



Improving the home buying and selling process

Call for Evidence by the Department for Communities and Local Government

Response by the Council for Licensed Conveyancers

Summary

The Council for Licensed Conveyancers has been looking at how digitisation could improve the conveyancing process and wider home buying and selling. We are very keen to work with DCLG and other branches of government including HM Land Registry and HMRC as well as lenders and conveyancers themselves to make progress.

We believe that a ban on referral fees would be damaging and disproportionately disruptive to the industry. However, it is necessary for the fact and amount of any referral fee to be communicated to the client early in the process, when they are engaging with the referrer (estate agent, mortgage broker) for the first time. Under current practice, it is generally left to the conveyancer to inform the client of the referral fee, by which time the client is likely to be disinclined to shop around.

We believe that transformational change is within reach and does not require government to legislate. A key role for government will be to make sure that data is digitised and made easily available and then to coordinate and encourage the development of new tools and approaches that make best use of that data. Ministerial leadership will be vital.

About the Council for Licensed Conveyancers (CLC)

1. The CLC was established by the Administration of Justice Act 1985¹ (AJA) and is an Approved Regulator under the Legal Services Act 2007², subject to the oversight regulation of the Legal Services Board. It licenses and regulates licensed conveyancers and Practices in the provision of reserved legal activities, currently conveyancing , probate services and other non-reserved legal activities (including will writing). It is also a Licensing Authority authorised to license and regulate Alternative Business Structures (ABS). It has no representative function having always been an independent regulator.
2. As an approved regulator the CLC ‘must, so far as is reasonably practicable, act in a way which is compatible with the regulatory objectives’³.
3. The CLC’s role is to safeguard the public interest and consumers by regulating providers to deliver high quality and accessible legal services.
4. The CLC’s regulatory activities include:
 - a) setting educational and training standards for entry to the profession
 - b) issuing licences to practise to those qualified to provide conveyancing and probate services and to Alternative Business Structures
 - c) maintaining a register of all licensed conveyancers and regulated bodies
 - d) setting standards to regulate the professional practice, conduct and discipline of licensed conveyancers and regulated bodies
 - e) setting standards to maintain adequate professional indemnity insurance and a compensation fund to protect consumers
 - f) monitoring the work and conduct of regulated bodies
 - g) providing guidance and advice to regulated bodies to maintain compliance with our regulatory requirements
 - h) investigating allegations of misconduct and where appropriate taking disciplinary action and
 - i) collaborating with key stakeholders in the legal services market to monitor and shape future policy.
5. The CLC’s approach to regulation is proportionate, risk-based and outcomes-focused. Licence holders are required to demonstrate that they:
 - a) act with independence and integrity
 - b) maintain high standards of work
 - c) act in the best interest of clients
 - d) deal with regulators and ombudsmen in an open and cooperative way and
 - e) promote ease of access and service⁴.

¹ <http://www.legislation.gov.uk/ukpga/1985/61/contents>

² <http://www.legislation.gov.uk/ukpga/2007/29/contents>

³ S.28 Legal Services Act 2007

⁴ See further Annex 1

Call for evidence questions and responses

Estate agents

Q1. Should the industry do more to make customers aware of how to complain?

a. If so, how?

CLC Response

To the extent that they do not already do so, the CLC believes that all Estate Agents should be required to comply with rules similar to those applicable for lawyers. For these purposes, both the seller (who pays the estate agent) and the buyer (who does not) should be treated as customers.

- Estate Agents should notify customers at the outset about the process for raising complaints, and how the complaint can be escalated if the customer is not satisfied in the way the complaint has been handled.
- This information should be given to the customer again if they raise an expression of dissatisfaction with the service they have received.
- Customers should also be notified of the Complaint Handling Body to which a complaint should be referred if it is not resolved to the customer's satisfaction by the Estate Agent.

Q2. Should the government take further action to enforce current transparency regulations regarding disclosure of referral fees?

CLC Response

The CLC considers that Estate Agents should be required to notify customers who are considering using their services of any referral fee that might be received if that customer were to go on to instruct a conveyancer referred by the Estate Agent (i.e. before they have contracted with the Estate Agents). The expectation should mirror the expectation placed on conveyancers, which requires them to inform clients 'of the nature of the arrangement (including any payment made), with whom it is made, and any impact (including any legal costs they are charged)'⁵.

