



RESPONSES TO DCLG CALL FOR EVIDENCE

The Conveyancing Association is a trade organisation representing conveyancers across all regulatory frameworks. We have 75 members who together complete around 30% of all conveyancing transactions.

We provide a platform for debate across the industry, bringing together stakeholders to identify ways to improve the home moving process for the benefit of the consumer.

We also produce protocols and guides (freely available on our website for all) to help all conveyancers improve the process and protect against cyber fraud. We also provide guides and animated videos to help the consumer understand the conveyancing process and, in particular with regard to leasehold, their obligations and rights as a leaseholder when it comes to fees.

We regularly work with other stakeholders, such as consumer groups and leasehold and legal representative bodies, to ensure that guides and protocols are as robust as possible, avoid unintended consequences and are disseminated as widely as possible.

The Conveyancing Association created its own white paper on improving the home moving process in 2016, having researched other jurisdictions, identified the points of constraint in the conveyancing process in England and Wales and consulted widely with consumer groups and stakeholders across the industry.

The CA white paper drew on the knowledge of industry experts with experience of working in estate agency, conveyancing, the search industry, financial services industry, case management workflow development, energy performance and HIP production. We created a 10 point strategic plan to improve the conveyancing process in England and Wales. We have been working with the industry to implement these proposals, running pilots, home mover surveys and roundtables to establish the impact and delivery of our proposals.

We are happy to discuss and share our findings, should that be of assistance, and we have applied them to our responses within this document.

Consultation Questions:

Estate agents

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

We are unaware of customers who do not feel they can complain and often the conveyancer will signpost the customer to the redress schemes if they report a problem with dealing with the estate agent. Buyers often do not realise that the estate agent acts solely for the seller and therefore are unrepresented in negotiations.

a. If so, how?

Estate Agents are in general as hamstrung as conveyancers by the system and if we could resolve it to create a smoother process with greater certainty and transparency, coupled with binding offers then there would be less discomfort with estate agents and stress in the process.

In general customers do have plenty of information on where and how to complain, be that through the redress schemes or National Trading Standards (NTS). The issue is that the redress schemes take over six months to hear a complaint and NTS in particular are under resourced and unable to enforce the existing regulation. NTS issued just 11 prohibition notices last year and its goal is to double that this year but without improved resourcing it cannot properly regulate the industry.

The Property Ombudsman's annual report indicates that the second highest reason for complaint is marketing and advertising and there is general consensus that estate agents are not complying with their obligations under the Consumer Protection from Unfair Trading Regulations 2008 (CPR).

NTS is reliant on local Trading Standards to enforce the regulations but there are insufficient resources for this to happen. Consequently, buyers are not provided with sufficient information prior to offer and are often exposed to nasty surprises during the conveyancing process, by which time they are already financially and emotionally committed to the property or under such high pressure to exchange contracts that they are unable to make the decision which they would have made if they had been aware of the information prior to offer.

There needs to be effective enforcement of CPRs to provide home buyers with a better moving experience. In the mortgage and legal industry, a complaint to the ombudsman costs £400 whether or not it is upheld - this is not the case in the case of estate agent alternate dispute resolution.

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

Yes.

a. If so, what action should be taken?

Under the Consumer Protection from Unfair Trading Regulations, estate agents should be providing any information which might affect a customer's decision-making processes.

Good estate agents will do this as standard, but we do hear of many that do not.

As mentioned above NTS is responsible for regulating in this respect but does not have the budget to bring an action for a breach.

More important is that the consumer should understand what the payment of the referral fee means to them.

It is true to say that in many referral arrangements, and particularly those where conveyancing panel managers operate, often the referral arrangement offers genuine value to the conveyancer and customer through:

1. Reducing the conveyancer's marketing budget enabling them to resource the customer's transaction better.
2. The provision of outsourced administrative services such as search ordering or chain chasing.
3. The provision of secure communication platforms.

However, we are aware of instances where this is not the case or where the amount of the referral fee is excessive and the impact of this has not been explained to the customer. Eg the amount of the referral fee is sufficient to impact the conveyancer's ability to resource the transaction and therefore the customer's satisfaction with the service in context with the overall price paid.

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

Referral fees were introduced to create greater transparency because a variety of other incentives were used by conveyancers to reward referrals. These included everything from brown envelopes of cash, promises of probate sale instructions and various forms of excessive hospitality. Consumers did not have any visibility of these arrangements. This would be true again if referral fees were banned rather than controlled.

