



## **Referrals Consultation – Overview of Responses 22 April 2013**

In the period of December 2012 to March 2013 we consulted upon our referral arrangement provisions. 65 stakeholders responded in total. Thank-you to all who contributed to the consultation. This document sets out the findings of that consultation exercise.

### **The majority consider that:**

- **the CLC should continue to permit referral arrangements;**
- **the disclosure and publication provisions we have proposed are appropriate and proportionate;**
- **it would not be proportionate for the CLC to provide an agreements template or to publish an overview of the arrangements in place.**

These findings, and the opinions behind them, will help inform our direction of travel, which will be determined and published over the next few months.

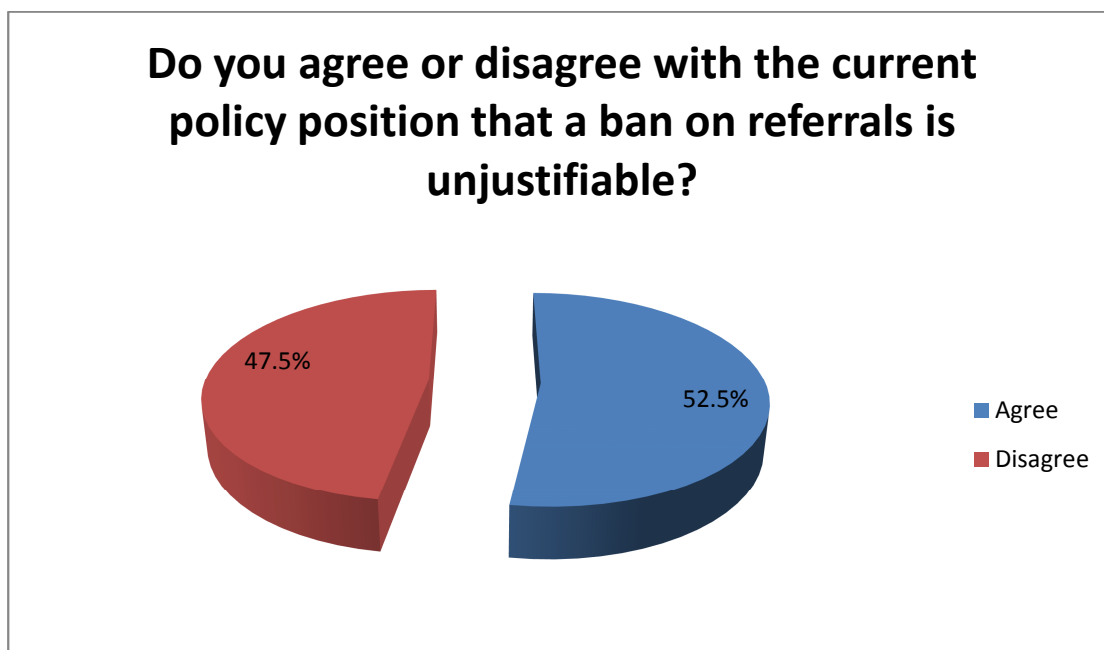
### **Stakeholder demographics**

- Of the 55.4% of respondents who were responding on behalf of their firm, the majority, 59.5% did not have referral arrangements in place.
- Of the 65 respondents, 36 were managers of CLC Practices, 20 were licensed conveyancers employed in SRA practices, 3 were managers of SRA practices, 2 were licensed conveyancers employed in industry, 2 were licensed conveyancers who act as locums, 1 used to practise as a licensed conveyancer and 1 was the Law Society.
- Of the 36 managers of CLC practices, 14 respondents are in practices with turnover of less than £100,000, 16 are in practices with turnover of between £100,000 and £500,000, 2 are in practices with turnover of between £500,000 and £3,000,000 and 4 are in practices with turnover of more than £3,000,000.

