

An RICS
Consultation Document

Transparency in professional fees



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Part 1

Foreword

Introduction

It is stating the obvious to say that professionals should at all times be open and transparent in their dealings with their clients and others. This clearly includes the requirement that they charge a fee for the professional service that they provide to their clients. The client should be left with no uncertainty as to what service they have paid for and what the cost of that service is. There should be clarity about fees and no hidden commissions or payments.

I do want to make the point, at the very start of this consultation paper, that commissions are not bad per se. It is quite reasonable for a commission to be charged where certain services are arranged or procured on behalf of a client. However, where any financial benefits are derived from the service then this should be either passed on to the client or fully disclosed to the client.

What is this consultation about?

A number of issues around transparency in fees have been raised by property professionals, clients (both consumer and business), other regulators, the press and through formal consultation exercises and brought to the attention of the Royal Institution of Chartered Surveyors (RICS). To date the issues include:

- A. Declaration of insurance remuneration and commissions.
- B. Service charges in leasehold property.
- C. Commission on letting renewals.
- D. Commission on Home Information Packs (HIPs) and Energy Performance Certificates (EPCs).
- E. Valuation fees.
- F. Arrangement of fees for security loan valuations.

Who should respond to this consultation?

Please respond to this consultation if you are a consumer client, business client, professional, regulator, government department or agency or anyone else who might have an interest in transparency or have experience of one or more of the issues listed.

RICS' involvement

RICS, as a professional body governed by Royal Charter, has a modern regulatory system for members and firms regulated by RICS. This system adopts the UK Government's principles of better regulation and brings a regulatory approach that is principles and risk based. Building on this regulatory structure, RICS is undertaking a fundamental review of professional ethics for members and firms.

Professional ethics, transparency and openness are interlinked and the work on professional ethics provided the impetus to review transparency. RICS is very keen to look at transparency generally in the delivery of professional services in the property sector and, more specifically, in relation to transparency in fees charged. I am therefore delighted to be involved with this work and, as President, had no hesitation in agreeing to Chair the Transparency Working Group (TWG).

The TWG

The TWG is made up of RICS members and lay members and includes representatives from the consumer and insurance sectors¹. The TWG aims to report before the end of 2009.

Finally, and by way of a personal observation, in no way do I consider this project to be a straightforward or simple exercise. However, I do think it is an area that needs to be looked at and I very much welcome your assistance in developing this work.



Peter Goodacre
RICS President
April 2009

¹ The members of the TWG are:

RICS Members: Peter Goodacre, President of RICS and Chairman of the TWG, Max Crofts, Senior Vice President, Gerry Fox, FRICS and Roger Southam, FRICS; Lay Members: James Purvis and Keith Richards; RICS Staff: Paul Bagust, Assistant Director of the Commercial Group, David Dalby, Director of the Residential Group and Steven Gould, Director of Regulation.

Part 2

Information about the consultation

Status of the consultation

The members of the TWG agreed, at their first meeting, that evidence was needed about what was happening in relation to transparency in fees. The Group wanted more than anecdotal information that things might not be all they seem. They felt strongly that although there may be examples of unwelcome practice, that equally there will be examples of good practice that needed to be looked at and promoted.

The TWG was also clear that although RICS would lead on the mechanics of the exercise, it was crucial that other organisations, professionals working in the property sector, individual consumers and consumer organisations informed the findings.

The method to gain evidence

The TWG wants to consult as wide a range of stakeholders as possible for their views on these issues. As well as publishing this consultation document there will be a number of stakeholder meetings.

The consultation paper is short, but the issues posed are important and need careful consideration. The issues listed are those that have been brought to the Group's attention. There will be others and the TWG welcome views on what they are.

The key stakeholders

The TWG intends to meet with key stakeholders and, where practical, hold public select committee style meetings, where the Group can question stakeholders and examine their evidence. Details of these meetings will be available in due course.

Within the property market there are a range of organisations that either regulate or service the sector, most of which are voluntary in nature. Obviously some organisations may have a direct interest, whether due to their membership or their policy responsibility.