Banning referral fees would also result in less innovation e.g. many large conveyancing practices have worked hard on scanning and paperless conveyancing over the years because the 'guaranteed' volumes of cases justify the cost.

Periodic mismatches of supply and demand are a significant reason for market level transaction delays. A ban on referral fees could stifle investment in the firms who have invested in technology that allows them to flex more effectively in line with changing demand.

Panel managed referral arrangements also hold conveyancers on their panels to high standards of service through service level agreements which set out, for example, timescales for responses to communications and agreed working practices between the buyer and seller's conveyancers.

Where it works well, referral fees should be broadly similar to the benefits received by the conveyancer, eg generating and converting leads etc.

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

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

Yes. Estate Agents (and managing agents) are the only part of the process not regulated and should be licenced to operate and be required to pass a fit and proper person test. Trading without a licence should result in criminal prosecution.

Whilst Estate Agents are currently required to advertise their redress provisions in their offices, most consumers interact with estate agents on line. Estate agents should be required to provide details of their regulation and redress arrangements on their websites and on the footer of their emails, in the same way that lawyers and financial advisers have to.

This should be extended to anyone marketing property eg developers. A recent survey indicated that of 905 buyers of new build property 95% felt that they had not received enough information prior to buying the property and only 7% believe that they received relevant information prior to making an offer. Developers, even when marketing their own properties, should be complying with Consumer Protection from Unfair Trading Regulations and providing any information which would affect a transactional decision.

Better enforcement of the regulation is also paramount. NTS is responsible for regulation yet has an annual budget of £250k. It is therefore only able to bring 11 prohibition orders a year. Estate agents should have to pay for regulation to enable the proper operation of the system.

Legal practices are accountable to the Legal Ombudsman (LEO) for complaints, where if a case is justified then the lawyer will also pay the LEO fee of £400.00 plus VAT on top of any compensation to the consumer. This is similar to the arrangement for mortgage brokers and lenders where the Financial Ombudsman also charge per complaint received.

Conveyancing

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

a. How could government help facilitate this?

The selection of a conveyancer should be based on a variety of factors, from the type of service delivery, service standards and costs.

Option 1:

A centralised standard survey website, which home movers are encouraged to complete, may assist but great care would need to be taken in the formulation of such a website, as consumers may still be ill informed of what type of service they are purchasing through such a facility.

Conveyancers offer varying products and services within a conveyancing package. High street conveyancers often sell their service on a personal basis, with the client being able to attend at their offices, whilst their online equivalent offers remote access as a desirable alternative.

The Advertising Service Authority already provides consumer protection against wrongful or misleading advertising. Conveyancing regulators all have robust policies, procedures and reporting and penalty functionality if regulatory guidelines in relation to the estimate process are not followed.

Online search engine searches will, and already do, reveal the online reputation of a legal practice and the experiences of others.

The provision of one centralised standard survey website could be misleading as all conveyancing services are different, with different costs, products, services and methods of operation. The consumer would not necessarily be in a better position to make an informed decision based on the information from an online cost calculator or comparison website.

Perhaps a good alternative would be to offer consumers a guide for what they should be looking for from their conveyancer. This information could be published by regulators and trade bodies to assist consumers in their decision making process.

Option 2:

Online quotations should be regulated to ensure that they are like for like and that conveyancers are sufficiently resourced to be able to provide an efficient service.

Basic quotes should be based on a Freehold Registered Title without a mortgage with the facility for the enquirer to identify for themselves, through appropriate questions generated by the quote engine/website, what additional services will be required and the cost of those to them. For example, leasehold, mortgage or shared ownership which all require additional work and fees.

Further, the home mover should be able to view a list of the costs for additional services e.g. trust deeds, etc so that they can compare effectively with other providers whether overall the service is more expensive or too cheap to provide the customer experience they would be comfortable with.

The fact that more conveyancers make very low margins shows that the balance of competition is strong but the consumer is unable to determine when fees are too low to result in a good service.

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

This is key part of improving the home mover experience and reducing lack of transparency, uncertainty and confusion. The current process, assuming that existing regulations were followed, is that the seller on marketing completes a CPR disclosure form provided by the estate agent, then weeks later on sale of the property completes the Law Society Seller's Information Form provided by the conveyancer, which has 51 duplications of the questions in the CPR disclosure form and the information given may conflict with earlier information.