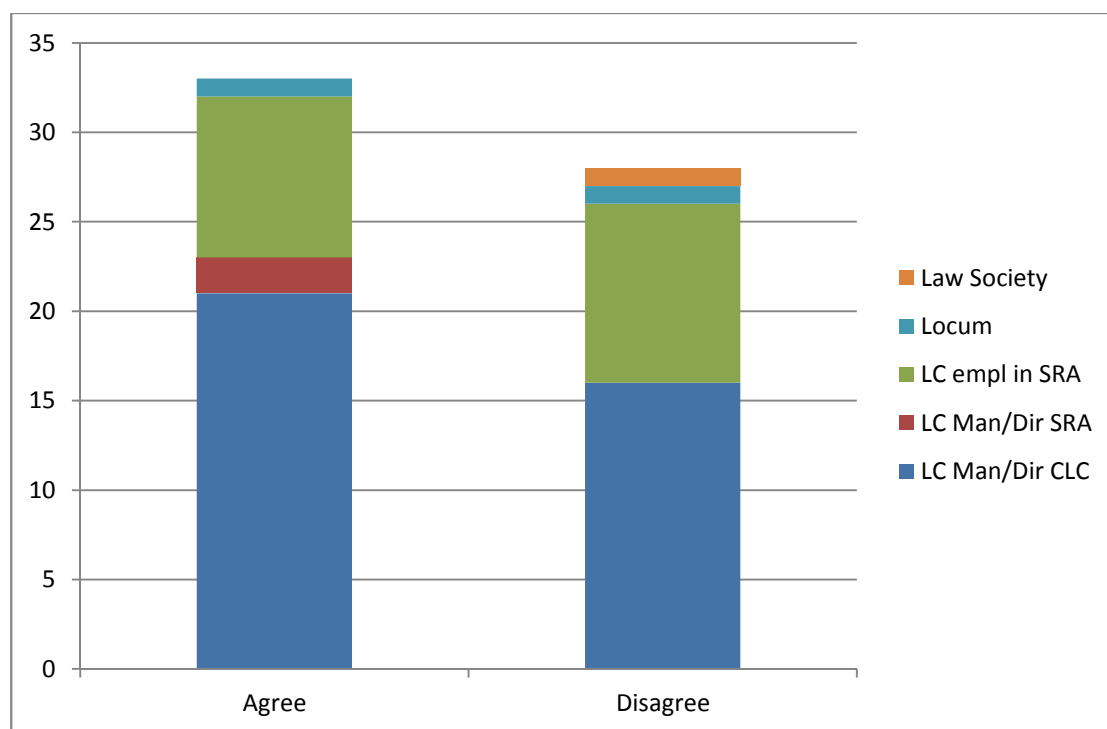
### **1. Should the CLC ban referral arrangements?**

We asked whether respondents agreed with the CLC's current policy position that a ban on referral fees is not justifiable. A slight majority agreed with the current policy position and so that the CLC should not ban referral fees.

