

**NATIONAL
TRADING
STANDARDS**

**Estate and Letting
Agency Team**

Protecting Consumers
Safeguarding Businesses

REFERRAL FEE TRANSPARENCY IN PROPERTY SALES REPORT

February 2020



FOREWORD

The National Trading Standards Estate & Letting Agency Team is hosted by Powys County Council and Bristol City Council. Powys County Council is designated by the Secretary of State as the lead enforcement authority for the purposes of the Estate Agents Act 1979, and Bristol City Council is designated as the lead enforcement for the purposes of the Tenant Fees Act 2019.

The team is primarily responsible for the regulation of estate agency work in the UK and lettings agency work in England, specifically:

- issuing prohibition and formal warning orders to those found unfit to engage in estate agency work in the UK, and maintaining the public register
- approving & overseeing the UK's consumer redress schemes, ombudsmen, and Alternative Dispute Resolution entities in the estate agency sector

- overseeing the operation of relevant lettings agency legislation in England

- issuing guidance and advice for the public, businesses and enforcement authorities on:
 - estate agency work in the UK
 - relevant lettings agency work in England

The team consists of officers appointed by both authorities and overseen by a senior manager. Arrangements are in place for officers from each authority to act on behalf of the other authority. These arrangements are intended to maximise the resources of each LEA and to complement the arrangements for enforcement of lettings agency work in the devolved nations of Scotland, Northern Ireland and Wales.

Funding for the team is provided by virtue of a grant from the Ministry of Housing Communities and Local Government which is administered by the Chartered Trading Standards Institute on behalf of National Trading Standards. The funding is ring-fenced by the host authorities for the work of the team.

“This report highlights some of the issues around the acceptance of referral fees by agents, the effect on consumers, and recommendations for the future.

It stresses the importance of transparency in all business dealings, regardless of what sector a business may operate in.

Our aim is to support businesses to comply with their legal obligations and to help build consumer confidence in the estate and letting agency industry.”

James Munro

Senior Manager, National Trading Standards
Estate & Letting Agency Team

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EXECUTIVE SUMMARY

The referring of customers to a preferred or recommended service provider in exchange for a fee or other consideration is a practice which occurs across several market sectors. This report examines the legalities surrounding the receipt of referral fees in the estate agency sector and the impact on buyers and sellers in the UK property market.

Typical arrangements exist in respect of referrals for conveyancing or other related legal work, financial services (mortgages etc.) and arranging an EPC. The amounts paid for referrals, and the proportion of the overall fee, vary widely. Alternative models also exist, for example where the fees charged to a seller increase when a preferred supplier is not used.

There is a variety of views on the subject of further legal controls, ranging from doing nothing to an outright ban on such fees.

In 2018 the Ministry of Housing and Local Government (MHCLG) expressed concern about the lack of transparency around the disclosure of

referral fees in the estate agency sector. MHCLG tasked the NTS Estate & Letting Agency team to investigate the practice and encourage transparency by the industry. The government made it clear that a ban on referral fees would be considered if transparency was not improved.

The team looked at the existing legal controls around referral fees, and obtained legal opinion about the potential for using wider consumer protection legislation to help improve transparency for consumers.

Customers of an estate agency may or may not be aware of the existence and prevalence of fees which are paid in exchange for their custom being referred to another business. Legal analysis of the concept of referral fees in light of established consumer protection regulations determined that disclosure of such fees is required as early as possible in the consumer-to-business interaction to ensure that consumers have the material information they need to know in order to take an informed transactional decision.

As a result, guidance was published setting out how agents should comply with the transparency requirements. This guidance was issued in early 2019 and the team embarked on a programme of advice and education to businesses, and monitoring of compliance by the industry.

The practice of referring consumers to preferred service providers in exchange for a fee is, arguably, a hidden one. The customers of those businesses who do not disclose such fees are likely to remain unaware of its existence; presenting a challenge for compliance researchers and to potential enforcement bodies alike. In the same vein, non-disclosure does not equate to non-compliance in all circumstances. A significant number of agents claim that they do not receive referral fees.

This report demonstrates the variety of views that have been expressed in relation to the guidance thus far, and of the concept of being transparent about referral fees generally, and couples this with the data available on the subject. It is recognised there is a dearth of available data, due in part to the very nature of

the fees involved. There is, however, a great level of interest in this subject on the part of the property industry, representatives of which have expressed concern over the implications of a potential ban on referral fees.

Banning estate agency referral fees would create a level playing field, but would have an impact on some existing business models, and would have implications for other related businesses in the wider property sector, such as letting agents and landlords.

The team supports any measures which increase the disclosure and transparency of referral fees, but there remains concern about the level of industry compliance and the enforcement of the disclosure requirements given the way the legal controls are currently constructed.

Requiring positive disclosure of referral fees to all parties in the process would make enforcement clearer and more straightforward. This could be achieved by amending the Estate Agents (Undesirable Practices) (No. 2) Order 1991 to include such a requirement.

In its role as the lead enforcement authority, the team could also treat the failure to disclose a referral fee as a trigger for consideration of a

warning or prohibition order under the Estate Agents Act.

INTRODUCTION

BACKGROUND

In October 2017, the government issued a call for evidence in the home buying and selling process. The Ministry of Housing, Communities & Local Government asked the question whether ‘the government should take further action to enforce current transparency regulations regarding the disclosure of referral fees’. There was a strong response to this question; 879 responses in all.

There was clear support for the government to ensure transparency regarding referral fees, with 81% of organisations and 77% of the public in favour of further action. Just over half of respondents suggested that estate agents should disclose any referral fees in the letter of introduction to clients, thus ensuring that consumers were made aware of the information as soon as possible. Responses demonstrated that a standardised format was preferred, so consumers may be better equipped to decide whether to choose to contract with the recommended service.

Some of the responses suggested that without referral arrangements, firms would seek to increase their marketing spend. The certainty of business that referrals provided allowed companies to invest in their businesses more confidently. Respondents in favour of referrals explained that one of the real

benefits to consumers was they offered an informed choice to clients on reputable service providers.

A number of the respondents to the survey questioned whether referrals benefitted the consumer at all and almost 12% believed that referral fees should be banned altogether.

In light of the responses, the government committed to working with the industry, enlisting the help of NTSELAT and professional bodies to engage with estate agents on the subject of referral fees.

“It is so important that estate agents are transparent about referral fees. That is why we are working with the industry to ensure estate agent referral fees are clear, so consumers can make an informed decision before they decide to purchase”

Heather Wheeler MP

Parliamentary Under Secretary of State for MHCLG

(NOTE: at the time of the announcement, the team was only responsible for estate agency work in the UK; its role was extended in April 2019 to include letting agency work in England).

BACKGROUND

A scoping exercise was required to determine the levels at which referral fees were being charged, the types of referral fees being charged, and what estate agents were doing to disclose information to consumers. The survey results gathered with the help of Propertymark, The Property Ombudsman and The Property Redress Scheme helped to inform working groups on the subject of referral fees.

Following an agent survey conducted with The Property Ombudsman members in June 2018, it was felt the most appropriate course of action was to provide clear guidance to estate agents on the subject of referral fees; what constituted a fee, how best to disclose and when, with a view to repeating the survey at a later date for comparative purposes.