The buyer's conveyancer then obtains searches against which the seller's answers are verified.

This means that information is often inconsistent and confusing and frustrating for all parties plus the buyer's knowledge of the property may be assumed from the original information and they may not pick up that the information has changed.

If the search data was digitally available to populate the information forms on marketing then it would simply be a question of the seller advising of anything not covered by the search data.

To achieve this the searches should be fit for purpose and the number of questions significantly reduced to remove those which are no longer relevant or do not, based on outcomes, impact the home owner.

Digitising local authority data sets and making other datasets such as title, covenants, leases, flood and mining digitally accessible would enable a much more cost efficient and certain process.

Once digitised, if the impact of the Scottish Planning Etc Act 2006 is consistent in England and Wales, local searches should be available within 24 hours of request as are the Scottish Property Enquiry Certificates – the equivalent document in Scotland. In England and Wales the National Land Information Service (NLIS) was intended to provide this level of digitisation but because many Local Authorities have not digitised their back office systems, the position is that whilst all Local Authorities can receive an order for a search electronically, they cannot process and return it digitally. Current Local Government resources do not allow for back office systems for the provision of data to be digitised.

Providing the data digitally means that the home buyer need only be exposed to relevant information rather than the current overwhelming list of things which do not apply to the property.

The current list of questions in the Local Authority Search has been created through the addition over the years of new concerns and potential Government policy, which have not then been updated as they become irrelevant. The existing conveyancing searches therefore need to be revamped to include only relevant information specific to the transaction, which the consumer would find easier to understand.

For example, there is still a question on the Local Land Charges (LLC) Register for Fenland Ways Maintenance – an Act which was repealed decades ago. Similarly, there is a question on SuDS when sustainable drainage systems are not recorded by local authorities, which is the case with many of the approximate 140 data sets queried by the search. Additionally, the Local Authority may have no systems in place for reporting on some datasets, for example, the Competent Person Schemes.

Because of the HM Land Registry project to digitise the LLC Registers into one Register, Local Government have ceased to resource their Land Charges teams and internal technology in the belief that these will be replaced by the new HM Land Registry LLC Register. This project is currently on hold, awaiting budgetary approval, and should be authorised with immediate effect.

An interim solution to help manage the inconsistencies within the search process is for HMLR to further develop the LLC interface which it is developing with all 326 Local Authorities, so that when the LLC function transfers to HMLR, the CON 29 enquiries can be routed to the relevant LA, either directly or by the search intermediary/ search agent. HMLR would then be able to monitor LA performance and work with industry and technology performance to assist the LA's with data issues and improve turnaround times. This would also fit with HMLR's repeat search function for the new LLC Register, with the first search completed and then refreshed when the CON 29 enquiries are returned. As stated, this would only be an interim solution and further reform, driven by government, would be required.

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

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

With the application of caveat emptor – buyer beware - in property transactions it would not be possible to have only one conveyancer acting for both parties due to the conflict of interest which would arise.

The advice given to a buyer should not just be in relation to the property and any restrictions on its use but the relevance of these restrictions to the buyer's intended use and enjoyment of the property and the suitability of the property with regard to their chosen lender's lending criteria.

Whilst it is possible for Licenced Conveyancers to act for both the seller and the buyer, this is subject to a 'Chinese wall' with different conveyancers acting for each party to ensure that no conflict arises. In the event of a conflict arising, which does not happen that often in our experience, then the Licensed Conveyancer firm would need to cease acting for both parties and they would need to seek separate representation – potentially delaying the transaction.

It is true to say that other jurisdictions do have realtors who act for both parties. They are required to have completed a three year training course and achieve two years post-qualification experience. Because these jurisdictions work on the principle of caveat venditor – seller beware - with long term penalties for sellers who do not reveal known issues with a property, it is possible for the realtor to act for both parties, subject to the realtor being liable for any conflict of interest or failure to disclose and therefore having sufficient insurance. The moving fees in these jurisdictions tend to be much higher than in England and Wales due to the significant risk which the realtor takes on.

It is quite likely that even if one conveyancer were able to advise both parties in England and Wales then the lender may require separate legal representation, so two conveyancers may be required in any event.

Harnessing digital technology

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

Digital processes would remove the opacity of current reporting and information sharing e.g. exceptions would be reported only rather than things which did not apply. Digital conveyancing also enables asynchronous communication allowing the home mover to access information when it suits them, in a way that suits them.

