



The Conveyancing Association is a trade organisation representing conveyancers across all regulatory frameworks. We have approximately 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 as well as our consultation responses are as robust as possible, avoid unintended consequences and are disseminated as widely as possible.

Consultation Question 1

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

The average timescale for the purchase of property from offer is 20 weeks, this is largely due to the delays in collecting all of the information, and the additional enquiries created due to missing or inconsistent information where it is regularly duplicated in the forms completed or the valuer's assumptions.

The average number of transactions which fall through after offer acceptance was 34%, in a normal market in 2019, causing huge waste in resource and consumer detriment.

The home moving process and the ability of the potential buyer to understand the quality, tenure and legal requirements around a property before they make an offer.

Digitisation of the public data relating to property so that the relevant data can be provided in an appropriate summary, enabling the consumer to establish the suitability of the property for their intended use and enjoyment and identify the lenders with appropriate lending policy for the property.

Consultation Question 2

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

Buyers view and, without having ready access to relevant information, offer on properties which are unsuitable for their intended use and enjoyment, based on the property location and amenities or which they do not know that they cannot afford.

Later once their conveyancer advises on the title and property information (often many weeks into the process because it is currently collated in an analogue way), they then have to make a decision; whether they will make do, risk the breach of a restriction or pull out and lose the monies already paid for searches, survey etc. Any required mortgage lender will also have to decide whether it meets their lending policy.

Similarly, because property data is currently collated in an analogue way after a buyer has been found, by different parties and at different times, this results in conflicting information being provided which causes confusion, delay and wasted resources establishing the true position.

Further investigation into the genuine reasons for transactions failing is vital as BEIS published in their 2017 Research on Buying and Selling Homes found that 56% of buyers, and 44% of sellers, had incurred loss when their transactions failed.

In the buyer experience of the research BEIS do not assess whether any information required on Consumer Protection from Unfair Trading Regulations was provided. Our survey of 1,100 home movers indicated that less than 4% received any material facts on title before making an offer.

The average transaction takes 20 weeks during which time the parties are in economic stasis, being unable to book holidays, get their kids into school or take out financing because they do not know when they will move and can't risk their credit score.

Much of the frustration and stress in the process is based on the timescales and lack of clarity around the timescales.

Consultation Question 3

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

Property Law or Land Law

Consultation Question 4

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.

Consumer Protection From Unfair Trading Regulations 2008 requires that anyone marketing property should not exclude material facts that would impact the average consumer's transactional decision making.

Caveat emptor is a common law principle that makes it the buyer's responsibility to obtain information about the property.

Sale of Goods Act 1979 created rights in chattels but only a few of these rights are also established in property law eg that the seller has title and sells free from encumbrance, however chattels must be durable, reasonably fit for purpose and of merchantable quality – this is not reflected in property so you will have more information and rights when deciding whether to buy a toaster than you will when deciding to buy a property.

This means that a buyer can inadvertently make an offer to buy a property marketed with 3 bedrooms but which only has 2 bedrooms and a room in a loft conversion which is not built to building safety standards, or a property which cannot be altered to the buyer's specifications because it is listed, or cannot be rented out because the energy performance rating is lower than E rating. Currently, none of this information is required to be provided by a seller to a buyer and only by the person marketing if they are aware of it.

The Land Registration Act 2002 came into force in October 2003 resulting in the dematerialisation of deeds. Whilst an electronic version of title was positive, the unintended

consequence was the loss of deeds packages because the remainder of the data was not available or stored digitally.

Because lender's no longer required the deposit of a Charge Certificate with a deeds package with all the historic documents, including planning and title insurance, and property owners no longer needed solicitors to keep their Land Certificate in a fire proof safe for them, the "deeds" have been lost and have to be re-collated on every transaction, often in an analogue process.

Whereas, when a seller's conveyancer used to be able to refer to the old deeds, searches and documents when an additional enquiry was raised, they now have to re-piece history. Consequently the time to exchange contracts has extended from 6-8 weeks to 20 weeks on average, 34% of transactions fail for a variety of reasons (survey issues, delay, information revealed after offer or lender refusal to lend) and title insurance policies, and the cost of the premium for them, are duplicated because the policy has been lost by the owner not realising it was an important document.

Legislation for the creation and transfer of a Property Log Books would provide a solution by mandating a mechanism to collate and store all data about a property, or a link to it, so that a digital twin can be created which stores all of the historic and real time data for the property. The logbook is intended to be transferred as an asset of the property on a change of ownership.

Consultation Question 5

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

Common themes where countries tend to rank higher in the World Bank's Ease of Doing Business Report for Registering Property are:-

e-conveyancing system

- Countries that rank higher have an e-conveyancing system and use a digital platform, which is linked to other government and/or private bodies
- There is notable maturity of integrated platforms for delivery of land related public services, the range of land data held and online interaction with other government/private bodies
- The use of digital deeds and signatures keeps costs low

Breadth of digital data sets

- Fully intelligent data sets contribute to an efficient property market because they enable transactions to be completed quickly and easily
- There is a direct correlation between the comprehensiveness of the digital data sets and a country rating,

Fewer procedures for registering property

- Indicates a reduction in speed and cost
- Complexity of the conveyancing market, size of the Register and disparate model of land administration in the UK makes the task onerous

Comprehensive Registration

- Those with a complete land register rank higher.

Land taxes

- Other countries do not have a comparable tax to our Stamp Duty Land tax.

In Scotland the Planning etc (Scotland) Act 2006 required that all planning decisions and development plans be published by electronic means. This means that property information is more accessible to the buyer. Scotland also has the Home Report which includes the property information from the seller and a condition report. The fall through rate in Scotland is on average 11% even though they still operate under caveat emptor.