“The results of the survey will help provide evidence of how agents currently approach referral fees and allow the working group to discuss how the industry can work together to adopt a standardised approach of up-front disclosure”

Katrine Sporle, The Property Ombudsman

“By building a comprehensive profile of referral fees, it will enable the working group to make constructive proposals to the government that reflect what fees are received, regional differences and how consumers are informed”.

Sean Hooker, Property Redress Scheme



CHAPTER 1

TPO MEMBERSHIP SURVEY : JUNE 2018

In June 2018, the team conducted a survey on the subject of referral fees with estate agent members of the Property Ombudsman scheme. 582 firms responded to the questions, ranging from whether the business engages in the practice of referring, to whether such details (including the amount of any referral fees earned) are disclosed and when.

This chapter summarises the responses received in 2018 with the intention of drawing a comparison between the repeated survey results. (released in February 2020) later in this report.

573 participants responded to the first question, asking whether they engaged at all in the practice of referrals and, if so, to what extent. Nearly 84% indicated they engaged in some form of referring, with 16 percent stating they did not engage in the practice at all.

Of the 476 respondents who answered the second question, approximately 72% stated they received a fee for referring clients to other service providers, with nearly 28% claiming to never receive a fee for recommending another service provider to consumers. These figures suggest that there may be a significant percentage of agents who refer clients without the intention of earning a fee.

Nearly 60% of agents in the survey claimed they act as a conduit between the service provider and the consumer in order to earn their fee. Conversely, the remaining 40% state they do no further work for the fee.

| | | % | n |
|---|---|--------------------|-----|
| 1 | Do you signpost, refer, or recommend your customers (sellers and/or buyers) to a provider of connected services such as solicitors, surveyors, financial advisers, removals firms etc. whether or not that provider is internal or external to your organisation? (573) | Response Breakdown | |
| | We do not make any referrals | 16.06 | 92 |
| | We signpost/refer to external companies | 61.26 | 351 |
| | We signpost/refer to an internal provider (or parent/sister company) | 2.44 | 14 |
| | We signpost/refer both internally and externally | 20.24 | 116 |
| 2 | If you make referrals, does your business ever receive a referral fee? (476) | Response Breakdown | |
| | We do not receive any referral fees | 27.94 | 133 |
| | We receive a fee for referring to a provider of connected services | 72.06 | 343 |
| 3 | How do you earn referral fees? (331) | Response Breakdown | |
| | We receive a fee for a referral to a connected service/business but take no active part in the process thereafter | 40.18 | 133 |
| | We liaise with connected services/businesses, acting as a conduit between them and the consumer, and earn a fee from the connected business | 59.82 | 198 |
| 4 | Do you disclose: : the fact that you get a fee (317) | Response Breakdown | |
| | To the buyer | 38.49 | 122 |
| | To the seller | 39.12 | 124 |
| | Neither | 22.4 | 71 |
| 5 | Do you disclose: : the amount of the fee (307) | Response Breakdown | |
| | To the buyer | 26.38 | 81 |
| | To the seller | 23.45 | 72 |
| | Neither | 50.16 | 154 |
| 6 | The Government are currently looking into transparency issues and a possible ban on referral fees. What do you think the Government should do about this issue? (502) | Response Breakdown | |
| | Nothing | 23.11 | 116 |
| | Increase transparency so that the fact that a referrals fee will be received must be divulged to buyers and sellers | 40.04 | 201 |
| | Increase transparency so that the amount of any referrals fee must be divulged to buyers and sellers | 21.91 | 110 |
| | Ban referral fees altogether | 14.94 | 75 |
| 7 | Any further comments (210) | Response Breakdown | |
| | Free Format Text | 100 | 210 |
| | No Response | 0 | 0 |

DISCLOSURE OF FEES

The figures shown in questions 4 and 5 of the survey results were significant in that they gave an indication of the current approach taken by agents at the time to the disclosure of any referral fees earned. Out of the 317 who responded to question 4, there was roughly and equal split claiming to disclose to either the seller-client or the buyer-client, with just over 22% stating they did not disclose at all.

In question 5, participants of the survey were asked if, and how, they disclosed the amount of fees earned. Just over half of respondents stated they did not disclose the amounts at all. There seemed to be a very slight difference in the number of agents disclosing the level of the fee earned to a buyer-client as opposed to a seller-client, though perhaps not significant enough to draw substantive conclusions.

Lastly, question 6 asked participants to provide their opinion on the best means to approach transparency issues concerning referral fees. At 40%, the most popular approach appeared to be a move towards greater transparency through mandatory disclosure of the fact a referral fee may be earned to both buyer and seller clients. Just over 23% felt nothing should be done in relation to referral fees, and approximately 22% stated the amount of the fee should be disclosed to consumers. Nearly 15% were in favour of a total ban on referral fees.

ANALYSIS

Analysis of the results of the first survey demonstrates that, of those who responded, the actual practice of referring consumers to other service providers may be prevalent, however; over a quarter indicated that (though they referred clients) they did not necessarily receive a fee for this referral.

Figures concerning disclosure of referrals were interesting, with most showing a reluctance to disclose the amount of the fee as opposed to disclosing the existence of a referral fee process generally.

This said, the largest percentage of respondents preferred the option of greater transparency where referral fees are concerned. The least popular option being a ban on referral fees altogether.

This analysis of the survey results must be tempered appropriately in consideration of the numbers of respondents in comparison to the total number of estate agents operating in the UK today.

TPO MEMBERSHIP SURVEY : JUNE 2018

SURVEY COMMENTS

210 of the respondents to the survey elected to leave free-text comments. These comments appear mixed, some admitting to charging referral fees in certain circumstances and seeing no issue for the consumer in this, whilst others spoke in favour of a ban. A number in the survey stated that the questions should be re-worded to allow for the option of stating they disclose to both kinds of clients; buyer and seller.

A random selection of comments is provided in this section, as an example.

We already disclose to both buyer and seller

The fee is paid by the provider and is not costing the buyer anything. We refer quality companies who provide an excellent service for our clients in a timely manner. If the client went to other less reputable companies in our experience it costs them more in both time and money and in some cases have lost the property they were hoping to buy. That I feel is part of a good agents job and should be paid for it.

I would prefer the banning of referral fees

this is a poor survey which lacks the understanding of how "professional business" works. we pass referrals to a local solicitor who does discounted fees to our customers (we get NO payment) the customer benefits. I we pass referrals to other professionals and get a fee it is because we spend time and money progressing the sale and working with these other companies to ensure our customers get great service. Banning referrals / disclosing referrals is headline grabbing nonsense, you should be just regulating the industry properly with the current legislation. We have never been visited or checked by trading standards, would be happy to as we do things properly. other agents REALLY could do with a visit. So stop creating new headlines and sort out the poor agents NOW.

Referral fees which are transparent, proportionate and offer a choice to the consumer provide a level of convenience which makes them valuable to consumers, both buyer and seller. All referral fees should be outlined to consumers and state that there is a fee and what the amount is as well as what it is for. If there is transparency on this basis in documentation to the consumer then they can make an informed choice between referred services and those of others in the market. Furthermore, if services are offered where an agent or other assists the sale process and the ancillary services being provided then referral fees themselves are justified if they are clearly outlined. It is no different to say that of a mortgage broker etc. A total ban would reduce available services, increase completion times and remove the convenience element which is a valuable service in itself. What cannot be justified is conditional selling where it is a requirement to use in-house services in return for lower fees or a more favourable service. In respect of the latter conditional selling should be legislated against and trading standards should monitor.