Transparency is key, since OFT, Legal Services Board and CLC studies have found no consumer detriment arising from referral fees where there is transparency. (We have provided details of those studies to DCLG officials.)

The timing of the disclosure is also important. It needs to take place before the conveyancer has been instructed, and ideally earlier than that, before the client has made a decision to purchase a particular property because the client's emotional commitment to the purchase may prevent them shopping around for a conveyancer.

a. If so, what action should be taken?

CLC Response

Estate Agents should be required to comply with a rule substantially in the terms set out in response to Question 2 above. Monitoring and securing compliance may require government action to ensure robust regulation of estate agents.

⁵ Paragraph 16 CLC Profits and Advantages Code at <http://www.clc-uk.org/CLCSite/media/PDFs/Disclosure-of-Profits-and-Advantage-Code.pdf>

Q3. What would the impact be of banning referral fees?

CLC Response

As mentioned above, three major studies have found no consumer detriment arising from referral fees in conveyancing as long as there is transparency about those payments.

Where there is generally significant asymmetry of knowledge between client and service provider, and where purchase is infrequent as is the case in conveyancing, referrers such as estate agents and mortgage brokers may provide a useful service based on their knowledge of the speed and quality of service provided by different conveyancers.

Referral fees may be increasing the cost of the service overall, but without referral routes, spend on marketing as a route to client acquisition would increase and any reduction in price might not be significant. That is perhaps especially true in a competitive market such as conveyancing.

The CLC is unclear about the likely impact of banning referral fees and a thorough impact assessment would be needed before any final policy decision could be made. However, we can identify some potential impacts.

Disruption of the conveyancing market: Since referral arrangements have been common in the conveyancing process for some years, a ban would require a large number of firms to change their business model very quickly. An assessment would need to be made as to the effect this would have on customers, as well as businesses and possibly the housing market itself if consumers or transactions are negatively affected as change runs through the provision of conveyancing services.

Encouraging entry of estate agents into the provision of conveyancing: Estate agents may seek to make up for the lost revenue stream from referral payments by establishing their own conveyancing operations. These would of course need to be under the regulation of one of the established regulators of conveyancing.

Reduction in price of conveyancing: Where firms are no longer paying referral fees, they may choose to reduce the price of their services to reflect that entirely or choose to improve their profit margin by passing on the effect only in part or not at all. There is currently significant price convergence in conveyancing and keen competition, which might indicate that firms currently paying referral fees would put the money saved to improve their profit margins.

It would be desirable to bring forward the moment at which the client is informed of the referral fee. Currently, that is generally at the point at which the conveyancer is confirming their instructions with the client. At this stage, the client is unlikely to consider whether they wish to continue to instruct that conveyancer or seek another who has not been referred because they will be focused on moving their transaction forward.

The CLC and other front line regulators are currently consulting on proposals to increase the transparency of price and service information to encourage users of legal services to shop around more. If estate agents and other referrers were to be required to inform clients of the referral fee (that it will be paid and its value) when they first take instruction from the client, that client would then have time to shop around if they wished. This approach would be much more likely to allow the industry as a whole to evolve as consumer behaviour changed over time. Unlike a ban, it would allow consumers to rely on the advice of an informed player in the industry, taking into account the fee attached to that referral.

Q4. Should the government introduce more regulation for estate agents?

CLC Response

Clear principles and outcomes need to be agreed as to the basis upon which estate agents services are provided. This is likely to require estate agents to modify their behaviour. The extent to which that behaviour changes is likely to determine the extent to which the regulatory framework for estate agents needs to change.

a. If so, what sort of regulation would be appropriate?

CLC Response

See response to Q4.

Conveyancing

Q5. What should industry do to help consumers make more informed decisions when selecting a conveyancer?

CLC Response

These are issues which are currently being review by the legal services regulators as they consider how to respond to the recommendations in the Legal Services Market Study⁶ published by the Competition and Markets Authority (CMA) in December 2016. At time of writing, the CLC is coming to the end of a three month consultation on proposals for the implementation of the CMA's recommendations. The front line regulators of legal services are working together to deliver whole-of-market solutions and to increase the impact of the Legal Choices website that helps consumers identify their legal needs and choose the right legal service provider.

a. How could government help facilitate this?