In vendor disclosure states in Australia and, in Denmark and Norway, the obligation is on the seller to provide information at the point of marketing. These have less than 2% fall through rate.

Consultation Question 6

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

In Scotland the Home Report goes some way to reduce the issue, though fall through rates are still over 5 times higher than in vendor disclosure jurisdictions, when buyers and their lenders find out prior to offer the full data on the property.

Consultation Question 7

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

Public data should be made available digitally and linked to the Unique Property Reference Number, and we should move to vendor disclosure to ensure that information is made available to the buyer prior to offer and the lender prior to valuation.

Please see the attached run through of the proposals, how they could work and the issues to be considered to avoid unintended consequences.

Consultation Question 8

What is the scale of the problem?

Around 1 million residential property sales occur each standard year in England and Wales impacting over 2million consumers, buyers and sellers whose transactions do proceed to completion but 34% of transactions do not complete on average and the consumers and stakeholders involved in those too are impacted.

NAEA PropertyMark survey of 1,000 people indicated that 62% of respondents felt they were mis-sold their leasehold property and 93 per cent would not buy another leasehold.

98% of respondents to the Conveyancing Association survey of 1,100 home owners advised that they had no information prior to viewing a property and 93% had insufficient information before buying, whether leasehold or freehold.

98% of the respondents to the Home Buying & Selling Group Home Moving Consumer Survey, indicate that they think access to information upfront is important.

Consultation Question 9

What would be the positive impacts of reform? Benefits derived from law reform can include:

- modernisation, for example, supporting and facilitating technological and digital development;
- economic, for example, reducing costs or generating funds;
- fairness, for example, supporting individual and social justice;
- improving the efficiency and/or simplicity of the law, for example, ensuring the law is clearly drafted and coherent to those who need to use it;
- supporting the rule of law, for example, ensuring that the law is transparent;
- improving access to justice, for example, ensuring procedures do not unnecessarily add to complexity or cost.

Improved Consumer Journey

Both for the buyer and the seller, and the stakeholders in the industry, having access to the property information available digitally would improve the process and having the information available upfront would reduce the delays and financial loss created by fall throughs.

Reduced Stress and Illness

Moving home is counted as one of the top three most stressful things you can do, after death and divorce, but it is the only one with a positive outcome.

80% of the respondents to the CA home moving survey advised that they had suffered from stress and 17% of cases this had led to ill health.

Economic Impact

BEIS research indicated that over £250 million was lost each year due to home moving transactions falling through. There is also the wider economic impact of having to wait 20 weeks in economic stasis, not knowing whether you are moving or not, as well as the impact on economic activity triggered by home movers in the retail industry eg DIY, furnishing etc

Consultation Question 10

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

The cost of digitising property data and attaching it to the Unique Property Reference Number, however, this could derive additional economic impact through the creation of new services eg property logbooks to create a digital twin of the property deeds packet, or using property data to identify potential environmental improvements which could be undertaken to the property.

The cost to sellers of providing the information about their property at listing. However, most people who sell also buy property so the impact would be neutral save that it would move the upfront cost which currently sits with the First Time Buyer with little or no disposable income to the person realising an asset at the top of the chain.

Similarly the cost of to the seller of a failed transaction is calculated as £750 but the provision of information upfront is far less.

61% of the HBSG Group Home Moving Consumer Survey respondents so far have indicated that they would be prepared to pay more than £300 for the provision of information upfront.

However, of those currently involved in the process 72% would be prepared to pay over £300 for upfront information.

74% see that information provided a listing would benefit both the buyer and the seller.

72% think that the seller should pay for the information, 96% of respondents had bought or sold so were able to answer from the perspective of seller as well as buyer.

98% think that providing more information when a property goes up for sale is a good idea.

Consultation Question 11

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?

First time buyers are unduly impacted due to lack of experience but also having to pay for information such as Searches on a property that they do not know if they will be able to buy or would result in a restricted lending criteria.

Government Ethnicity Facts and Figures data from February 2020 indicates that whilst 68% of white British households own their own home:

- households in the Black African (20%) and Arab (17%) ethnic groups had the lowest rates of home ownership
- in every, socio-economic group and age group, White British households were more likely to own their own homes than all ethnic minority households combined.

Making the seller is responsible for providing all information at the point of their property going on the market will make it more affordable for buyers, of all ethnicity, to get on the housing ladder.

Consultation Question 12

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?

This is a non-controversial change to the law, however it needs to be delivered by an independent such as the Law Commission as the Conservative Government scrapped Home Information Packs, a Labour delivered policy (delivered ahead of its time with insufficient property information forms and unregulated search information), and would be uncomfortable delivering upfront information which the media could identify as a HIP replacement.

Consultation Question 13

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

The Home Buying and Selling Group have been debating the potential solutions for 3 years since the MHCLG Call for Evidence into improving the home moving process but the impact of commercial interests prevent the industry from voluntarily delivering. Government needs

an independent review to identify the need to legislate for vendor disclosure and digitisation of the property data.

Consultation Question 14

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.

MHCLG have asked the Home Buying and Selling Group to looking into upfront information, property log books and reservation agreements. However, the solutions will be delivered by digitisation of property data, annexing it to the Unique Property Reference Number, and a move to vendor disclosure which can then pave the way for upfront information, property log books and reservation agreements.

Consultation Question 15

Would you like to submit another idea for reform?

Please see our attached document which highlights the other areas of reform necessary to support the provision of upfront information.