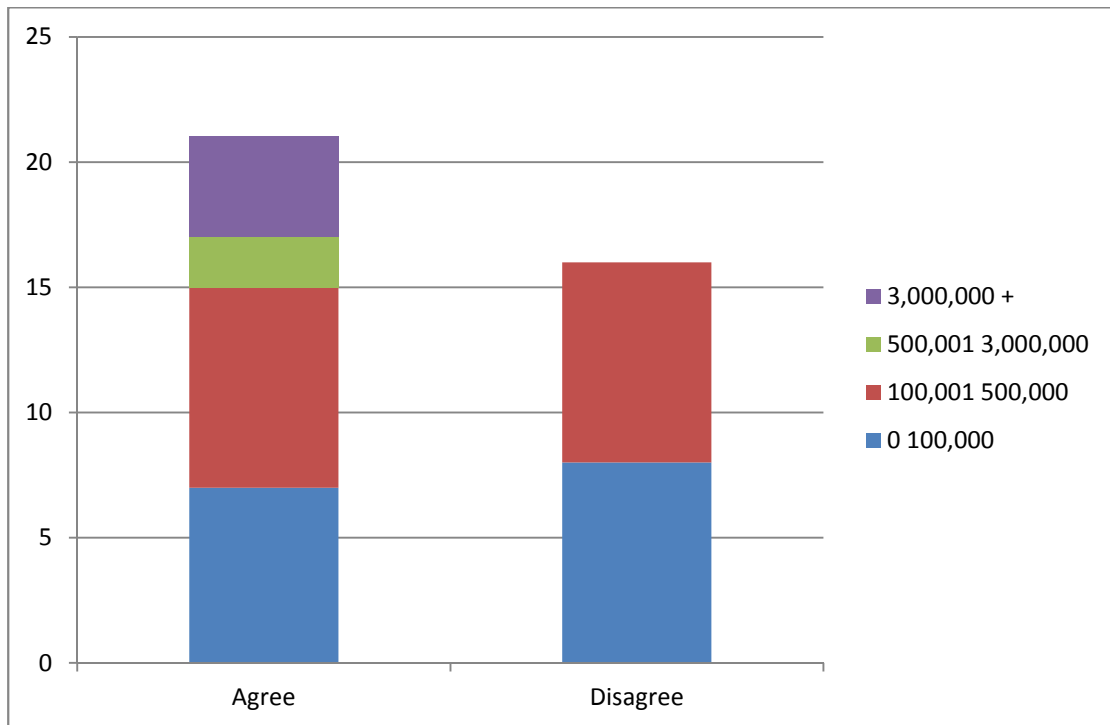
**Majority (52.5%) answered – No:**



Applying the categories set out above the respondents can be broken down as follows:



And for the managers of CLC Practices, the respondents can be further broken down by the turnover of practices:



While the larger practices by turnover favour retention of referral arrangements, the smaller practices by turnover are fairly evenly divided on the issue (see in particular comment below that banning of referral arrangements would mean that smaller practices would not survive).

**Why the CLC adopted the provisional policy position that referral arrangements should be retained:** the government's 2011 decision to ban referrals of personal injury claim was prompted by the perceived need to curb the compensation culture in this area. In contrast, the Legal Services Board, having commissioned two substantial pieces of analysis, found there to be little evidence of significant detriment to the client or public interest. As our own monitoring activities have reached a similar conclusion, we considered there to be no regulatory case for a blanket ban.

**Themes of responses which considered referral arrangements should continue to be permitted:**

Consumer benefits:

- one stop-shop;
- value for money;
- purchasing power; and
- an introducer will not wish to be associated with a firm of lawyers that does not meet high standards.

Transparency:

- any potential harm to the client is mitigated through the disclosure of the arrangement;
- if banned, such arrangements will go underground, will not be monitored and will not have VAT applied.

Competition concerns:

- to ban such arrangements outright would amount to a restraint of trade;

- the legal services sector should be focused upon generating growth and focusing on clients, not on increasing red tape;
- 2 responses suggested that the banning of such arrangements would mean that some small firms could not survive, (in direct contrast to the responses of several sole practitioners and smaller firms which judged such arrangements as threatening their existence – see below); and
- one respondent considered that the popularity of online comparison sites – which take a referral fee – demonstrates public support for the referral approach.

Forward planning: the ability to forecast the volume of new instructions with some degree of certainty encourages practices to invest in the continuing development of systems and processes which, ultimately, improves the service and experience to the customer.

**Themes of responses which considered there should be an outright ban:**

Conflicts of interest:

- referral fees compromise independence and are not in the best interests of the client
  - referral agents are given too much control about how the work should be undertaken; and
  - lawyers look to keep the referrer happy rather than the client.
- 3 respondents suggested that referral arrangements generated issues such as higher costs, dishonest methods, lower conveyancing standards, and capacity and capability shortfalls resulting in slow and poor service.

Competition concerns:

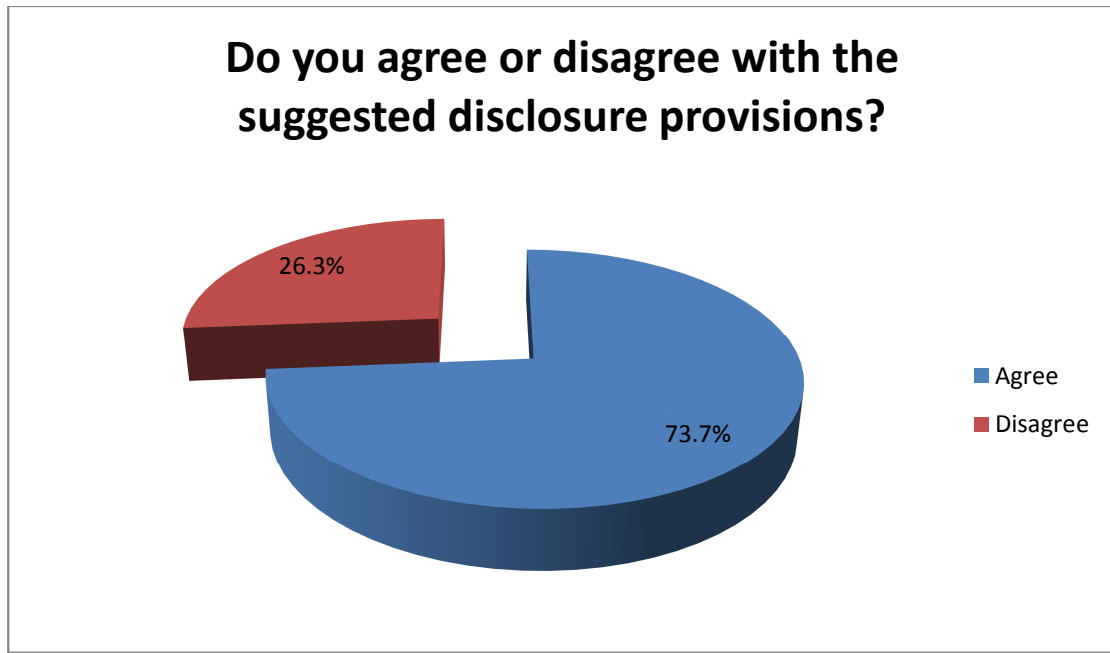
- 5 respondents suggested that such arrangements disadvantage the sole practitioner, essentially ‘killing the smaller practices’ and forcing them to lower their fees; and
- a couple of respondents were clear that workload should be based upon reputation rather than referral.