A list of organisations that have been sent this document is included at Appendix A.

Responses

Responses to the consultation may be submitted electronically to transparency@rics.org or, if in writing, to David Pilling, RICS, 12 Great George Street, London SW1P 3AD. **The deadline for responses is 17 July 2009.** A summary report will be produced on the responses received on the consultation. Comments made by individuals and organisations may be attributed to those individuals and organisations. Please do say if any of the evidence you provide is confidential and to be used only on a non-attributable basis. This will be useful but may mean that it cannot be used as robust evidence to support the outcomes of the TWG's work.

Part 3

Transparency – Setting the scene

Why is transparency important?

Transparency in fees in both the residential and commercial property sectors has been in and out of the news for some time. It is an emotive issue and one where anecdotal information suggests there may be some unwelcome practice. Indeed, Sir Bryan Carsberg in his report in June 2008 on *Residential Property – Standards, Regulation, Redress and Competition in the 21st Century* made a number of recommendations around improving transparency in the residential property market. Transparency, of course, has much broader implications than just openness around professional fees.²

It is also very clear that as the current economic climate prevails, everyone, whether from a business perspective or from a consumer perspective, will be looking at what service is provided and at what cost. Indeed, governments across the world are likely to require greater transparency in the way their financial systems work. For example, the UK Financial Services Authority (FSA) recently issued a discussion paper (09/02) 'A regulatory response to the global banking crisis'. Transparency is featured throughout that paper. Transparency and openness will be increasingly important aspects in the marketplace.

RICS' position on transparency is clear in that individual members and firms regulated by RICS are under a general duty to act with integrity and comply with the professional and ethical standards of being open and transparent in all dealings.

2. For example, work is being undertaken by:

- Transparency International – the global civil society organisation that is leading the fight against corruption worldwide.
- The UK Anti-Corruption Forum – an alliance of UK business associations, professional institutions, organisations and businesses with an interest in the domestic and international infrastructure, construction and engineering sectors.

RICS is not alone in promoting the importance of transparency and openness, for example:

- The National Association of Estate Agents Rules of Conduct places a duty on members not to accept secret commissions.
- The Solicitors Regulatory Authority updated the Solicitors' Code of Conduct Rules 2009 that came into effect on 31 March 2009. They now include a rule for firms on receiving commissions that require firms to pay clients any commission received over £20, unless the client has agreed that the firm may keep it.
- The Association of Residential Managing Agents requires its members to declare to their clients any insurance commission received.
- The FSA through its Mortgages: Conduct of Business rule book requires all lenders to provide prospective borrowers with a Key Facts Illustration, which explains the key features of the mortgage product and what the borrower pays. The rules require lenders to itemise the fees payable to them and fees payable elsewhere. These rules effectively put into a statutory framework the previous requirements of the Council of Mortgage Lenders' Statement of Practice on cost transparency.

Carsberg Review of Residential Property – Standards, Regulation, Redress and Competition in the 21st Century

Sir Bryan Carsberg in his report talked about the importance of transparency and the provision of information to clients by professionals working in the residential sector. His review looked beyond transparency issues, but did consider transparency as a key concept in how professionals work and in improving standards. In particular he made recommendations about:

- Putting in place general requirements on professionals for providing good information about property transactions.
- Improving transparency in property transactions to help deal with actual or potential conflicts of interest.
- Taking action to ensure that lenders fairly describe fees for applications and for valuations.

Part 4

The key issues

A number of specific issues have been highlighted and brought to the attention of the TWG. These are:

A. Declaration of insurance remuneration and commissions

Issue:

The FSA does not impose mandatory disclosure to clients of commission earned. Instead, it has in place an 'on request' regime. If a client specifically requests to know what commission is being earned then the intermediary is under an obligation to disclose that to the client.

For exempt professional firms, i.e. those firms that are not regulated directly by the FSA but are regulated by a professional body, such as RICS, via that professional body's Designated Professional Body (DPB) Scheme, the requirement is mandatory disclosure of commission. The informed consent of the client must be obtained in order that the intermediary may keep the commission.

