before signing up to the arrangement.

If referral fees are to continue, and I do not see that it in the best interests of anyone other than the agents receiving the payment – certainly not the client who receives nothing for the payment they are funding, regulation must be of the agents. Even then, the verbal nature of the exchanges that induce a referral are impossible to monitor, and complaint from the public is highly unlikely if they are not aware of the payment that is being made or the motivation behind it in the first place.

6. There is no opportunity for cooling off.

If referral fees continue, there should be a mandatory cooling off period of not less than 14 days for Clients to consider the choice of Lawyer.

This Regulatory framework must be imposed on those who are recommending the Lawyers, to provide adequate protections for Clients who are subject to persuasive forces to accept the Estate Agents' choice of Lawyer.

Invariably, Clients have not entered into conversation with Estate Agents expecting to be sold a Lawyer although the agent will have this in mind as an additional income stream of considerable significance at the present time.

It is exceedingly difficult for a Client to reverse that process once it has been started by the Selling Agent as the client will have been asked to sign up to it at first interview and entered into a contractual position already.

A cooling off period will avoid the inequity of a pressure sales position. It will permit Clients to test the proposal that has been put to them and assess in sober reflection whether they wish to accept the offer of Lawyer by a Selling Agent or make their own arrangements.

Yours sincerely

John Guest
Senior Partner