



Law Commission Consultation on 14th Programme of Law Reform

Response by the Council for Licensed Conveyancers

30 July 2021

About the Council for Licensed Conveyancers

The CLC was established by the Administration of Justice Act 1985 and is an Approved Regulator under the Legal Services Act 2007, subject to the oversight regulation of the Legal Services Board.

It licenses and regulates licensed conveyancers and practices in England and Wales in the provision of reserved legal activities, currently conveyancing and 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.

The CLC's role is to safeguard the public interest and consumers by regulating providers to deliver high quality and accessible legal services. As part of this role, we engage closely with innovators in the delivery of conveyancing and probate services and especially with the developers of

Response to the Law Commission Consultation

Question 6

In general terms, what is the problem that requires reform?

The Law Commission has identified home buying as a potential area of law reform for inclusion in its 14th programme. The CLC believes that it is urgent that the legal process for transacting property should be review and reformed.

Transaction times are growing ever longer, resulting in high fall-through rates, and resulting cost and inconvenience to home buyers and sellers. This is in large part due to the processes and behaviours that arise as a result of *caveat emptor*. Obtaining and verifying data on the property to be purchased as well as follow-up enquiries introduces delay and uncertainty for all involved, including lenders.

There is a great deal of work underway across the legal and property sectors to improve an outdated process. The Home Buying and Selling Group has developed an approach to the up-front provision of information to drive the sale and purchase process more efficiently, for example, and a huge number of established and new tech companies are developing solutions that tackle different challenges in the current system. Many of these improvements would be more useful with changes to the legal process, and fundamental changes.

The CLC's discussion paper [Conveyancing 2030](#) sets out a range of possible scenarios for the future of conveyancing.

Question 7

Can you give us an example of what happens in practice?

The key challenge is that the full picture about the property being purchased only becomes available to the buyer some considerable time after they have made an offer on it. The information that they obtain could reveal that the property is not suitable for their intended use or has a problem that requires costly correction, for example. If this information causes the buyer to withdraw, they will face wasted costs and time, as may the seller. Alternatively, they proceed in spite of this information either accepting the shortcoming or renegotiating with the seller in some way.

BEIS undertook research on this issue that showed around half of buyers and sellers in a failed transaction experience a loss as a result.

A change of approach to support property logbooks or other means of providing up-front information to sellers as properties are being marketed could revolutionise home buying and selling, supporting a vastly more efficient market and reducing costs to consumers.

Question 8

To which area(s) of the law does the problem relate?

We will be looking into the existing law that relates to the problem you have described. Please tell us about any court/tribunal cases, legislation, books, or journal articles that relate to this problem.

- The common law concept of caveat emptor
- Consumer Protection from Unfair Trading Regulations 2008
- Sale of Goods Act 1979
- The Land Registration Act 2002

Question 9

Can you give us information about how the problem is approached in other legal systems?

No.

Question 10

Within the United Kingdom, does the problem occur in any or all of England, Wales, Scotland or Northern Ireland?

The CLC regulates conveyancing and probate in England and Wales. We understand that there are differences in conveyancing between the jurisdictions of the UK, but the problem is largely shared across all of them.

Question 11

What do you think needs to be done to resolve the problem?

Ideally, a legal framework would be put in place to support a move to a model which ensures

potential buyers have all the necessary information they need to inform their decision to purchase a property before they make an offer. Importantly, they will need to be able to trust that information whether it is provided by the seller, a public authority, or a commercial entity.

Question 12

What is the scale of the problem?

Other respondents will be able to provide insight into the scale of the problem, but in a normal year, some 1 million residential properties will change hands each year, so we can assume that well over 2 million citizens will be affected by the shortcomings of the current process. In addition, around one-third of transactions are aborted, which we might estimate as affecting over 600,000 citizens through wasted time and money.

This is quite apart from the numbers of buyers who may come to regret a purchase that they might not have proceeded with had they held all the necessary information at the outset rather than after having made an offer and committed in other ways such as preparing school moves, for example.

Question 13

What would be the positive impacts of reform?