This is preferable to the current position where, more often than not, the consumer has to rely upon the conveyancer or estate agent being available to update them when they telephone or email them during office hours.

Often the information held by the conveyancer and estate agent is not the same, due to the sources and access to the information, which can create frustration and uncertainty for the consumer.

Providing the information digitally will also reduce the time and difficulties currently associated with collating the data required to advise a client. The current conveyancing process is deeply frustrating to all parties due to the piecemeal delivery of information from different sources and in different mediums, meaning that enquiries are raised upon receipt of new or updated information, which may conflict with information previously supplied.

An example of this would be the CPR disclosure form which duplicates 51 of the questions in the Law Society Seller's Information Form (TA6) and the seller's answers to which may in turn conflict with the information revealed by the searches or title documents.

Additionally, the customer experience in completing these forms (for the seller) or reviewing the forms and search results (for the buyer) is extremely poor as both parties are exposed to all sections, whether or not they apply to the property.

By digitising the conveyancing forms, home movers need only be exposed to sections relevant to the property. Similarly, if HM Land Registry digitise the documents which they currently hold in PDF format, such as conveyances and leases containing restrictive covenants and details on rent and rent reviews, then this information can be made available to a potential buyer much earlier when considering the suitability of the property for their needs prior to offer.

Digitisation could significantly reduce failed transactions and overall dissatisfaction from buyers, who may proceed with property transactions, even when an issue is revealed, because they have already made a financial and emotionally commitment to purchase the property.

Solutions such as blockchain also offer opportunities to further secure transactions and protect client money through the disintermediated distribution of funds on completion and verification of data, which can then be accessed upon the next dealing with the property. Currently, this data may be lost by the home owner, resulting in additional waste in replacing such things as planning documents, defective title indemnity policies, etc.

To maximise the benefit of this search and survey providers would need to offer insurance that covered anyone relying on the information provided.

By centralising the data digitally in one place, greater resource can be put into data protection to avoid security risks.

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

The Government should enable D-conveyancing (Digital) rather than E-conveyancing (Electronic) to ensure that data is machine readable and can be used by the disruptors to create flexible products.

The Law Society's control of the transaction forms creates unintended issues around the collation of information, which the conveyancer has to have to comply with as part of their Conveyancing Quality Scheme (CQS) membership - which is necessary to gain entrance to some lenders' panels.

Making the forms digital and intelligent means that they can be comprehensive, without impacting the user experience. For example, with self-assessment tax forms you only have to complete the page on self-employment if you are self-employed.

The standard conveyancing enquiry forms need to be reviewed to ensure that they are relevant, up to date and represent best practice and that they can be completed and signed digitally, with Artificial Intelligence (AI) available to assist consumers wherever possible.

Existing codes of practice in relation to the exchange of contracts and completion formalities need to be reviewed to ensure that they are fit for purpose to facilitate d-conveyancing. Many of the codes of practice that are currently used are subject to the copyright of the Law Society and are not fit for modern day conveyancing, these should be replaced by industry approved forms and codes, developed by the industry - with input from all stakeholders - and for which the copyright is held nationally - as currently happens with the LPE1.

The government should encourage industry to find solutions for the provision of the digital signature of deeds in conjunction with the Land Registry, making the digital signature of deeds a simple and user friendly process for the conveyancer and the consumer utilising biometric data to avoid fraud. This in turn will lead to simpler registration formalities and more robust proof of identity procedures.

Property fraud is a major issue in the UK, with criminals masquerading as property owners to sell their properties. D-conveyancing should be developed to include a centralised register of client ID at the Land Registry, with proof of identity being established at the beginning of the property transaction.

Government held biometric data already exists in the form of passport and driving licence photographs and signatures and these could be appended to Land Registry titles for inspection by authorised parties in the conveyancing process. This in turn will allow conveyancers to check the validity of their client against the data held at the Land Registry for future transactions, eliminating the risk of fraud.

A more robust, streamlined and defined proof of identity verification process, adopted by all conveyancers, is of paramount importance to the d-conveyancing community. Without being able to establish the identity of your client with certainty, d-conveyancing is fundamentally flawed and the existing out dated and out-paced (by the fraudsters) system of obtaining the witnessed signature of deeds etc will prevail.

Delays in property transaction are often attributable to missing documents or information which could be stored electronically with the footprint of the transaction at the Land Registry on registration, making the sale process more effective at a later date.