Fee misrepresentation: although not directly the subject of the consultation, concern was expressed by 2 respondents concerning inconsistencies between fee estimates and final charges and disbursements presented as other.



## **2. Should firms disclose more information as standard?**

**Majority (73.7%) answered – Yes:**



Though we provisionally concluded that a ban could not be justified, we also considered that the current regulatory provisions did not go far enough to ensure consumer choice. We therefore suggested that clients should be provided with information of the arrangement's nature, the name of the relevant third party, how the payment is calculated and the impact of it on the client. The client must be notified of the arrangement no later than when accepting instructions, be informed of any restriction or limitation affecting the introduction, and advised of their right to shop around.

### **Themes of responses which considered the suggested disclosure provisions appropriate:**

- if referral arrangements are to remain they must be disclosed;
- advising the client they can shop around is an adequate protection; and
- if no ban to be bought in, set the bar as high as possible.

### **Themes of responses which considered the suggested disclosure provisions were not appropriate:**

#### Proposals go too far:

- if displayed openly and transparently, already existing arrangements provide proportionate protection for clients;
- the current provisions are in keeping with outcomes-focused regulation;
- the proposals are a step backwards, creating unnecessary red tape and removing the CLC's common sense and helpful approach to regulation;
- a simple statement explaining a fee might be paid is sufficient;
- too onerous to give specific name of referrer, instead provide generic description (e.g. 'your estate agent/financial adviser');
- provide generic statement of amount paid and confirmation this does not affect the

quote;

- remove requirement to say how sum is calculated: this is a commercial matter for the business and may be subject to change due to changing volumes; and
- 'shop around' reminder and wording unnecessary.

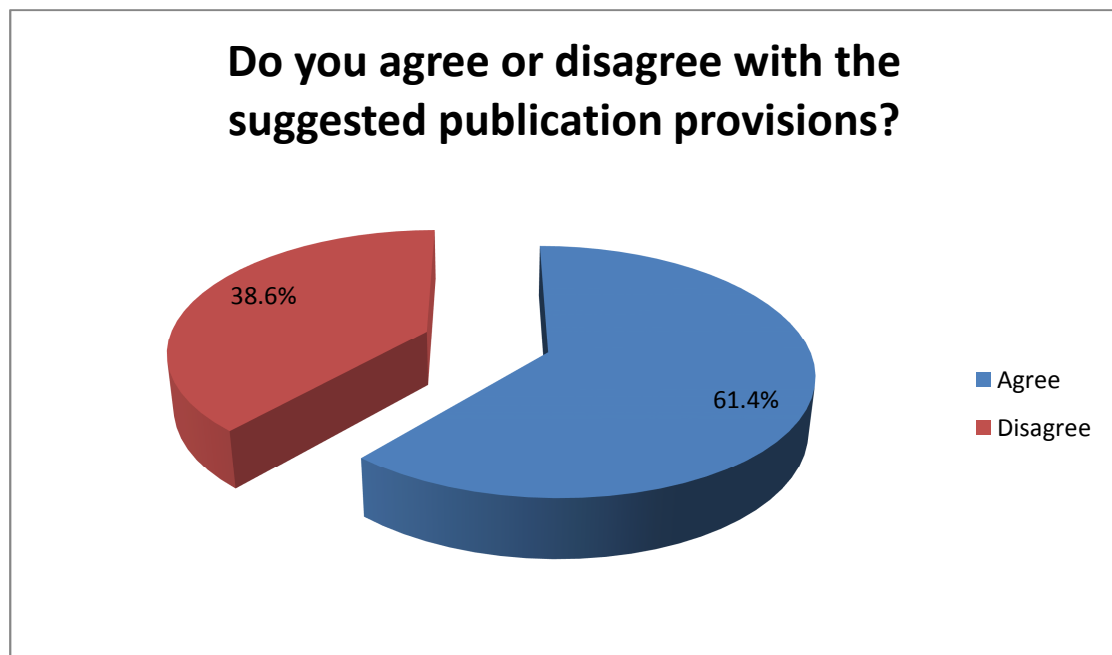
Proposals do not go far enough:

