

The Council for Licensed Conveyancers: Submission to the Levelling Up, Housing and Communities Committee Inquiry into Improving the Home Buying and Selling Process - 18th April 2024

Introduction

1. The CLC is the specialist regulator of conveyancing and probate lawyers in England and Wales, established by the Administration of Justice Act 1985, and is subject to the provisions of the Legal Services Act 2007 with powers deriving from the Courts and Legal Services Act 1990 and the Deregulation Act 2015. We were established to ensure that there is competition in the market for conveyancing services and to support innovation.
2. The CLC is a pure regulator and does not have any representative or advocacy functions on behalf of the professionals and sector that we regulate; those functions fall to membership organisations and trade bodies. Our position means that we are truly impartial and consistent with our statutory obligations, we are uniquely placed to truly represent the consumer interest in these submissions.

Summary of Recommended Changes

3. 40 years of experience in the regulation of conveyancing has enabled us to build a clear and comprehensive picture of the changes needed to deliver improvement in the home buying and selling process that consumers and others working in the sector are calling for, and how best those changes can be achieved.
4. Much has already been achieved without the need for legislation, as highlighted in the evidence provided by the Home Buying and Selling Group (HBSG) of which we are a member. Other key players including the Digital Property Market Steering Group (DMSG), of which the CLC was a founding member, are enabling change, and there is sector-wide consensus on the need for further action, as well as a shared understanding of the broad direction of change. However, coordination is needed, and that is where the DPMSG intends to make an impact and where government can assist.
5. Given where we are now, with comparatively little resource and cost implication for the public purse, the government could make some interventions which would deliver significant improvements and greatly enhance the experience that the UK public and businesses have when buying or selling property. However, we must recognise the scale of change that will be needed in the day-to-day delivery of the home buying and selling process and conveyancing. Without an overhaul to the system, the consumer experience will continue to be poor, and financial benefits to UK plc will be missed.

The changes that will bring most benefit to consumers include:

- 6.1 Those that will deliver improvements in the time taken to buy and sell property, including digitisation of property data and upfront provision of reliable property data to speed transactions up and reduce the fall-through rate as well as a single, agreed approach to conveyancing owned and maintained by all the relevant participants.
- 6.2 Improvements to enhance security (that is measures to safeguard people's money and their personal identities as they engage in property transactions) such as sector-specific ID schemes under the forthcoming government framework for example. Also, the CLC has made possible the use of Third Party Managed accounts as an alternative to client account to reduce the risk of

fraudulent or accidental misdirection of funds. We would like to see these or other, more secure alternatives to client account, adopted much more widely.

6.3 Changes that will help reduce the fall-through rate for property transactions, which is currently unacceptably high and has a very detrimental impact on consumers. These include, again, upfront provision of property information and the wider or perhaps even mandatory use of reservation agreements.

6.4 Introduction of a regulatory scheme for property agents (including estate agents and managing agents) that would include a Code of Conduct as recently recommended by the House of Lords Industry and Regulators Committee. This is needed enforce requirements such as, upfront provision of information at the point a property is marketed and the wider provisions of a Code of Conduct.

7 Further detail in relation to each of the above points is provided in answer to the relevant questions below. We look forward to the opportunity to answer any further questions the Committee may have through oral evidence.

Addressing the Inquiry's Specific Questions

8 How efficient or effective is the existing process for buying and selling homes? How could this be improved?

The current system is effective, giving buyers a high degree of confidence and security of legal title in property they have purchased by virtue of the due diligence undertaken by conveyancers and the state-backed guarantee operated by Land Registry. However, the system is not efficient, taking far too long; evidence suggests typically transactions take 12 to 16 weeks. Some can take much longer than 16 weeks, especially if access to information about the property is slow and anecdotally, we hear of much more extended time frames being common. These extended transaction times are certainly a significant cause of the high fall-through rate that wastes time and money in the system and causes difficulties and anxiety for citizens.

Simple changes could deliver significant improvement to the home buying and selling process such as ensuring that sellers have instructed a conveyancer before putting the property on the market; buyers have obtained a decision in principle from a lender before viewing properties and ensuring that on the day of completion everyone is able to move by 1pm.

Other changes include the availability of upfront property information which meets common industry standards, streamlined use of digital identity verification, an acceptable standard of digital signature which is universally accepted, digitisation of data and establishing a common taxonomy, reliable provenance markings to enable easy access to data and specifically for the conveyancing of property, ensuring that there is a complete view across the entire chain for everyone in the chain.