The Government should support and authorise the HM Land Registry digitation programmes for greater digitisation of the registers and the creation of the Local Land Charge Register as well as the ability for digital signature of deeds.

Similarly, enabling the use of data sets such as those created through the Open Banking Data Regulations would mean that it would be possible to more readily and accurately validate the buyer's

source of funds. The current process is cumbersome, inconsistent and heavily paper based, which both delays the conveyancing process and causes frustration to the client.

The added benefits of digitising property data is that it provides the Government with ready access to vital data on the state of the nation's housing stock and the home owner's appetite to improve their property or move home as an indication of consumer confidence.

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?

Most environmental data sets are already available but the LLC and CON29 need to be reviewed and digitised. The HM Land Registry data should be digitised and machine readable e.g. restrictive covenants and leasehold information.

Additionally, HM Land Registry should create a 'notional' register for new-build plots upon approval of the estate layout plan so that buyers can see exactly what the title will be that they are buying.

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

Blockchain style solutions could:

- a. Create a property log book and save wasted time in collating the same data on each transaction.
- b. Disintermediated distribution of funds and data.
- c. Fraud prevention.
- d. Biometric ID verification and AML check - identifying not only the person that you are transacting with but also their relationship (or lack of it) to the property and the bank account to which proceeds are being sent, thus avoiding fraud and money laundering. Current regulations prevent the use of vital databases within the conveyancing process; databases that can be readily used to locate debtors but cannot be used, currently, to identify property fraudsters.

A big issue for home movers is the transparency of the position of the chain of transactions; creating integrations between the case management systems used by conveyancers, estate agents, lenders and search providers could ensure that real time data was effectively shared.

The storage of biometric data by the Land Registry could eradicate seller ID fraud and frauds perpetuated by family members which make up the majority of the 1,200 cases of fraud recorded by HM Land Registry annually. This could be achieved by simply linking the DVLA or Passport database to HM Land Registry, allowing conveyancers to check that the person whom they are dealing with is the owner of the property by checking their proof of identity information against the official document. This link already exists between border control and the DVLA whereby the photograph on one document is used to populate another, so there would not necessarily be any great burden on home owners to link their passport or driver's licence with their property.

These solutions would reduce the time and money wasted through multiple ID verification searches and procedures which have to be carried out by the estate agent, broker, lender and conveyancer against the same client during the conveyancing process, creating a negative customer experience.

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?

It is absolutely right that buyers should not make an offer on a property without being approved as being able to finance the transaction. There are urban myths which perpetuate from historic cases of credit scores being adversely impacted by multiple mortgage applications, or even insurance applications through comparison websites, which mean that home movers are less inclined to obtain a Decision in Principle (DIP). Similarly, brokers make also have this concern but they also are less

inclined to complete a full DIP application because of the perceived time it can take to complete the information – which is similar to a full mortgage application.

Lenders such as Atom Bank have worked hard to create a smooth and speedy application process and are now able to offer a DIP within 15 minutes.

There is also a concern that products and interest rates might change between the initial DIP and when a property is found (anecdotally stated to be around eight weeks). Stems exist which readily enable the core customer details to be completed and then used to populate any ongoing mortgage DIP application process when a property is found.

With the Open Banking Data Regulations due in 2018, the process will continue to become more straightforward and certain.

If an offer made on a property was binding then the behaviours of brokers and buyers alike would change to ensure that, in the same way as happens in other jurisdictions (often where the same lenders operate as in England and Wales), buyers have been properly financially vetted to ensure they offer no more than they can afford.

By mandating or providing best practice guidance to estate agents and those accepting offers on properties that they must not accept or recommend an offer to purchase without full funding requirements being provided, purchasers will know that they will not be entertained without a Decision in Principle from their preferred lender before they start house hunting.

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

Open Banking data would enable a guaranteed decision based on the true affordability of the applicant. Brokers need to be educated to use these and the perceived risk of any footprint impacting the credit score should be removed, as this prevents people from shopping around.

Significant survey and valuation data already exists, there cannot be a property in England and Wales that has not had an official valuation at some point. By combining this data with data around works completed to the property provided by local authority data sets and the seller's information forms (if provided at the point of marketing) along with the title documents, a lender should be able to state whether a property will meet their lending criteria.