We do nothing wrong, just police the companies that do wrong rather than another blanket ban.

Referral fees without full disclosure is not in the best interest of the consumer. We do receive a fair and appropriate referral fee for recommending businesses and we declare this to our fee-paying vendors, clearly and in writing. We also inform the buyer who will also receive this information in writing. This has never been an issue to either party. We complete on approx. 600 transactions per year with approximately 35% of transactions having a third party being recommended.

all our vendors and buyers are fully aware of the referral fee we received and are happy to pay that fee due to the excellent service that we and the solicitors provide, we would not refer to a solicitor if they did not do such a good job. the solicitors already disclose the referral fee

Although we get referral fees, we give volume to the supplier, so the amount charged to the client is less than what they would have got if they approached them directly. i.e. The supplier takes an effective cut in their profit margin for volume business, and the customer is better off.

I think taking away referral fees would have a huge impact on cash flow to small independent businesses like mine. We refer to certain businesses which include solicitors and mortgage providers because we trust in their service to our client and us. With our recommended partners we get a smoother transaction and better customer service which helps everyone involved. We wouldn't refer to someone who we got a referral fee from that didn't match our customer service levels and experience

Referral fees are fleecing vendors and buyers out of hundreds of pounds .

From a personal point of view, I and my colleagues do not refer to companies because we get a referral fee, we refer to them because they are good. For example, the local solicitors we recommend, I recommended before they paid referral fees. But once they decided to pay referral fees to estate agents, they included us in that. This referral fee is included in their standard fee, so the client pays the same fee whether they have found the solicitor independently or if referred by us.

In my opinion referral fees are fine as long as they are reasonable, and the estate agent is clear that the company being referred is being recommended because they offer a top quality service, not because they are being paid. To be clear, unlike some companies, referral fees make up such a small amount of our income. if they ended tomorrow i wouldnt have an issue with that.

Referral fees if dealt with properly are not bad for the consumer and generally come from the supplier as their marketing does to acquire the client is lower and therefore they can afford to pay a referral fee instead.

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CHAPTER 2

NTSELAT GUIDANCE ON TRANSPARENCY OF FEES INVOLVING PROPERTY SALES

In January 2019, the team published its guidance to the industry on the subject of disclosing referral fees. This chapter summarises the guidance and highlights some of the more prudent points contained within it.

REFERRAL FEE DEFINITION

The guidance defines what a referral fee is by summarising the circumstances where a referral fee may arise:

“A traditional referral fee exists where an agent recommends (refers) another business to a seller or prospective buyer, and that business rewards the agent for the referral by way of money, gifts or any other form of benefit. The other business might offer preliminary services, such as photography, or something as fundamental as conveyancing. Additionally, referrals to associated companies, whether under the same roof or not, such as financial advisers, mortgage providers, etc. may still constitute a referral where consideration is passed between the companies.

The status of the connected service provider must be made explicit to the consumer irrespective of their status of being the buyer or seller.”

The CPRs 2008 & the EAA 1979

The guidance continues to apply the definition of a referral fee in relation to

the provisions laid out in the Estate Agents Act 1979 (‘EAA 79’) and the Consumer Protection from Unfair Trading Regulations 2008 (‘CPRs 2008’):

Whilst the EAA 79 makes specific provision as to the disclosure of information to sellers, including services which the agent is offering or intends to offer to a prospective purchaser, or which s/he knows a connected person, or third party is offering or intends to offer to a prospective purchaser; there is no provision in the Act requiring disclosure of the fact of referral fees or their amount.

In its application of the CPRs 2008, however, the guidance indicates there is a need to disclose referral fees in order to avoid committing a misleading omission offence under that legislation:

“Any practice by an estate agent which hides the real price of a service is capable of being found to be an unfair commercial practice under the CPRs – whether it is the price of the service the agent is themselves providing, or the price of a service they have recommended, as the existence and scope of such payments are “material information” which could affect a consumer’s decision about whether, or not, to engage with an estate agent.

As to the latter, recent surveys have shown first, that it is common for solicitors, conveyancers and others to pay estate agents to refer sellers and buyers to them; and second, that consumers are largely unaware of the practice.”

As such, the guidance provides practical examples which involve referral fees and applies these scenarios to the CPRs 2008, giving a clear guide to the industry. In addition to the practical scenarios highlighted in the guidance, there is also an example disclosure form provided in the appendices to allow for ease of compliance to the regulations.



CHAPTER 3

RECEPTION TO GUIDANCE

NTSELAT's guidance on the use of referral fees in property transactions received widespread attention, both in the media and from the industry. This section highlights some of the notable coverage received.

Comments on estateagenttoday.co.uk :

Frances Marshall

01 March 2019 12:26 PM

If the conveyancer you recommend is that good, you shouldn't need any other incentive to recommend them. My firm doesn't pay or accept referral fees for anything. My clients know that if they've been recommended to me, it's because the agent thinks I'm good.

[Login to Reply](#) [Login to like comment](#)



Luckily, those days are behind me, but my fear is that in the pursuit of transparency, agents might find they are 'pushing' clients away from using their preferred solutions - a brilliant solicitor solution, a brilliant survey solution - and 'pushing' clients out into the unknown.

I could be wrong, but if clients no longer take up the recommended suppliers of other related services, because of the money that the estate agent gets as a referral fee, then this lost revenue stream could see many agents struggling.

Lastly, referral fees exist in many, many areas of commerce, so will trading standards be searching these out and making the world transparent for all folk, including the beleaguered estate agent?

[Login to Reply](#) [Login to like comment](#) 1 person likes this



Comments from propertyindustryeye.co.uk :

nextchapter

JANUARY 18, 2019 AT 07:04

#1

Why is it 'ban referral fees' to Estate Agents? It's ludicrous. Referrals and referral fees can be found everywhere in every aspect of life in every sector! It's how the world revolves. Here's some business. Oh thanks. Here's a fee to say thank you. What the f***k is the problem? So what! Actually ban ALL referral fees in every sector for everything. It's insane that it's specifically Estate Agency focussed.

Will2

JANUARY 18, 2019 AT 09:50

#3

If you don't understand why bribes are wrong you just won't understand the problems with referral fees. Criminality is also rife in all areas of life; it does not make it right. Banks and PPI highlighted the problems. If you wish to consider yourself a professional you should act in your clients best interest without hiding anything, such as back handers/referral fees. I know my view will be incredibly unpopular but do you want to be known as a professional estate agent of a house flogger with Del Boy standards?

SLF

JANUARY 18, 2019 AT 12:07

#47

They should be completely banned.

Presumably all agents promote and recommend a particular solicitor solely because they will offer the best possible service to their clients, the lines of communication are good and the solicitor is quick and efficient. The referral fee shouldn't come into it if you are doing right by your clients.

MisterP76

JANUARY 18, 2019 AT 07:24

#17

It's all about transparency.

Your client should know if you are recommending someone because they do a good job or pay a fat fee for intros.