- the exact monies paid need to be specified and more detail is needed about how the disclosure is made; and
- One respondent considered the real issue to be the 'lies and malpractice' of estate agents rather than the extent of the information the legal firm is required to provide.

### **3. Publication**

#### **3a. Should the arrangements be in writing and periodically reviewed?**

**Majority (61.4%) answered - Yes**



**What the CLC proposed:** our provisional policy proposal was that all such arrangements should be in writing and subject to periodic review. We did not consider it appropriate for firms to publish individual referral arrangements as this would be inconsistent with the regulatory objective to promote competition. In addition, the proposed disclosure provisions would require a client to be informed of the impact the arrangement has upon them.

**Themes of response which considered the suggested publication provisions appropriate:**

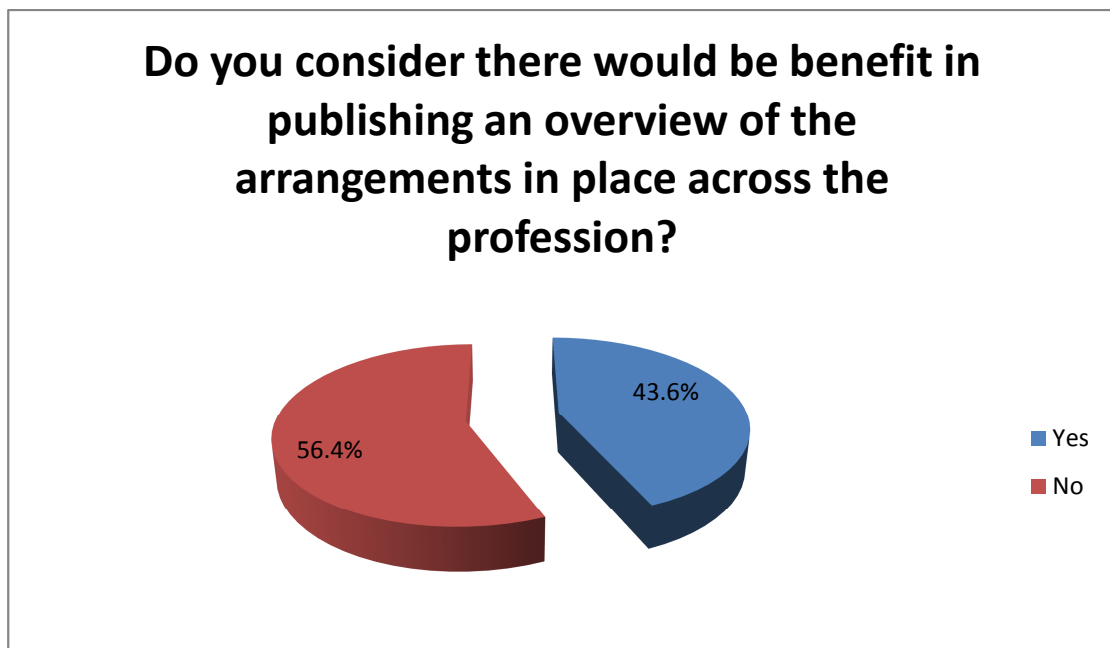
- if endorsing referral arrangements, need to have rigid procedure in place;
- for the sake of clarity we see no reason why referral arrangements should not be in writing and we would support proposal. Clearly they also should be reviewed periodically to see if they are still fit for purpose.