As is implied from the above, reform of the home buying and selling process could:

- Improve the efficiency of the housing market and potentially support better use of existing stock by ensuring buyers move into appropriate housing
- Reduce transaction times, reducing costs and stress
- Reduce the stress of moving home generally
- Reduce the costs of abortive transactions
- Improve the consumer journey
- Ensure that buyers are fully informed about what they are buying
- Enable improved security around transactions and reduce risks to buyers, sellers, lenders, conveyancers and the wider home buying and selling industry

Question 14

If this area of the law is reformed, can you identify what the costs or other negative impacts of reform might be?

There will be a potential shift in costs of selling a property from the buyer to the seller as the seller will need to provide more information about the property than at present. Overall, however, the increased efficiency of the process should bring the cost of buying and selling down.

There will be costs associated with the digitisation of data about properties. These costs will be incurred in any event, as that effort is already underway and is needed even if home buying and selling is not reformed.

Some businesses that have grown up to meet the demands of the current process may disappear if the product or service they provide is not needed following the reform. However, they could also evolve to deliver new products and services in the new process. We cannot quantify the impact of this, but it seems certain that it is vastly outweighed by the lasting benefits of reform.

Question 15

Does the problem adversely impact equality, diversity and inclusion by affecting certain groups in society, or particular areas of the country, more than others? If so, what are those groups or areas?

The current system impacts more those individuals and groups with less experience of the process. Those are first-time buyers and groups who are less likely to have transacted a property in the past. That is because it is a complex process for purchase which places the onus on the buyer rather than the seller.

Question 16

In your view, why is the independent, non-political, Law Commission the appropriate body to undertake this work, as opposed to, for example, a Government department, Parliamentary committee, or a non-Governmental organisation?

The most radical version of possible reform would see a move away from the common law principle of caveat emptor in property transactions that are both high value and emotionally charged to one of vendor disclosure. This would be a fundamental change.

Any reform will entail major changes to the industry affecting estate agents, managing agents, property portals, property sellers and buyers, mortgage lenders and of course conveyancing lawyers. It will also need to command the trust of citizens and ensure that the stability of the housing market is maintained through the period of change.

The most recent attempt to improve home buying and selling, Home Information Packs, became something of a political football.

Vested interests in the current process mean that there is widespread reluctance – or outright opposition- to consider the kind of fundamental reform that is so necessary.

For all these reasons, the authority of, and confidence in, the Law Commission in setting out proposals for reform will greatly improve the chances of success.

Question 17

Have you been in touch with any part of the Government (either central or local) about this problem? What did they say?

Government has been considering this issue seriously for at least four years. The CLC engaged then with BEIS, which initially had responsibility for reform of home buying and selling before it moved to MHCLG. We have remained active in the discussion directly with government, with HM Land Registry and HMRC, the Home Buying and Selling Group, and conveyancers of course as well as existing and emerging providers of IT who are seeking to address the problem.

Government has been looking for ways to reform home buying and selling that do not require legislation. It seems clear that effective reform will require some legislation, certainly if we are to realise all the benefits of digitalisation of the data and process that drive home buying and selling.

Question 18

Is any other organisation such as the Government or a non-Governmental group currently

considering this problem? Have they considered it recently? If so, please give us the details of their investigation on this issue, and why you think the Law Commission should also look into the problem.

As mentioned above, the key government department is MHCLG. The legal sector is taking action itself with others in the industry, through the Home Buying and Selling Group, which has worked up proposals on up-front information.

We have mentioned above our own scenario planning in Conveyancing 2030. HM Land Registry has its Digital Street project that points the way to digitalisation.

The Bank of England's reform of the Real Time Gross Settlement system also provides opportunities for improvement.

There are many lawtech and proptech entities that are developing approaches that offer significant improvement.

The Law Commission should also look into this problem because, as mentioned above, it has the capacity more than any other organisation to review the problem in the round and consider the implications of a move to vendor disclosure of information. The Law Commission's recommendations will carry great weight and help to assemble the necessary coalition to deliver the reform home buying and selling so desperately needs.