Background:

Insurance was self regulated until the advent of FSA regulation on 1 January 2005.

Since regulation, the issue of broker/intermediary remuneration disclosure has become a key issue within the industry.

Two reports produced in 2007, one by the European Commission (Business Inquiry Report) and the other by CRA International on behalf of the FSA, found evidence of a lack of transparency in the commercial insurance market in relation to intermediary remuneration and services, "*which could give rise to customer detriment and impair market efficiency*".

The CRA report to the FSA addressed the specific question of whether the FSA should mandate commission disclosure; CRA concluded that the benefits of doing so were outweighed by the costs and that only middle-sized customers would benefit.

The FSA asked CRA to report on these issues, which it did in the form of a discussion paper issued in March 2008.

CRA discussion paper: Key points

There are three pieces of information CRA believes a commercial customer needs to have when making a decision about its insurance intermediary:

1. How much remuneration will the intermediary be paid?
2. What services will the intermediary provide?
3. On whose behalf is the intermediary acting and what, if any, conflicts of interest does it face?

In addition, three conditions were highlighted by CRA as being necessary to achieve full transparency:

1. Clarity of information.
2. Comparability of information.
3. Accessibility of information.

The FSA's view

The FSA wants to see a *more competitive and efficient market*. There are five outcomes it would like to see, these are that customers should:

1. Have clear and comparable information about the commissions intermediaries earn.
2. Have clear and comparable information about the services intermediaries are providing.
3. Have clear information about the capacity in which an intermediary is acting.
4. Be alerted to their right to request commission information.
5. Be made aware where there is a chain of intermediaries.

The FSA has identified three possible solutions:

1. More vigorous supervision and enforcement of existing rules.
2. Enhanced "on-request" regime.
3. Mandatory commission disclosure.

The FSA's position

The FSA issued a feedback statement in December 2008 which provided an update on the issue of commercial insurance remuneration. Included within the document was the following statement: *"we welcome the development of a market-led solution" and further that "industry guidance has the real potential to lead to a change in the market and for the customer outcomes to be achieved"*.

The FSA is therefore allowing the insurance industry to come up with its own guidance which will ensure the five identified outcomes are achieved.

The FSA will be continually monitoring how firms are responding to the outcomes for customers. In 2010/2011 it will assess whether customers are receiving sufficiently clear and comparable information about their intermediaries' services, capacity and remuneration.

Questions:

- Can you share any evidence related to undesirable practices and most common complaints on this issue?
- Can you share evidence of good practice in this area?
- Should there be a level playing field when it comes to mandatory disclosure of commission, whether the firm is regulated directly by the FSA or via a DPB scheme?
- Can the different requirements on disclosure of commission be justified?
- Does it matter whether the client is acting as a consumer or as a business/commercial organisation, for example, should there be mandatory disclosure of commission for all consumer clients?

B. Service charges in leasehold property

Issue:

The issue here is around transparency and openness by freeholders and block managers in procuring services, repairs, refurbishment etc. Complaints from leaseholders relate specifically to quality of work, reasonableness of costs and competence.

The TWG, whilst discussing this issue, identified that it would be helpful to separate out the residential side from the commercial side. The view of the TWG was that there are different factors involved, not least because the situation where a company involved in leasing commercial property differs from an individual leasing a residential property.

Background:

Residential

With regard to the residential side there is legislation in place, for example, the Landlord & Tenant Act 1985 and the Commonhold & Leasehold Reform Act 2002 (CLRA 2002) setting out certain requirements. However, certain sections of the CLRA 2002, which may affect how service charges are held and accounted for, have yet to be implemented.

Supporting that is the Leasehold Valuation Tribunal (LVT) which provides a means for leaseholders to challenge service charge matters. Appeals from the LVT are to the Lands Tribunal.

The revised RICS Code of Practice for Service Charge Residential Management, which came into effect in April 2009:

- States that insurance commissions and all other sources of income to the managing agent should be declared to the client and to the tenants.
- Sets out a 'menu' of services which can be expected to be included within an annual management fee.
- Sets out a 'menu' of services which could be expected to fall outside an annual management fee.