Rob Hailstone

JANUARY 18, 2019 AT 07:13

#7

More transparency is needed re referral fees (a client needs to know if their £800.00 is going to their conveyancer or if a high percentage of it is going to the introducer). However, a complete ban would only drive referral fees underground. I recall seeing many a brown paper bag be handed under tables in various waterholes back in the late 70s and early 80s! Not with my fingerprints on I hasten to add!

ANALYSIS

Public opinion on the current approach to referral fees appear mixed; some suggesting an outright ban on referral fees is appropriate, others supporting an approach that encourages more transparency, and a number questioning whether further restrictions on referral fees would result in greater costs to the consumer elsewhere in the property transaction journey.

PROFESSIONAL BODIES

Professional bodies within the property industry sector were largely supportive of the publication, with The Property Ombudsman service ('TPO') announcing a change in its Codes of Practice to reflect the provisions of the advice provided. Contributors included the Guild of Property Professionals, NAEA Propertymark, The Property Redress Scheme and the Royal Institute of Chartered Surveyors.

Mark Hayward, Chief Executive, NAEA Propertymark said:

"We're hugely supportive of the National Trading Standards Estate Agency Team's (NTSEAT) new guidance for agents on referral fees, issued last month. The guidance will improve transparency and provide greater clarity for consumers at a time when markets across all regions need support to boost consumer confidence.

"We've long called for guidance which is easy for both agents and consumers to understand and comply with. Buying a home is no mean feat, and it's probably the most expensive type of transaction we engage in - so transparent and fair fees are essential. It's therefore important all agents take the time to understand the guidance and ensure they are compliant."

"NTSEAT has given the industry an olive branch. Rather than an outright ban, we've been given the opportunity to improve the practice of charging referral fees by increasing transparency. But if the guidance isn't taken seriously, referral fees could be banned when the guidance is reviewed next year."

Mark McLaren, Chair of TPO's Consumer Forum and Non-Executive Board Member commented:

"It is important for both buyers and sellers to be aware of the true cost of any service being recommended by estate agents. Whether this relates to conveyancing, removal firms or producing Energy Performance Certificates, clearly disclosing the benefit that the agent will receive at the earliest possible stage is the right thing to do. By providing this important information, consumers can compare the services on offer and make an informed decision."

Sean Hooker, Head of Redress for the Property Redress Scheme wrote:

"We have not received a large number of complaints directly relating to estate agent referral fees, however this is more than likely due to consumers not knowing that their agent is receiving them. As with all information that is material to a property sale, our view is fees or commission received for recommending a service, should always be disclosed to the buyer and seller and we welcomed the guidance from National Trading Standards. A

consumer should fully understand the basis of a recommendation to use a third party by an estate agent and knowing that a payment has been received allows them to make an informed choice.

It is our view that whilst the practice of referral fees may not in itself cause the consumer specific detriment, the covertness and lack of transparency of this income stream, does not engender trust or demonstrate a commitment to the duty of care agents should have to both parties in a property sale. We however feel an outright ban on receiving fees, will force the issue underground and make it more difficult to police. A legal requirement to disclose referral fees, either as part of the Consumer Protection Regulations or a specific legislative mechanism, such as the transparency obligations in place for lettings, would be the right option.

Since the guidance was issued, our team at the Property Redress Scheme are trained to spot where the guidance is not being followed and to award compensation as appropriate for this failure by estate agents."

Mark Hayward, Chief Executive of NAEA Propertymark, saw no issue with referral fees as a concept but urged compliance, stating:

"We see no issue in principle with referral fees if they are completely transparent and proportional however the more "creative" of the sector have sought to obfuscate their existence to the detriment of the consumer and if a call for voluntary compliance has been ignored then mandatory and statutory measures will have to be introduced, the most draconian of which would be an outright ban."

TPO CODES OF PRACTICE

Property Ombudsman, Katrine Sporle, on the subject of the revised TPO Codes of Practice, wrote:

“Based on NTSEAT’s guidance, which considers the Consumer Protection from Unfair Trading Regulations 2008, a requirement to disclose referral fees is now an obligation within the Codes to make previously hidden costs open and transparent to consumers.”

The Codes of Practice highlights NTSEAT’s guidance and requires members to disclose any charges made for not opting to use a service:

5n Where your Terms of Business include options for sellers to use associated and/or recommended services (such as conveyancing), sellers should be presented with the opportunity to actively opt-in to use the service. Requiring sellers to actively opt-out of any additional or recommended service should be avoided. Charges made for not using a service must be disclosed in accordance with the National Trading Standards Estate Agency Team’s ‘Guidance On Transparency of Fees Involving Property Sales’⁴.

ANALYSIS

There is widespread support from the leading professional bodies in the property sector for greater transparency when it comes to referral fees. It is recognised by those bodies that the concept of an agent receiving a referral fee is not (in and of itself) a direct problem for consumers, however; it is important that clients are fully aware of the basis of a referral or recommendation so they are able to take an informed transactional decision.

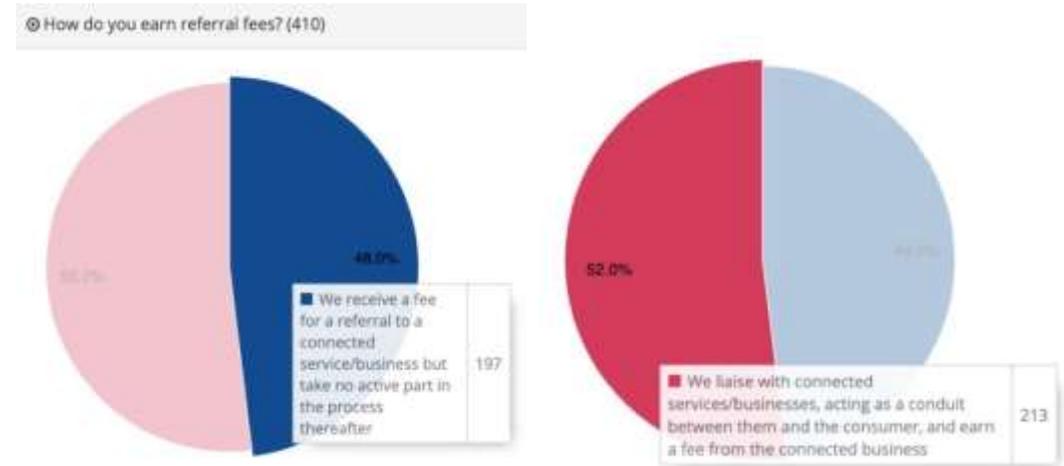
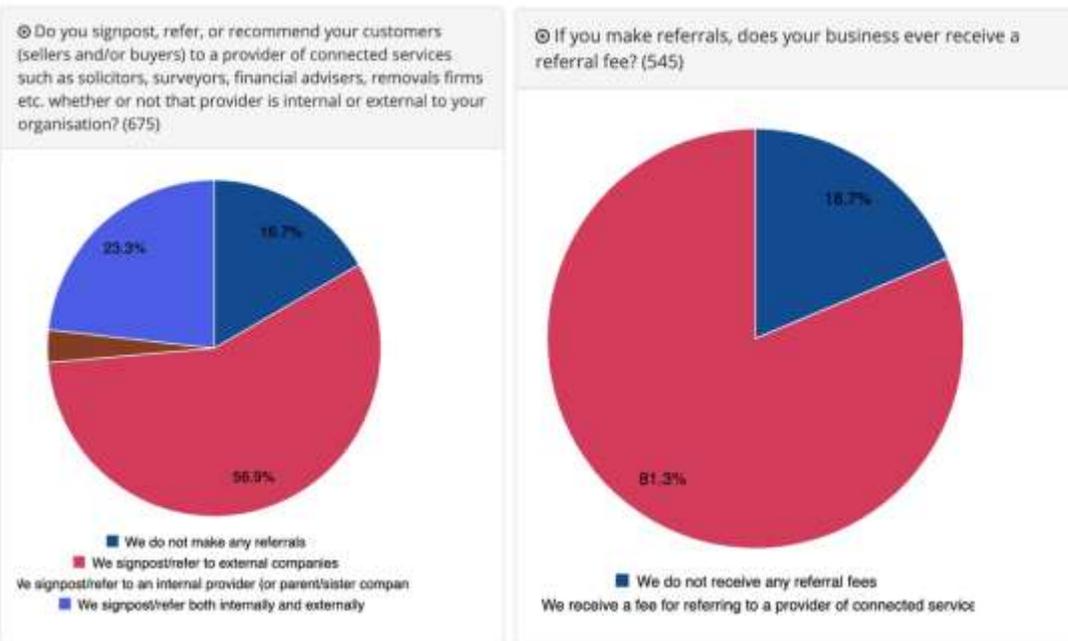
Although a ban to referral fees is discussed amongst the professional bodies, it is recognised that such a measure may force an already largely hidden issue ‘underground’.