Action to make changing to new ways of working mandatory will be necessary and could be achieved through legislation or action by regulators. The CLC is disappointed that the sector seems unable to move in the right direction voluntarily given that the solutions are largely understood. Any such major change to an embedded system will mean that embedded advantages enjoyed by particular participants may be lost.

The CLC keeps our own rules under review to make sure that they are not a barrier to innovation. In that context, we benefit from the specialist and tailored nature of our rule book

targeting conveyancing. Across the sector, changes will need to be made in a highly coordinated way, which is one reason why a mandatory approach is necessary.

A single, agreed approach to conveyancing, set out in a protocol that is maintained by all the relevant regulators, representative bodies of the professions, the lending community etc, would be a huge leap forward. This would require movement by many parties for the greater public good.

9 How could the consumer experience be improved during the process for buying and selling homes?

The most significant impact for consumers would be reducing the time taken to complete conveyancing transactions. Reduction in the time taken could be achieved by making standard the provision of comprehensive property information at the earliest point i.e. at the time a property is marketed (regardless of how it is marketed). This would also mitigate the risk of issues or concerns about the property emerging at a late stage with all the wasted costs and time associated with that. It would also reduce the (admittedly small) risk of gazundering or gazumping that increases with the length of a transaction. The positive impact of upfront information has been demonstrated in practice.

10 Is the reliance on voluntary initiatives adequate to improve the buying and selling process, or should improvements be made mandatory through legislation?

Although certain voluntary initiatives have resulted in improvement, the CLC's view is that to really drive change and ensure that the consumer interest is truly served by the conveyancing sector, more needs to be done. What is needed, particularly in such a commercially competitive market which is currently experiencing a downturn, is change which is mandated either through legislation or regulation, either by individual regulators or coordinated regulatory action.

The Transaction Process

11 What is the impact of issues in the transaction process, such as gazumping or gazundering, and how could they be remedied?

Though very detrimental when this happens, this is not necessarily the significant issue it was when the property market was more buoyant. Nevertheless, reducing the time taken to complete transactions and ensuring the availability of reliable, upfront information about properties would mitigate the risk of gazumping and gazundering and improve the consumer experience.

12 Would greater use of reservation agreements improve the transaction process?

There is evidence to suggest these can assist in preventing transaction failure and we support the HBSG's submissions on this point. We would add however that reservation agreements are contingent on the availability of reliable information at the point of marketing a property, otherwise a buyer is unlikely to be willing to enter an agreement and certainly not at a sufficiently early stage in the process to make a real difference.

13 What prevents reservation agreements being more widely used? Why has a short, standardised reservation agreement not been developed, as promised by the then Government in 2018?

The main factor that disincentivises the voluntary use of these agreements is the absence of comprehensive information provided when the property is marketed, which is needed to underpin reservation agreements, as well as the absence of a standardised agreement which is well understood cross the sector. In addition, some stakeholders are not convinced of the benefit of these agreements and therefore do not promote their use. As long as there is a choice, many consumers are unlikely to voluntarily enter agreements, even though they represent little more than a statement of genuine intent.

Information Provision:

14 Do buyers have the right information available at the right time during transactions?

No, lack of information is one of the greatest barriers to efficiency and reducing the time taken to convey a given that almost all of what follows in the transaction is dependent on this information.

The CLC shares the HBSG's views on this adding that in addition to availability of this crucial information, everyone in a chain needs to have visibility of all data within that chain and the ability to communicate seamlessly across the chain. This could be achieved by mandating the use of technology which is connected and interoperable.

15 What effect would it have on the transaction process if sellers were required to provide set information about a property when it was marketed?

The CLC supports the HBSG's submissions on this point.

Requiring information to be provided upfront by sellers uniformly would significantly speed up transaction times, reduce the fall-through rate, and would likely ensure that only those genuinely committed to selling a property marketed it. The effect would reduce waste in the system, make the property market more fluid and better able to meet the needs of citizens.

It is possible and perhaps likely that sellers would instruct conveyancers at the beginning of the marketing process to ensure the accuracy and completeness of the information they were required to provide to potential buyers. This would also help to move the process along more rapidly when a buyer is identified.

16 How much data associated with housing transactions still needs to be digitised and how can the digitisation process be accelerated or prioritised?

We refer to the HBSG's submissions in relation to this point and note our support for a rapid move towards a fully digital process including potentially mandating digitisation if necessary. It is important to note the distinction between digitising and digital accessibility, both of which are needed for a digital process to work effectively. Any digital scheme will require an agreed taxonomy and connectivity or interoperability of systems by design, and outdated legal or conventional barriers to digitisation will need to be removed.