Questions:

- Does the package of legislation cover the majority of complaints by leaseholders in this area?
- Is the balance between the rights of leaseholders and the rights of landlords correct?
- Is there enough advice/case law that defines the boundaries of what reasonableness is when considering taking cases to the LVT?
- Are there any issues around the ability or affordability to seek redress by leaseholders in this area?
- Can you share any evidence related to undesirable practices and most common complaints on this issue? Does this show any differences between regulated and unregulated managing agents?
- Can you share evidence of good practice in this area?

- Do you agree with the recommendation put forward by Sir Bryan Carsberg, in his review that landlords, letting agents and managing agents should be subject to appropriate regulatory requirements in order to achieve consumer protection, efficient markets and cost effectiveness?

Background:

Commercial

In 2006 the Service Charges in Commercial Property: RICS Code of Practice was introduced. The Code came into effect for service charges commencing 1 April 2007 onwards. It supersedes the Service Charges in Commercial Property: A Guide to Good Practice. The Code, like the Guide, is supported by cross-industry bodies. It provides advice to practitioners, and where procedures are recommended for specific professional tasks, these are intended to represent best practice.

Although the Code has only been in existence for just over two years this period has included having a full 12 months set of accounts. RICS will be undertaking specific research on this point during 2009. The TWG is keen to receive feedback on how useful the Code has been and to what extent it is being followed.

Questions:

- Can you share any evidence on the take up and usefulness of the 2006 Service Charges in Commercial Property: RICS Code of Practice?
- Can you share any evidence related to undesirable practices and most common complaints on this issue?
- Can you share evidence of good practice in this area?

C. Commission on letting renewals

Issue:

The issue here is where letting agents charge commission to the landlord after the original tenancy has come to an end and the same tenant renews the agreement. This would apply even if the letting agent no longer has any involvement and is not involved in the renewal process.

Background:

The issue came to a head by the Office of Fair Trading (OFT) issuing High Court proceedings against Foxtons Ltd, seeking a declaration on the application of the Unfair Terms in Consumer Contract Regulations 1999 to certain terms in Foxtons' lettings agreements with landlords. The OFT is also seeking an injunction against Foxtons preventing it from using the terms.

Questions:

- Is this issue actually about transparency or is it more to do with the use of unfair contract terms?
- If the issue is a matter of contract terms that the letting agent and the landlord sign up to, is it sufficient that the letting agent gets the informed consent of the landlord that they are aware of the terms and agree to them?
- Does it make a difference if the landlord is acting as a consumer or a business?
- Can the contract terms used in these instances be justified? For example, on the basis that the client (landlord) benefits from the original choice of tenant by the letting agent, who has presumably proved an acceptable tenant therefore avoiding the risk factors:
 - Voids.
 - Unsatisfactory new tenant.
 - Expense in making accommodation suitable for new tenant.

It is likely that the High Court will make a decision on this case soon. Clearly, that decision will have an impact on agents, professional bodies, government departments and agencies, consumer organisations and consumers.

D. Commission on Home Information Packs (HIPs) and the Energy Performance Certificates (EPCs)

Issue:

The issue here involves some HIP providers incentivising estate agents with commission to order HIPs from them. It has been suggested that this has resulted in some estate agents telling clients they can only use a specific HIP provider to undertake a HIP, and not the client's own conveyancer or other source.

Background:

The problem appears to be a lack of transparency by estate agents. Not in terms of the commissions received but by limiting client choice. This is not helped in the present home selling regime where conveyancers are not generally approached early in the process and are not, therefore, usually considered as an option to provide a HIP/EPC.

Any seller is free to shop around for a HIP/EPC, and is not obliged to use the agent's chosen HIP/EPC provider. The question is whether this is made clear to the client.

The issue, to some extent, may be a practical one. Many agents produce such information in an electronic format, any HIP procured needs to be capable of being downloaded into that agent's systems, and this may impact on the choices available.

Part of RICS' stance on home-buying reform advocates better information to buyers and sellers and an earlier involvement of conveyancers in the process, which would improve choice.