CHAPTER 4

TPO MEMBERSHIP SURVEY : 2020

In February 2020 the team launched the second of its TPO membership surveys on the subject of referral fees. 675 responded to a variety of questions, ranging from whether respondents received referral fees, to how these were earned, or whether they disclosed these fees to clients and how they did so. The survey questioned members on what they thought should be done in respect of referral fees.



ANALYSIS

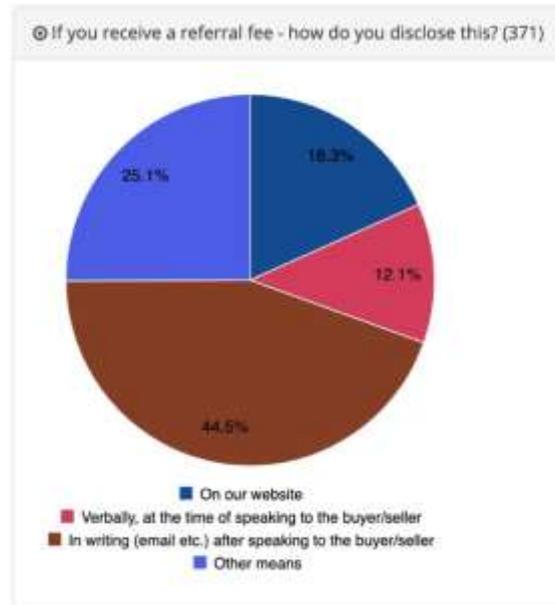
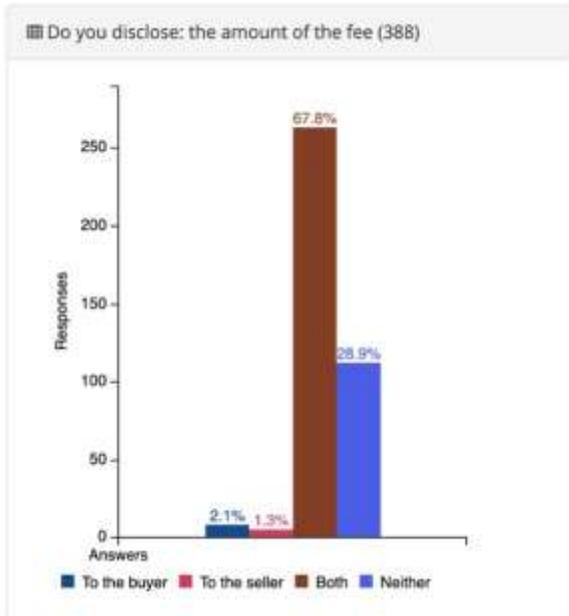
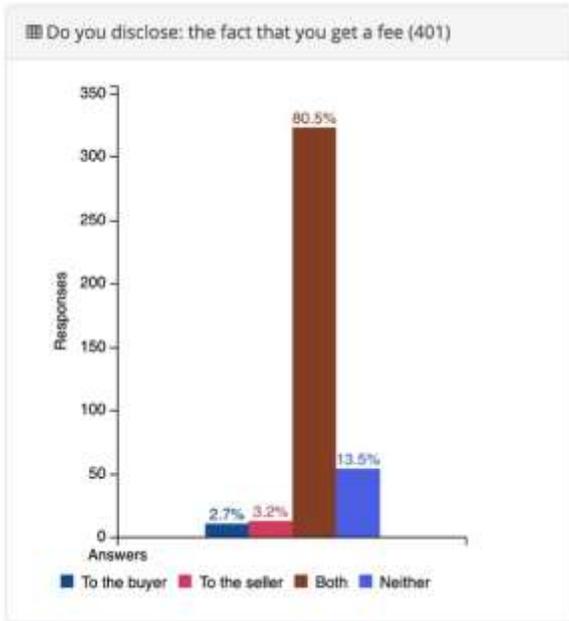
675 members responded to the question whether or not they engage in the general practice of referring customers to other providers. 56.9% stated they refer to external companies; 23.3% to both internal and external providers; 3.1% to internal providers only and 16.7% stated they do not practice referring at all.

When asked if they received a fee for the referral, the vast majority of members stated they do, at 81.3% out of 545 respondents. However, out of 410 respondents, 197 stated they took no active part in the process after the referral was made, as opposed to 213 who indicated they would still liaise with the businesses and act as a conduit between them and the consumer.

The initial questions posed by the TPO membership survey indicate that the practice of charging for referrals is prevalent in the industry, with roughly half acting as a conduit between the referred business and the consumer after the referral is made.

TPO MEMBERSHIP SURVEY

The survey continued by asking questions about disclosure, whether disclosures are made, to what extent and how they are done.



ANALYSIS

Of 401 respondents to the question, over 80 percent stated they would disclose the fact they receive a referral fee to both the seller-client and the buyer-client. Nearly 14 percent stated they would not disclose at all.

The figures concerning the disclosure of the amount of the fee received were different. By comparison to the first question, only approximately 68 percent would disclose the amount of the fee earned to both the seller and buyer clients. Nearly 29 percent would not disclose the amount of the fee at all.

The majority of respondents who receive referral fees stated they would tell clients in writing, after having initially spoken to them. Only 12 percent would disclose the existence of referral fees at the time of speaking with the consumer; a lower figure compared to the 18 percent of agents who detail their referral fees on their websites.