This would also mean that the lender's valuer or surveyor would have all of the data prior to visiting the property and therefore would significantly reduce the instances of post-valuation queries, which are estimated to affect 30% of all transactions.

Informing Consumers

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

Property titles are transacted on average every 23 years – First Time Buyers and end of life properties much more often. By requiring that home movers go to a Government-controlled website where they are exposed to the relevant information which would explain their options and the process, could ensure a better educated home mover. The home mover could be motivated to visit the website if they were required to validate their ID, complete the information forms and obtain a lending Decision In Principle, or evidence affordability where buying for cash, via links from the website – either themselves or via an 'agent' eg mortgage broker or conveyancer etc in the same way that a self-assessment can be submitted either by the citizen or by their agent.

Currently, the first point of contact for both parties is the estate agent who has no obligation to advise the buyer and will make the seller's instruction process as simple as possible to ensure that they can efficiently market the property – this, whilst providing a good customer experience, does not give the seller access to the marketing options open to them or the benefits of completing and providing title information upfront to the buyer.

By making information available prior to viewing, and perhaps creating binding offers, home movers would by necessity have to have good guidance.

The home mover is currently exposed to information at the point when an offer has been accepted and the home mover has multiple tasks to complete all at once and therefore are less able to focus on particular aspects relevant to them.

In our survey of homeowners, with around 1,200 respondents, 95% stated that they felt that important information should be available to them prior to offer, such as whether the property was leasehold, whether consent was required to let or alter the property or the amount of maintenance payable for shared facilities. Around 90% also wanted to know whether the property was in a high flood risk area, which boundaries the seller maintained and whether the roads were adopted by the local authority.

A staggering 93% of respondents stated that they did not receive enough information during the process and only 2% received information prior to viewing, as required by CPRs. More worrying is that 38% did not find out about this information until after they moved in and 86% state that they have suffered general stress and frustration as a result of not having this information in time – 18% also state this has resulted in personal illness.

If the information gathering was undertaken prior to marketing, then both the seller and the buyer would be able to review the information at their own pace, rather than at the pace of the rest of the parties in the chain.

The current system is opaque and complex. Creating a digital data set would enable movers to only have to:

- a. Review the title and receive advice from a conveyancer on what this means to them.
- b. Assess whether it was right for their needs.
- c. Obtain a decision in principle from a lender.
- d. Put in their binding offer.
- e. Set a completion date.

Better information at point of sale

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

a. If so, what information should be provided?

Sellers should be required to provide:-

OPTION 1 – at this moment in time with the reality of the information available:

- a. Title data including defective title insurance solutions where a defect cannot be resolved.
- b. Comprehensive conveyancing industry property information forms, which would include at least the current CPR disclosure information and seller's property information and leasehold information forms (LPE1).

OPTION 2 – once information is available digitally:

- a) Title data including defective title insurance solutions where a defect cannot be resolved.
- b) Comprehensive conveyancing industry property information forms which would include at least the current CPR disclosure information and seller's property information and leasehold information forms (LPE1).
- c) Once digitised 'search' data is available, data from the relevant authorities in relation to the property's type and location.
- d) Structural information – unless an offer is binding subject to survey.

These should be provided on the first sale after mandation and thereafter form a property log book, locked down using a secure algorithm to verify the data which can then be added to by the relevant authority during the ownership of the homeowner and provided to the next buyer upon sale. This will

reduce the overall cost of future packs and the existing waste associated with lost documents, and prevent the potential economic impact of a reduction in the liquidity of the housing market by making the information readily available should the home owner decide to test the market.

Estimates show £500 million is wasted every year in failed property transactions. Whilst in many cases conveyancers will work on a “no sale-no fee” basis, and therefore the consumer does not have to pay for the wasted work, this does reduce the conveyancer’s per capita productivity.

There are approximately 1 million transactions each year, so even if the initial packs cost £500 each this would not create additional cost across the sector. Experiences in other jurisdictions indicate that vendor disclosure reduces wasted transactions to less than 2% - compared with the 30% of transactions wasted every year in England and Wales.

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

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

Yes, sellers/marketers (e.g. estate agents and developers) of leasehold homes should be encouraged to engage with their freeholder before marketing their home for sale. The issue here is one of cost – leasehold management pack costs vary from £100 to £450 plus and elements of the form, such as the financial position in relation to ground rent and service charges, are date sensitive and hence the delay in requesting information before a purchaser is found, unless legislation requires that the information should be provided in a timely fashion at reasonable cost.