CLC Response

It is suggested that Government should engage in the work currently being undertaken by the legal services regulators. The Ministry of Justice has not yet published its response to the CMA's recommendations nor commented on the Action Plans that have been published by all of the front line regulators of legal services with the exception of ICAEW.

Q6. What improvements can be made to the process of property searches in order to speed up home buying and selling?

CLC Response

Property searches could be undertaken at an earlier stage in the buying process, possibly by the seller before they put the property on the market. The buyer will need to be able to rely on those reports. In a fully digitised system we can imagine that those searches could be updated in real time whenever a potential buyer interrogates the data about a property.

⁶ <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>

Q7. Would there be an advantage to encouraging buyers and sellers to use the same conveyancing provider?

CLC Response

The CLC has permitted CLC practices to act for both buyer and seller in a conveyancing transaction for a number of years⁷subject to appropriate safeguards to protect the interests of both buyer and seller. It is a matter for each CLC Practice to determine whether they can appropriately mitigate any potential detriment to the customers. If a conflict arises which was or should have been foreseen, Paragraph 10 of the Conflicts of Interest Code provides that the CLC Practice does ‘not charge either Client a fee for the work undertaken (other than for disbursements properly incurred)’.

a. If so, how could it work, without creating conflict of interest problems?

See above

Harnessing digital technology

Q8. How would a predominantly digital conveyancing process affect home buyers and sellers?

CLC Response

A digital conveyancing process could speed up the process for home buyers and sellers, though appropriate steps would need to be taken to mitigate the different risks of fraud that might emerge. Further, steps would need to be taken to ensure that those buyers and sellers who do not {missing bit here}

Q9. What should the government do to accelerate the development of e-conveyancing?

CLC Response

We welcome the announcement in the Autumn Budget of the Regulators’ Pioneer Fund that we hope we and other regulators in the legal sector will be able to access to drive forward improvement in the conveyancing process and the development of more and better digital tools that will speed up the process, improve security and consumer outcomes. We would also look to partner with government in that work.

Support from government for the digitisation of HM Land Registry records will be vital and there may be a business case for greater investment to bring forward completion of that work. The availability of that data set will really pave the way for digital conveyancing.

Q10. Are there any particular public sector datasets which you think should be released as open data in order to drive innovation in the home buying and selling process?

CLC Response

We’re not aware of any other data sets that have not already been identified as important for innovation.

It is important that data is also made available to regulators for the purposes of consumer protection and maintenance of standards in the provision of legal services. Some of that data might be publicly

⁷ See paragraphs 6-11 CLC Conflicts of Interest Code at <http://www.clc-uk.org/CLCSite/media/PDFs/Conflicts-of-Interest-Code.pdf>

useful, but other data might only be useful to regulators because it requires context and cannot be used as a guide for consumers even if it highlights issues of potential concern for regulators. At the moment Land Registry requisition data falls into that category. It is important that the implementation of the General Data Protection Regulation in the UK does not hinder regulatory activity and the benefits that can flow from sharing more information between agencies such as HM Land Registry, HMRC, lenders and the regulators.

Q11. How could other parts of the home buying and selling process be improved through better use of digital technology?

CLC Response

The CLC believes that increased transparency whereby different parties in a chain could track overall progress within that chain would be a very helpful innovation and assist in the management of expectations.

There is also significant scope to improve the speed and security of the completion stage and post-completion work, from transfer of funds between the various parties, to updating the title at Land Registry and making the SDLT payment to HMRC.

Mortgages and the requirements of lenders

Q12. What more could be done to encourage borrowers to seek a Decision in Principle from their preferred lender before they start house hunting?

CLC Response

It has been observed that there is a fear that shopping around for mortgages (or any financial product) may leave footprints on an individual's record that will reduce their credit-worthiness. In so far as this does actually happen, it could be reduced and if it is not widespread, then myth-busting might be helpful.

Q13. What other improvements could be made to the process of applying for and obtaining a mortgage?