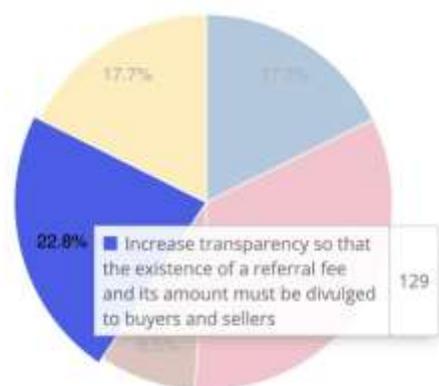
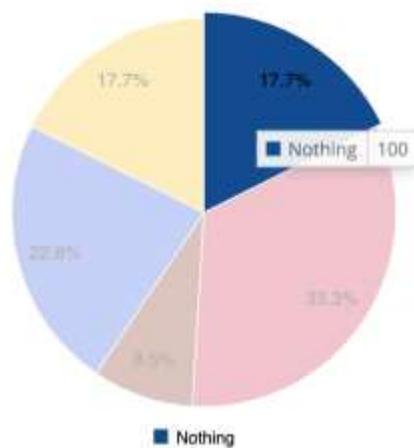
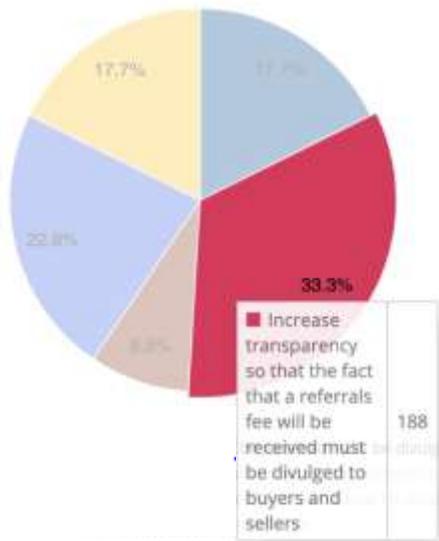
The comments section detail some of the other methods employed by agents in respect of disclosure. A quarter of respondents state they would disclose 'by other means'.

The figures here indicate that from the sample, most do disclose the existence of a fee and how much the fee earned may be, however; in the latter case, less are inclined to state how much the earnings are. A significant figure is the method of disclosure, with most respondents stating they would disclose details of referral fees in writing after having initially spoken to the consumer. Disclosing at the time of initial contact appears to be the least likely option for disclosure to occur.

TPO MEMBERSHIP SURVEY

Respondents to the survey were asked to consider the possible options available to the Government in respect to transparency issues. The following charts detail the answers given.

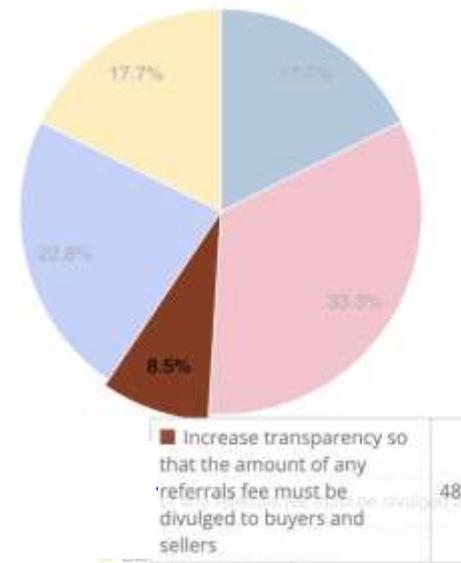
🗳️ The Government are currently looking into transparency issues and a possible ban on referral fees. What do you think the Government should do about this issue? (565)



ANALYSIS

Most of the respondents to the question were in favour of measures which would increase transparency requirements concerning referral fees, however, it is noted that from the figures in the sample, there may be a preference to not disclose the amount of the referral received.

Nearly 18 percent were in favour of banning referral fees altogether, however, by contrast, the same number of respondents felt the Government should do nothing in respect of referral fees.



TPO MEMBERSHIP SURVEY: RESPONDENT COMMENTS

Respondents were given the opportunity to provide detailed comments on the approach to referral fees and if they disclosed their existence by any other means. Below is a snapshot of a small selection of the comments received from TPO members.

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| Corporate firms are in my opinion the worst offenders | Referral Fees Survey | February 17th 2020, 1:21:29 pm |
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| We are supportive of the on-going initiative to improve disclosure to customers, however, we believe that the Government should aim to strike a balance between potentially overloading a customer and providing enough information on which they can make an informed decision. We believe a regulatory focus to ensure disclosure of the fact that a referral fee is received, perhaps combined with mandatory disclosure of the amount when a threshold is reached, would be an appropriate regulatory response. | Referral Fees Survey | February 17th 2020, 11:42:38 am |
|---|----------------------|---------------------------------|

We are supportive of the on-going initiative to improve disclosure to customers, however, we believe that the Government should aim to strike a balance between potentially overloading a customer and providing enough information on which they can make an informed decision. We believe a regulatory focus to ensure disclosure of the fact that a referral fee is received, perhaps combined with mandatory disclosure of the amount when a threshold is reached, would be an appropriate regulatory response.

| | | |
|---|----------------------|---------------------------------|
| There is no transparency and often the referral fees are hidden from the consumer, deliberately in my view. I have also come across instances where purchasers are encouraged to use services from group companies but to the detriment to another client of the referrer.(on two occasions I have been told that an estate agent from one of the national owned estate agents encouraged a purchaser to use their mortgage brokers and house surveyors in return they said for a reduction in the price of the house they were selling for someone else). These were different offices but for the same firm | Referral Fees Survey | February 17th 2020, 10:59:50 am |
|---|----------------------|---------------------------------|

There is no transparency and often the referral fees are hidden from the consumer, deliberately in my view. I have also come across instances where purchasers are encouraged to use services from group companies but to the detriment to another client of the referrer.(on two occasions I have been told that an estate agent from one of the national owned estate agents encouraged a purchaser to use their mortgage brokers and house surveyors in return they said for a reduction in the price of the house they were selling for someone else). These were different offices but for the same firm

| | | |
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| Banning referral fees is not the answer ... it will encourage underhand behaviour such as back handers and other payments in kind that Buyers or Sellers will have no awareness of. What is needed is a yearly declaration whether referral fees are paid, plus more effective policing, more effective punishments for those found in breach and a 'one strike, you're out' as a massive deterrent to potential abusers | Referral Fees Survey | February 11th 2020, 10:52:26 am |
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Banning referral fees is not the answer ... it will encourage underhand behaviour such as back handers and other payments in kind that Buyers or Sellers will have no awareness of. What is needed is a yearly declaration whether referral fees are paid, plus more effective policing, more effective punishments for those found in breach and a 'one strike, you're out' as a massive deterrent to potential abusers

Due to the challenging market, the added income that the smaller Agents receive can be the difference between profit and loss. At the end of the day it is a business that we are running, I do feel that there are much larger businesses that have much bigger sweeteners, yet nothing is ever disclosed or said. Also when disclosing on websites, as an Agent you are telling your competitors where you refer business which I feel should be confidential to that Estate Agency themselves.