Leaseholders should provide the industry-approved Leasehold Property Enquiry Form (LPE1). This is held with joint copyright under a memorandum of understanding that it should be freely available to anyone wishing to use it.

Lease Administrators should be required to provide the required information within five working days of receipt of payment and for a reasonable fee.

Service charge information should be updated once an offer is accepted where the LPE1 was obtained more than 60 days prior to offer. Again, Lease Administrators should be restricted to charge a minimum fee for this information.

A redress scheme needs to be put in place if timelines and costs of production are not met or are excessive. Lease Administrators should be placed on notice that a property is being marketed for sale on or before the date the property goes on the market in order to place the Lease Administrator on notice of the requirement of future information quickly once requested.

Sharing information about each other and increasing commitment

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

a. Would development of standard agreements help?

As in other countries, if we change to a principle of caveat venditor, once all information is available prior to offer, an offer should be binding, with financial penalties for any party who withdraws from the transaction.

Standard binding offer agreements such as reservation agreements already work in new-build developments although there is some concern that the agreement is made without the buyer having full knowledge of the title. Therefore, it may be preferable to look at binding offers once all information is available upfront.

This is already effectively operated in the auction market and in many other countries.

If it were a binding offer, the existing Law Society standard conditions of sale, which are generally adopted across the industry, could be used or an alternative approved across the industry and held under joint copyright and, under the Legal Services Act would have to be drawn up by a qualified and regulated individual.

If an optional basic reservation agreement is considered as an interim measure, then there are drafts already circulating within the industry and an industry initiative could see this agreed and endorsed by stakeholders across the industry under a memorandum of understanding, enabling a joint copyright allowing any individual to utilise the document, as has happened with the LPE1

The English and Welsh conveyancing system is unique and allows for chains of transactions to facilitate the transfer of funds from one transaction to the next. It is difficult to see how reservation agreements would work in chain transactions, as each party would be reticent to commit until the next property in the chain was secure. Reservation agreements can also have limited impact as they are conditional on several factors – title information – survey results etc – making their inclusion in the process potentially more complicated. The upfront provision of information would allow for a quicker, fully binding exchange of contracts, negating the need for reservation agreements. There is also concern that the introduction of reservation agreements may slow the property market down, with the market often dependant on the speculative seller testing the market prior to looking for a property to purchase.

Q18. How should we best tackle gazumping?

By creating a legal commitment on offer, gazumping will be virtually eradicated and, where it does happen, the losing party will at least recoup their losses and so will not be financially prohibited from entering into another transaction.

The current position means that, without skin in the game, anyone can pull out on a whim without recourse, which is devastating for anyone, particularly first-time buyers who no doubt have already struggled to save up for the searches and survey only to find that they have lost their money and need to start again.

A small amount, for example £1,000.00 or £2,000.00 would be sufficient to prevent most failed transactions.

However, it should also be noted that gazumping is, in main, a theoretical fear, with a very small proportion of transactions failing in reality. More often transactions fail simply because the parties change their minds or become frustrated by the delays and seek to impose some control through a deadline to exchange.

With the proposed up front provision of information and lending decisions in principle with purchase funds available, all parties should be in a position to exchange contracts very quickly – preventing gazumping.

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

Where there are chains, providing more transparency through integrated case management systems, delivering real-time updates or a secure portal could also reduce the uncertainty of whether a chain is complete and progressing.

Until information is available upfront then the reservation agreement can be conditional upon such things as title defects, searches, survey and potentially the seller finding a suitable property to purchase.

Buying a leasehold property

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

Yes.

a. If so, how could this be done?

Any Lease Administrator or Freehold Management Scheme Administrator, whether they be a managing agent, landlord, freeholder, management company or estate rent charge owner should provide services within five working days of payment or request where no payment is required.

Anyone providing these services should be required to be part of an ADR scheme with a 28-day fast-track process for hearing complaints in relation to unreasonable delay or fee. There are already such processes for Tenancy Deposit Scheme complaints where time is also of the essence.

There should also be an Administrator Register opened at HMLR with it being compulsory for those administering the terms of the lease or freehold management scheme to register their details at HMLR and update it when personnel change. It is relatively rare for an administrator to change, certainly not happening more than every couple of years, so would have low impact on the administrator but providing immediate improvements to the current process where the home owner and conveyancer will be unaware as to who provides the information required for the LPE1.