CLC Response

This could be improved by making comprehensive information about a property available to buyer and lender at the very outset, as raised above.

Informing consumers

Q14. How do we ensure buyers and sellers are able to access good guidance on buying and selling homes?

CLC Response

The CLC is working with the other legal regulators to develop the Legal Choices Website⁸ as a resource to which conveyancing practices can signpost customers. The CLC is aware that a number of CLC practices have developed informative material for customers on the home buying and selling

⁸ At <http://www.legalchoices.org.uk/>

process, both on line and in hard copy. We are also in the process of improving content for home buyers and sellers on our own website.

Better information at point of sale

Q15. Should sellers be required to provide more information before they market their property?

CLC Response

The CLC believes this is desirable since it should speed up the conveyancing process and reduce the number of transactions which fail.

a. If so, what information should be provided?

CLC Response

Ideally, all the information which a buyer's lawyer would reasonably require a seller's lawyer to produce as part of pre-contract enquiries.

Q16. Should sellers of leasehold homes be encouraged to engage with their freeholder before marketing their home for sale?

CLC Response

Yes, since this would also assist in reducing the time taken in completing a sale and purchase.

a. If so, in what ways should they engage?

CLC Response

See the response to Q15(a) above.

Sharing information about each other and increasing commitment

Q17. How can government increase commitment to a sale between buyers and sellers?

CLC Response

This could be delivered through culture change rather than legislation. The requirement for up front provision of comprehensive information may deter less serious potential sellers, for example.

Government might also consider whether it should promote the use of lock-in contracts at the point of acceptance of offer. However, as these need to include escape clauses in certain circumstances, their value may be limited and they have not taken hold in the sector hitherto.

Whatever changes are finally identified, a key role for government will be to encourage and monitor the transformation process and drive the adoption of new ways of working. Regulators and representative bodies too can provide encouragement and reassurance around changed approaches.

a. Would development of standard agreements help?

We are not sure that this would make a difference.

Q18. How should we best tackle gazumping?

CLC Response

This is always a risk where the market is overheating and should probably be viewed as a warning of an over-exuberant market that may be reaching its peak. Any attempt at tackling gazumping would need to be directed at the seller. This would require primary legislation, and may result in unintended consequences e.g. increasing disproportionately the bargaining power of the buyer.

Q19. What other steps could be taken to increase confidence in the housing chain?

CLC Response

As mentioned above, greater visibility of the chain itself could help reassure buyers and sellers up and down that chain.

Buying a leasehold property

Q20. Should managing agents / freeholders be required to respond to enquiries within a fixed time period?

CLC Response

To a large extent this is dependent on the resources of the managing agents/freeholders, but a time limit could give buyers and sellers greater confidence in the process. Ideally this information would be available as the property begins to be marketed.

a. If so, how could this be done?

CLC Response

This would need to be done in consultation with organisations representing managing agents and freeholders with a view to a voluntary code being agreed.

Q21. Should maximum fees be set for the services and information provided by managing agents / freeholder to home buyers and sellers?

a. If so, how could this be done?

CLC Response

CLC does not have a view on this.

Q22. Should the government introduce standard mandatory forms for collecting information about leasehold?

CLC Response

To date representative bodies have undertaken this role. It is suggested that they should continue to do so, although Government may wish to give guidance as to its preferred approach.

Buying a new build property

Q23. What can be done to improve the customer experience of buying a new build home?

CLC Response

CLC does not have a view on this

Q24. What more can be done to help buyers of new build homes quickly secure a mortgage offer?

CLC Response

CLC does not have a view on this.

Any additional points

Q25. What else should the government be doing to help improve the home buying and selling process, and reduce the cost for consumers?

CLC Response

Making more of the relevant information available much earlier in the process – when a property is being marketed – is a reasonable ambition and would achieve transformational improvement in the process. That may require significant upfront investment if it is to be achieved sooner than the 2030 envisaged by the Land Registry. But that investment would deliver a significant public good.

Government should play a key leadership role, working alongside conveyancers, regulatory and representative bodies, lenders, HM Land Registry, HMRC, established software suppliers and law tech, prop tech and fin tech start-ups to galvanise the industry to deliver the transformational change that looks to be within reach.