Questions:

- Should the existence of a commission-based relationship for the provision of HIP/EPC services be disclosed to consumers and, if so, should the amount of commission be declared?
- Should an agent be obliged to explain all available options for the procurement of a HIP/EPC as part of their terms and conditions?
- Do factors, such as compatibility of IT systems, put in place barriers to effective open working?
- Can you share any evidence related to undesirable practices and most common complaints on this issue?
- Can you share evidence of good practice in this area?

E. Valuation fees

Issue:

There is a long-running debate in the residential sector about both valuation fees and fees charged for the arrangement of surveys for consumers. As part of the mortgage application process a valuation must be obtained that the lender can use. The charge for this is usually built into the mortgage product that the consumer pays for. However, it is not always clear how much of the fee goes to the lender and how much to the professional providing the service.

Background:

Sir Bryan Carsberg, in his review, also made reference to this issue. He highlighted that ‘...one hears of many cases where the lender incurs a modest fee [for the valuation] but makes a much larger charge to the prospective borrower. To tell a borrower that he or she will have to pay £400 for a valuation when the cost of the valuation to the lender is £140, for example, seems to me to be misleading. It is unfair to the firm carrying out the valuation, because it makes it seem as if they are charging excessively, and it gives a false impression to the borrower.’ This led to Sir Bryan’s recommendation that ‘action should be taken by the appropriate authorities to ensure that lenders fairly describe fees for applications and for valuations.’

There is the linked issue where an agreement has been put in place between a lender and a panel management firm for the latter to pay back to the lender a percentage of the valuation fees received as a commission for the supply of work. The point here is whether the consumer actually knows that this occurs.

Additionally, and outside the framework of a mortgage valuation, financial institutions often recommend or arrange surveyors to carry out additional or supplementary survey work at the same time or subsequent to a valuation. It is not clear that consumers understand the charging structure here, nor that they may be paying more for the arrangement of a survey than the survey itself.

Questions:

- Can you share any evidence related to undesirable practices and most common complaints on this issue?
- Can you share evidence of good practice in this area?
- Do you think borrowers are clear about exactly what they are paying for in relation to valuations or other survey work?
- Are borrowers clear about the chain of events involved in the arrangements of a survey?

F. The agreement of fees for commercial loan security valuations

Issue:

A lender will instruct a valuation surveyor to undertake a loan security valuation. However, there is also the situation where the lender leaves the issue of agreeing the valuer’s fee – and in some cases to the actual fee payment itself – to the lender’s customer to agree with the surveyor.

Background:

The potential difficulties that this second situation presents include, for example:

- It creates a relationship between the valuer and lender’s customer which goes beyond just the provision of information.
- It lays the valuer and the lender open to the risk that the customer may use the fee issue to influence the valuer’s opinion. Put slightly differently it gives the potential for criticism of this practice where, as in the overwhelming majority of cases, the valuer has acted with total integrity.
- It puts both the lender and valuer in a poor position, if, for example, the valuation becomes the subject of a negligence claim.
- Where the customer is left to actually settle the valuer’s account there is the added pressure that the customer may try and use this situation as leverage over the valuer.
- It encourages a practice whereby lender’s customers may shop around and link the fee to the valuer that is most willing to produce the valuation at a price that suits the lender’s customers.

Questions:

- Is this issue actually about transparency or is it more to do with the potential for undue influence?
- Do you agree that the arrangement of the fee is a matter for the lender and the valuer?
- Can you share any evidence related to undesirable practices and common complaints on this issue?
- Can you share evidence of good practice in this area?
- Is there a need for greater clarity in this area?

G. General comments on commissions

The TWG is interested in views on commissions generally. Do you think the system of commission based payments is a good or bad thing? What factors make commissions acceptable or justified and what factors render commissions unacceptable? Would some of the following points help to increase client confidence in commission payments?

- All fees and commissions should be made fully transparent in all situations.³
- Commission should be seen as something that is earned for value added services.
- Clients, especially consumers, should be made aware about what fees are taken, at which point, by whom and just what the added value is.
- The client's informed consent should be obtained in order for the professional to keep the commission.