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

Yes.

a. If so, how could this be done?

Fees for all administrative services should be reasonable and set via the Secretary of State with a biennial review in line with the RPI.

The type of fee chargeable should be limited e.g only one notice should be required and charged for and should state whether there is an assignment and new mortgage.

S.12 of the Landlord & Tenant (Covenants) Act 1995 should be amended to ensure that the burden and benefits contained in the lease can be enforced against the management company in respect of the managed areas as well as the demised premises. This would then mean that all Deed of Covenants would be unnecessary and would reduce the cost and burden on home movers.

Leasehold restrictions requiring a certificate of compliance should be cancelled as superfluous, as is permitted under the Land Registration Act 2002, as the certificates are usually to confirm that a deed of covenant has been entered into, which is a void document since 1996, and that notice has been served when the receipted notice is evidence enough.

On over 21,000 transactions during the last four years, average certificates of compliance fees were charged at £125.00, the average fee for a deed of covenant was £131.00 and for a notice of assignment the average fee was £95.00 and notice of charge was £84.00.

These fees are excessive and the documents otiose and superfluous since the majority of titles are now registered and therefore, in the unlikely event that a conveyancer forgets to serve notice on the Lease Administrator, they can readily and cheaply establish the ownership and mortgages on the property through a title search via the Land Registry which costs £3.00.

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

Yes, these already exist as the LPE1 is already used in over 70% of transactions and a survey of conveyancers and lease administrators last year indicated that 89% felt that the form improved the process.

As mentioned the industry trade bodies including legal and leasehold sectors hold a joint copyright under a memorandum of understanding that it should be freely available.

Buying a new build property

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

Buyers of new-build properties are happy in most cases as they have an exchange of contracts within 28 days – however, they report lower satisfaction levels with regard to understanding the effect of the title on their intended use and enjoyment of the property, especially when it comes to leasehold.

This could be improved by providing upfront information, decisions in principle and binding offers as the buyer would complete the review and mortgage application before making an offer so there would be no stress that they would lose a reservation deposit which is the current issue.

Additionally, if HM Land Registry create a notional register for each plot when approving the estate layout plan then buyers will know the extent of the land and also what in the title will impact their use, enjoyment and ownership. HMLR should create a new indexing which until sold off retains the parent title number but is given a sub polygon, within the existing polygon, until the plot is removed. This could also improve how Official searches of the LLC register could be made when that register transfers to HMLR.

Issues also arise where the supply of new-build properties is short and there is a subsequent imbalance of power created in favour of the developers. This has resulted in developers selling leasehold houses unnecessarily and also refusing to give reasonable timescales for buyer's to complete snagging lists and to have any corrective work completed prior to them moving in.

All developers should be required to sign up to a customer charter to treat customers fairly.

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

Guaranteed DIPs and notional registers, as referred to above, would ensure that the buyer has finance in place for a property acceptable to their chosen lender.

Any additional points 24

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

Providing upfront information generating a digital property log book, digitised data, a financial decision in principle and binding offer would reduce the cost for consumers by:

- a. Reducing abortive transactions.
- b. Reducing the time spent chasing information.
- c. Reducing lender post-valuation queries because the data would already be available.
- d. Avoiding the waste of multiple ID verification.
- e. Avoiding loss through fraud by:-
 - i. Verifying the seller is genuine.
 - ii. Verifying the recipient account.
 - iii. Verifying the conveyancer's account.
 - iv. Avoiding deposit/proceed of sale redirection.
- f. Reducing requisitions generated by Land Registry.
- g. Reducing waste through applying for a mortgage with a lender who would not lend on that title/construction type.
- h. Reducing waste of repeated searches.
- i. Reducing waste of repeated or duplicated title insurance.
- j. Reducing waste of unnecessary contingency insurance such as Chancel Repair/breach of buildings regulations/ground rents over £250.00 pa.
- k. When we move to a binding offer then the priority period of the HMLR Official Search should be extended from the current 30 days to accommodate the period between contract and completion which could now be many weeks. This overall would save the risk to the security of the buyer's title which occurs in the current regime where the search priority cannot be extended.

The current conveyancing system needs to be reviewed and developed by those that operate it in practice. The upfront provision of streamlined conveyancing information is of paramount importance and should be mandated. Reviewing conveyancing forms and codes of practice to comply with modern day best practice will lead to significant immediate improvements in the client experience and the advent of e-conveyancing.