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| Referral Fees Survey | February 10th 2020, 7:47:02 pm |
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| Disclosure is done on contracts, in email referral and on website | Referral Fees Survey | February 10th 2020, 10:03:54 pm |
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| Referral Fees Survey | February 10th 2020, 10:03:54 pm |
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| Via agency contract for vendors, within the detailed quote for a purchaser via the solicitor referred. | Referral Fees Survey | February 10th 2020, 8:15:01 pm |
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| Referral Fees Survey | February 10th 2020, 8:15:01 pm |
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| Verbally and in writing | Referral Fees Survey | February 10th 2020, 7:42:10 pm |
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| Referral Fees Survey | February 10th 2020, 7:42:10 pm |
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| All 3 above | Referral Fees Survey | February 10th 2020, 5:59:27 pm |
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| Referral Fees Survey | February 10th 2020, 5:59:27 pm |
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| It is in our contracts | Referral Fees Survey | February 10th 2020, 5:25:44 pm |
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| Referral Fees Survey | February 10th 2020, 5:25:44 pm |
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| in our terms of business | Referral Fees Survey | February 10th 2020, 4:55:01 pm |
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| Referral Fees Survey | February 10th 2020, 4:55:01 pm |
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| Our external companies explain the process | Referral Fees Survey | February 10th 2020, 4:28:29 pm |
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| Referral Fees Survey | February 10th 2020, 4:28:29 pm |
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| The outside company explain it when speaking to the client. | Referral Fees Survey | February 10th 2020, 4:24:19 pm |
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| Referral Fees Survey | February 10th 2020, 4:24:19 pm |
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| It is labelled on the quote form from the solicitors. | Referral Fees Survey | February 10th 2020, 4:01:57 pm |
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| Referral Fees Survey | February 10th 2020, 4:01:57 pm |
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| On our memo of sale | Referral Fees Survey | February 10th 2020, 2:41:17 pm |
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| Referral Fees Survey | February 10th 2020, 2:41:17 pm |
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| It's in our property particulars and terms of business | Referral Fees Survey | February 10th 2020, 2:26:48 pm |
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| Referral Fees Survey | February 10th 2020, 2:26:48 pm |
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| On our website, in client contracts, during discussions. | Referral Fees Survey | February 10th 2020, 2:10:49 pm |
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| Referral Fees Survey | February 10th 2020, 2:10:49 pm |
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TPO MEMBERSHIP SURVEY: RESPONDENT COMMENTS

I don't believe it's fair to ban referral fees, we use solicitors that charge a competitive rate with our referral fee deducted from that. The consumer receives the best deal. Why should in this instance do no work, prospecting, advertising and just expect business to land on their desks without paying us. We pay Rightmove etc thousands to get traffic to come to us, it's only fair something comes back to us. If TPO and co continue in this manner, agents will drop like flies and they won't have a job to worry about.

Referral Fees Survey
February 10th 2020, 8:19:02 pm

With Estate Agency revenue income streams being constantly cut, this is just another dagger in the heart to our industry. I really don't see why we are constantly under the spot light as our revenue streams are now so minimal it's a wonder how we keep running our office. All we really need to do is ensure transparency as you or others require rather than banning this. I only ever refer people to services which in the main are mortgage brokers or solicitors who I personally use, and who I believe offer better services and at better prices than they can find searching for themselves, therefore if we can save the our client money and still get a better product, why should we not earn a small intro fee, if we tell the client that we are doing this?

Referral Fees Survey
February 11th 2020, 11:13:16 am

The market continues to behave in a wild west fashion - often with lip service paid on a hidden web page- an outright ban with serious sanctions will lead to a much higher standard of advice.

Referral Fees Survey
February 10th 2020, 11:31:01 am

We firmly believe that consumers should be made aware of the existence of any benefit, monetary or otherwise from them being introduced to a particular provider or service. However we do not see the relevance of disclosing the potential value of any gifts such as wine or chocolates or being taken out for a meal as we do not understand how you differentiate from a benefit or part of a networking meeting or relationship building. As long as they are aware that there is a benefit to the company or individual for them being introduced to services then as customers still have the option to make their own decisions and conduct their own research we do not see what the issue would be. Consumers are actively encouraged to refer friends and family to a whole range of products and services for financial benefit so we do not understand why this should be banned in our industry.

We put it as part of our formal offer letters and also on our recommended list of solicitors,

Referral Fees Survey
February 7th 2020, 4:44:22 pm

The only referral fees we receive are from insurance policies in our lettings department, so the question above is difficult to answer correctly

Referral Fees Survey
February 7th 2020, 4:43:48 pm

its in our terms of business, in our welcome letter, in our email to the clients and verbally. Those to whom we have referred also make the clients aware of the referral agreement we have.

Referral Fees Survey
February 7th 2020, 4:43:39 pm

We have referral fees listed on our website, in our office, on our sales details, in our contract.

Referral Fees Survey
February 7th 2020, 4:39:34 pm

All three above but only one button is allowed to be selected

Referral Fees Survey
February 7th 2020, 4:35:44 pm

Our referral fees are stated in our sales brochures, on our website and also within our terms of business

Referral Fees Survey
February 7th 2020, 4:34:32 pm

ANALYSIS

The comments were varied. Further analysis of the comments is recommended to gain a clear picture of the consensus amongst respondents to the survey. Of the sample highlighted, those in favour of further mandatory transparency measures still felt a ban would be detrimental to business and may have an effect on the cost of services to the consumer. A number of the comments expressed concern that a ban would be targeting one individual sector of business, estate agency, which would ignore the existence of referral fees in other areas of the consumer landscape.

The vast majority of comments indicate that when disclosure happens, this is done in writing with many citing their terms of business, memorandum of sale and property particulars as platforms for disclosure.

CHAPTER 5

SURVEY COMPARISON

A slight increase of 93 respondents is seen in the later survey, which although is marginal when considering the extent of the surveys as a whole, this should be factored into any comparative analysis between the two.

In Question 1, respondents were asked whether they practice referrals at all. The percentages in both the 2018 and 2020 survey appear roughly unchanged, with a marginal increase of participants in the 2020 survey stating they do not practice referrals whatsoever.

Question 2 concerning whether agents received a fee for referring consumers saw an increase in response of 69 in the later survey. Just over 81% stated in 2020 that they receive a referral fee, as opposed to approximately 72% in 2018. By comparison, it appears there has been an increase in the number of referrals that result in a fee for the agent; however, the differences in response rates may be responsible for the change.

Question 3 asked respondents whether they act as a conduit between the consumer and the ancillary service provider in order to earn the referral fee, or if, once referred, they took no further part in that process. In 2018, nearly 60% stated they remain involved in the process compared to 52% in 2020.

Disclosure to consumers formed the basis of Question 4 in both surveys. The later survey introduced the option for respondents to select that they

disclose the fact they receive a referral fee, in general, whereas the 2018 survey split buyer and seller client-disclosure. In order to draw a comparison, overall, 77.61% of respondents stated they disclosed referral fees to either buyer-clients, or seller-clients. In 2020, if we combine all the responses which indicate some form of disclosure has taken place, this amounts to 86.4%; a marked increase.

Question 5's figures concerning whether respondents disclose the actual amount of the fee earned also sees a potentially significant change, with approximately 71% stating they either disclose to both client-types, or one of the client-types. This amounts to over a 20% increase as compared to the 2018 figures.

Lastly, in respect of the respondents' preferred potential regulatory option regarding referral fees, the most favoured answer remained mandatory greater transparency of fees. The 2020 questionnaire saw the inclusion of another option i.e. where agents would be required to disclose the amount of the fee only, attracting a total of 8.5% of respondents; the least favoured option in this section of the 2020 survey. However, the disclosure of the amount of the fee is already an option in one of the transparency choices, where nearly 23% of respondents stated they were in favour of mandatory transparency of the existence of referral fees and their amounts. It may be argued that the extra option created in the 2020 survey regarding sole disclosure of the amount of the fee only, suggests that disclosure of the existence of a referral fee is inherent in that option, regardless. As such, it may be possible to amalgamate these two figures into one percentage of just over 31%, making total transparency of fees (including their amounts) the second favourite option in the 2020 survey. If this is taken to be correct, the least favoured option in either survey remains the prospect of a ban on referral fees entirely.