Other issues

As indicated at the start of this consultation paper the issues discussed are those that have been brought to the Group's attention. There may be other issues surrounding transparency of fees that you have come across. The TWG is interested in hearing about them, so please do give a short outline of the issue and any evidence that you have as to the extent of the problem.

Consultation responses

Responses can be sent to RICS online, by email or by post.

Online responses can be submitted at:
www.rics.org/transparency

Email responses can be sent to:
transparency@rics.org

Postal responses can be sent to:

David Pilling
RICS Regulation
12 Great George Street
Parliament Square
London SW1P 3AD

The deadline for responses is 17 July 2009.

Further information

Enquiries about any aspects of this consultation can be made to:

Email: transparency@rics.org

Tel: +44(0)870 333 1600

3. This includes all commissions, for example, any referral commission from a removal company, photographer, signboard contractor, etc.

Part 5

Appendix A – Consultation list

RICS

Chairman of Professional Group Boards
Governing Council
Regulatory Board

Consumer

Association of Independent Advice Centres
Citizen Advice Bureau
Consumer Focus
Consumer Policy Institute
Consumers International
National Consumer Council
Which?

Government and public bodies

Better Regulation Executive
Business, Enterprise & Regulatory Reform
Communities & Local Government
Financial Service Authority
HM Treasury
LACORS
Law Commission
Local Government Association
Ministry of Justice
National Assembly for Wales
Northern Ireland Assembly
Office of Fair Trading
Privy Council Office
Public Accounts Committee
Scottish Government
Scottish Parliament
The Trading Standards Institute
Valuation Office Agency

Other Professional and Trade Bodies

Advisory Council of the Home Sale Network
Architects Registration Board
Asset Skills
Association of British Insurers
Association of Home Information Pack Providers
Association of Real Estate Funds
Association of Relocation Professionals
Association of Residential Letting Agents
Association of Residential Managing Agents

British Bankers Association
British Chambers of Commerce
British Estate Agents Group
British Property Federation
Building Societies Association
Centre for Cities
College of Estate Management
Confederation of British Industry
Council of Mortgage Lenders
Council of Property Search Organisation
Energy Saving Trust
Federation of Private Residents Association
Federation of Small Business
House Builders Federation
Incorporated Assoc. of Architects & Surveyors
Independent Estate Agents Group
Independent Surveyors Association
Institute of Business Ethics
Institute of Directors
Institute of Home Inspection
Institute of Residential Property Management
Law Society
National Approved Lettings Scheme
National Association of Estate Agents
National House Building Council
National Landlords Association
Property Code Compliance Board
Property Standards Board
Royal Institute of British Architects
Society of Licensed Conveyancers
Solicitors Regulation Authority
Transparency International
UK Anti-Corruption Forum

Redress

Centre for Effective Dispute Resolution
Dispute Service Limited
Financial Ombudsman Service
Independent Dispute Resolution Services
Independent Housing Ombudsman
Legal Complaints Service
Ombudsman for Estate Agents
Tenancy Deposit Solution Limited
The Ombudsman Service Limited/Surveyor
Ombudsman Service

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Advancing standards in land, property and construction.

RICS is the **world's leading qualification** when it comes to professional standards in land, property and construction.

In a world where more and more people, governments, banks and commercial organisations demand greater certainty of **professional standards and ethics**, attaining RICS status is the recognised **mark of property professionalism**.

Over **100 000 property professionals** working in the major established and emerging economies of the world have already recognised the importance of securing RICS status by becoming members.

RICS is an **independent** professional body originally established in the UK by Royal Charter. Since 1868, RICS has been committed to setting and upholding the **highest standards of excellence and integrity** – providing **impartial, authoritative advice** on key issues affecting businesses and society.

RICS is a **regulator** of both its individual members and firms enabling it to **maintain the highest standards** and providing the basis for **unparalleled client confidence** in the sector.

RICS has a worldwide network. For further information simply contact the relevant RICS office or our Contact Centre.

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