One of the challenges to digitisation however is that material property data is held by multiple parties, making this complex and costly. This is an area where government support could be transformational whether through funding pilots, pump-priming new approaches or funding digitisation of whole classes of data if that is necessary, and enabling the skill and experience of the UK's technology industry to be deployed.

17 What challenges are there to digitisation or providing information at listing?

Estate agents may be reluctant to publish enhanced information because gathering this could slow them in bringing the property to market. Some may be reluctant to take on responsibility for greater transparency at the point of listing, for reasons of cost, time, or disproportionate upfront effort when there is a risk costs may not be recouped should the seller not proceed with the sale. These are very significant challenges to a voluntary approach to making change that could be removed by introducing a mandatory requirement.

It has also been suggested that, where there is a known defect or issue with a property, both estate agents and sellers may be reluctant to be transparent for fear of putting off potential purchasers. A requirement to be transparent should incentivise sellers to address a defect, if possible, rather than attempting to pass it on to the next owner. If that is not possible, the potential buyer will at least be aware at the outset of the defect rather than perhaps accepting it reluctantly when it emerges some months into the transaction process, when it is not necessarily in their interests to do so.

Conveyancers

18 Do consumers have sufficient information to determine which conveyancer to use? How could information provision on conveyancing be improved?

In the interests of consumer choice and to promote effective competition in the legal services market, the CLC has a wealth of consumer-facing information on our website as well as a 'Find a CLC Lawyer' function (<https://www.clc-uk.org/find-a-clc-lawyer/>). To help consumers make an informed choice, we also publish consumer guides to buying and selling property and choosing a conveyancer, and provide comprehensive information about the safeguards and benefits that come with instructing a regulated Licensed Conveyancer. We undertake public legal education through publications such as What Mortgage and First Time Buyer.

To help consumers choose the best conveyancer for them, we developed Informed Choice rules and guidance which require all regulated practices to display price and service information in clear and easily comparable ways on websites and marketing material. We also require practices to display the CLC logo in order that consumers can verify that the practice is indeed licensed and regulated. Following research which the CLC undertook with other legal sector regulators, we are considering what further interventions we could make to enhance consumer information.

We have also collaborated with others across the broad conveyancing sector to enhance consumer choice and empowerment. Legal Choices (<https://www.legalchoices.org.uk/>) is a website run by the CLC and a number of other legal services regulators in England and Wales and aims to provide reliable, impartial information for consumers who require legal services of any sort, including conveyancing services.

19 What effect would a mandatory professional qualification for estate agents have?

We support the HBSG's submissions on this point, noting in addition that a mandatory professional qualification would ensure that those entering the profession for the first time are trained to a required standard, but not those estate agents already in the profession. Qualification in and of itself does not offer much in the way of assurance to consumers unless this is supported by standards of practice which are monitored and enforced through a scheme of registration at the minimum, or ideally, a scheme of regulation for all property agents, including estate agents.

National Trading Standards (NTS) are charged with ensuring that the legal requirements imposed on estate agents, including the new Material Information measures, are complied with. It is not clear

whether NTS has the resources to secure the scale of change or regulation that is required in the delivery of estate agency services in a short time.

20 Should there be a single, legally enforceable Code of Practice for property agents?

Failings, poor conduct and deliberately misleading or evasive practices by some estate agents are a driver of costs for consumers in conveyancing transactions, and such conduct results in delays which in turn can carry financial and emotional consequences for consumers. Therefore, the CLC supports introduction of regulatory scheme of some kind for all property agents. This could include a Code of Practice as well as arrangements to monitor and enforce compliance and provide redress to consumers who suffer harm or financial loss through failure to comply with the Code.

21 What impact does the practice of referral fees have, and how would a review, standardisation of practice, or ban affect transactions and consumers?

The CLC intends to review the operation of referral fees in the coming year. This follows past research which did not find evidence of consumer detriment from referral fees provided there is transparency.

Conveyancing services are infrequently used, and clients often rely on referrals from trusted advisors, family, or friends to help make their choice of conveyancer. Recognising that, we require CLC-regulated conveyancers to disclose the fact and value of any referral fee paid for a client's business. This transparency ensures that the client can make an informed choice or exercise the option to instruct someone else if dissatisfied with any referral arrangement or fees, or the impartiality of advice they might receive from the person they were referred to. We always advise consumers to shop around to find the conveyancer who is right for them.

There is a significant risk that an outright ban would result in illicit arrangements being established, greatly disadvantaging and disempowering consumers. However, the CLC is approaching its review of referral fee arrangements with an open mind and any changes to our expectations will be evidence-based.