**Themes of responses which considered the suggested publication provisions were not appropriate:**

- adequate protection already in place, such prescription risks firms moving to another regulator;
- it would be better for the client if the estate agent had to make this disclosure;
- the client would not be interested in the actual arrangement details;
- provide information in annual return to CLC to inform supervision only;
- publishing lawyers' written agreements with introducers does not serve the consumer interest, only the interests of a firm's competitors.

**3b. Should the CLC publish an overview of all of the arrangements in place?**

**Majority (56.4%) answered - No**



**What the CLC asked:** should we publish an overview of the arrangements in place across the regulated community and if so, what could this include?

**Themes of response which considered publication of an overview appropriate:**

Transparency: in favour, particularly across all parts of the legal profession (should be a requirement of all)

Geographical comparisons: would benefit from knowing the arrangements/fees in a

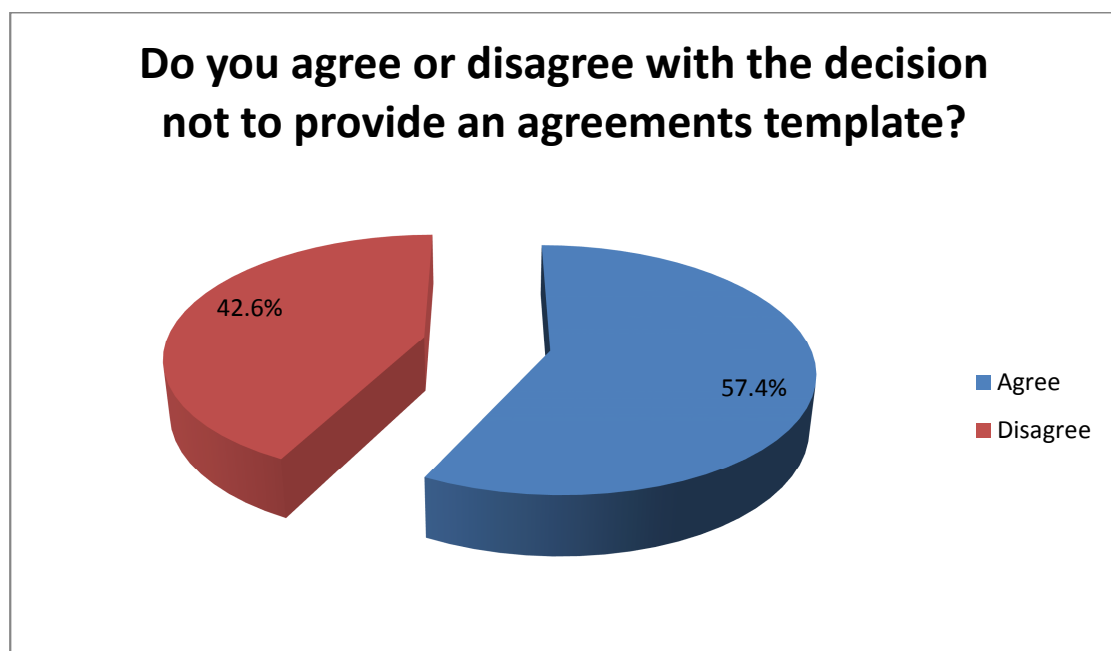
particular area so have idea of what is and isn't reasonable

**Themes of responses which considered publication of an overview not to be appropriate:**

Misplaced: a couple of responses suggested provision of neutral guidance for public on referral arrangements to be a more appropriate allocation of resources which should help inform the decision of the potential client

**3c. Should the CLC prescribe the form of an agreement?**

**Majority (57.4%) answered – No**



**Provide overview of the suggested overview provisions:** we suggested that provision of a referral arrangements template is likely to be too prescriptive and not in keeping with outcomes-focused regulation.

**Themes of responses which considered a template should be provided:**

Consistency and specificity: if endorsing referrals, must have a rigid procedure in place so approach is uniform across the profession; if a CLC requirement to have written arrangements, it should specify what they need to include; helpful to see what might be expected in an agreement.

**Themes of responses which considered a template unnecessary:**

Too much detail: which may result in the CLC being perceived as an unnecessarily prescriptive regulator;

Will be ignored: corporate estate agents will ignore/override these.