It must be noted there are many external factors which may affect the reliability of these figures for any comparative purposes, as previously mentioned. This is a subjective topic, and the participants have a vested interest in the outcome; if the surveys had attracted different respondents, this may have been reflected in the data.

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CHAPTER 6

NTSELAT REFERRAL FEE COMPLIANCE RESEARCH

In November 2019, prior to the TPO Membership Survey, investigators within the NTSELAT team engaged in various research activities in an attempt to measure the level of compliance in the industry in regard to its guidance on the disclosure of referral fees. One of the main challenges faced was the fact that, by their very nature, referral fees remain a 'hidden' issue i.e. where they do exist, many consumers remain unaware of this and subsequently may not report it via the usual channels.

The key agreed activities carried out in the project were as follows:

1. Approach all Trading Standards services across the UK via designated regional co-ordinators and ascertain the level of complaints received by those services between the period of the 1st April 2018 until the 30 November 2019.
2. Examine the Citizens Advice Partner Portal for complaints and enquiries about referral fees charged by estate agents, as reported by consumers and businesses when using the Citizen's Advice Consumer Helpline telephone service.
3. Conduct open source research on the subject area, including industry forums, to examine any concerns or issues raised.

4. Request any complaint information from the TPO and the Property Redress Scheme (PRS)
5. Conduct an online examination of estate agents' websites to determine if the disclosure of referral fees takes place on those platforms.
6. Request complaint data from Shelter and Generation Rent.

In addition, in line with its methodology the team engaged with a number of notable firms in the industry. Of which, one had conducted its own 'competitor survey', selecting some of its key rival firms' websites to analyse for any reference to the disclosure of referral fees.

RESULTS

The return rate for the questions sent to the Trading Standards regional coordinators was high at around 80%. The overall picture was there were very few complaints received by Trading Standards concerning referral fees. The total number was 6, nationally.

The Citizens Advice Partner Portal, which is the main gateway consumer report matters to Trading Standards, had no record of referral fees on its database.

An open source search brought no real indication that referral fees were in the consciousness of the general public. Anecdotally, investigators found few instances of full disclosure of referral fees on company websites.

In addition to the 2018 survey carried out by the TPO, both the TPO and the PRS were asked for complaint data for 2019 concerning referral fees from the public. The PRS had no records on the subject and the TPO had received 5 complaints in total.

Around twenty estate agents' websites were examined with 5 mentioning referring customers to other services with no mention of fees. Only 2 offered a full explicit breakdown of fees that gave consumers total clarity.

Of the small sample of websites inspected within the competitor survey results received by the team, 99% of rival estate agent websites were said to contain no reference to referral fee disclosure.

CHAPTER 7

CONCLUSIONS

In its purest sense a referral or recommendation to another business should be based on quality and value alone. This can then be beneficial to customers in terms of the (better) service they receive from that other business. This can be compared to the practice of leaving reviews for businesses by their customers, this can benefit other customers of that business to make an informed decision about whether or not to use them.

When a fee or incentive is involved however, this can introduce an element of bias in favour of the recipient which may ultimately distort competition. It can also put pressure on employees who are paid on commission to overtly or covertly put pressure on consumers to use referred service providers. This practice is closely linked to the legal duty of an estate agent to pass on offers to their clients. The team has seen examples of agents who have failed to pass on an offer to the seller because the potential buyer was not using the referred services, in favour of a buyer who was. This practice is extremely difficult to detect and will almost always result in a prohibition order being issued against a person or business found to be engaging in such practices.

It is debatable if consumers get any additional work or value from the referral arrangement. Some agents will act as a formal go-between with the customer and the referred provided; others do nothing for the referral fee.

This report has not considered many of the wider behavioural issues relating to referred services:

- will customers shop around, or are they more likely to use the referred services?
- if customers go direct to the referred service provider, will the price be the same; will the service be the same?

Referral fees form part of the income for many agents – banning them may cause upfront agent fees to rise to compensate for their loss. Other connected services may potentially be cheaper if referral fees don't have to be paid.

Measuring compliance with the disclosure of referral fees presents a challenge. Although evidence suggests such fees are particularly prevalent in the estate agency sector, compliance is difficult to assess, especially as not all agents receive referral fees, and there is no requirement to disclose whether or not such fees are received. The current legal requirements are spread across the Estate Agents Act (and related Orders) and the Consumer Protection from Unfair Trading Regulations 2008 (the CPRs). The CPRs only punish non-disclosure of material information, rather than requiring disclosure. Consumers remain unaware of the frequency or amount of referral fees and, as such, are unlikely to report their concerns.

Where referral fees are present, evidence provided by the TPO membership survey suggests the majority of firms state they do disclose their existence to consumers, but there may be a slight reluctance to disclose the exact referral amounts earned. That said, based on the small sample of estate agency websites inspected by the team (and by rival firms conducting their own survey) there were very few examples of full disclosure via any online platform.

Reactions to the current approach to referral fee transparency appear mixed. Of the comments public inspected and those contained within the TPO membership survey, it appears as though many have concerns that a ban on referral fees would be potentially detrimental to business, resulting in a possible increase in service fees overall to consumers. A significant number of comments indicated that there was support for greater, mandatory transparency measures in relation to referral fees, however; in many instances, these statements of support were caveated with reservations over the efficacy of an outright ban.

Professional bodies echoed this support for greater transparency, and similar concerns were expressed in relation to the possible consequences of a total ban on referral fees. These concerns centred around the potential for the issue to be driven 'underground', whereby less scrupulous firms may be tempted to obfuscate their referral fee earnings entirely.

Of note were the stated methods employed to disclose fees, where TPO members stated they existed. The majority of respondents claimed to disclose fees in writing, usually in their terms of business or in contracts. Given the current guidance published advises that disclosure must happen at the earliest opportunity, there may be some work required to push disclosure forward and earlier in the consumer-agent relationship.

RECOMMENDATIONS

If done ethically, transparently, and with no pressure to use the referred service, there is an argument in favour of allowing businesses to receive referral fees. There remains concern about the amount and proportion of some fees, and whether or not there is any direct value to consumers.

In consideration of the issues faced and the results gained thus far, our recommendations are as follows:

1. That the government make transparency of referral fees mandatory, and require a warning to be given to customers that they should consider shopping around. (Consideration needs to be given to the potential knock-on effect to other business outside the estate agency sector (letting agents, landlords etc.) and the enforcement costs by Trading Standards and the LEA)
2. That the team develops a programme (via Citizen's Advice) to raise public awareness that referral fees are charged and inform consumers of their rights in such circumstances, and encourage greater reporting of non-disclosure via Citizen's Advice to Trading Standards.
3. That the team develop further industry guidance, and work with the professional bodies and redress schemes to encourage compliance in the property sector.
4. That the team use the full range of enforcement options to punish non-compliance, including the Estate Agency Act 1979 powers to ban Estate Agents who continue to flout the legal requirements concerning referral fees.
5. That the team report back to MHLG on compliance and enforcement

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