



MODERNISING THE HOME MOVING PROCESS

**CONVEYANCING ASSOCIATION WHITE PAPER
NOVEMBER 2016**



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FOREWORD FROM THE CHAIR

Welcome to the Conveyancing Association's White Paper on 'Modernising the Home Moving Process'. Here we set out the results of our research and consultation with stakeholders across the industry, in the UK and abroad, to identify the constraints in the home moving process and the solutions employed in other jurisdictions as well as our own vision of how a future technology-supported process could operate.

The ideas set out here may appear, in some instances, to be pure blue sky thinking at this moment in time, but we should not lose focus of the fact that 20 years ago no one would have thought in 2016 routine communication with clients would be via e-mail.

We hope that through the continued efforts of stakeholders working together with the policy makers, we can bring to fruition some of the changes needed to create a positive home moving process for all.

EXECUTIVE SUMMARY

This White Paper outlines the issues associated with the home moving process, the learnings from other jurisdictions and proposes solutions based on those learnings and the ideas proposed by our members and contributors.

Finally, we postulate what the future might hold in terms of our vision of a data sharing, collaborative, digital home moving service.

Overall however, we propose that to achieve a positive home moving experience for all we need to create certainty earlier in the process by:-

1. Centralising the identity verification of the parties to reduce the risk of fraud and money laundering.
2. Collating the Property Information and Title Information on marketing the property to be supported by a conveyancer's certificate as to any missing documents will provide greater information to the buyer upfront, avoid delays in completing the information and ensure that title is reviewed early to give the seller the opportunity to resolve any title issues ahead of the sale.
3. Requiring a legal commitment on offer with a five working day cooling-off period, either through a reservation agreement or conditional contract.
4. Review the standard conditions of sale to require completion monies to be sent through the day before completion to provide certainty on the day of completion.
5. Amend the Commonhold & Leasehold Reform Act 2002 to resolve the unreasonable cost and delay associated with the Leasehold sales process (see our attached synopsis and proposed redress scheme for further details).
6. Reducing additional enquiries through artificial intelligence during the collection of the property information.
7. Reviewing the CON290 and R to create separate relevant searches to satisfy lender's and buyer's needs.

8. Monitor and resource the performance of Local Authorities.
9. Providing a reliable lending decision in principle based on a 'hard' credit report without impacting the applicant's credit score.
10. Reviewing the CML Handbook to remove anomalies and ambiguous entries which generate post-valuation queries.
11. Reviewing the statements within valuation reports to anticipate and avoid post-valuation queries.
12. Provide a secure portal for communication to protect conveyancers, estate agents and the home mover from fraud.

THE ISSUE

Since the beginning of the recovery of the property market conveyancing transaction times have steadily increased from six to eight weeks (from offer to completion) up to the latest estimates from RICS placing the average transaction time at 12-14 weeks.

Overall, there is dissatisfaction expressed by most stakeholders (as well as our customers) as to the speed, transparency and certainty of the home moving process whether they be conveyancers, lenders, estate agents or mortgage brokers.

One key industry figure even commented that the current lack of stock is, amongst other things, down to the fact consumers believe moving home is so stressful they would prefer to extend their current property rather than upsizing.

This White Paper seeks to identify the key problems within the home moving process which is taken to include the tasks surrounding and within the legal process of transferring title.

We then propose solutions for debate at the Conveyancing Association conference on 1st December 2016.

METHODOLOGY

The Conveyancing Association BIG question survey in 2014 provided an insight into the state of the process in England & Wales (E&W). The survey¹ was completed by people across the property industry and highlighted specific areas of concern.

Research was conducted to review a variety of other jurisdiction's processes to establish the differences and best practices.

Consultation was undertaken with stakeholders across the industry in E&W, including round table debates to identify the key issues creating delay and inefficiency in the process.

These key issues were then followed up with further research, round table debate and meetings with the relevant stakeholders.

Stakeholders were invited to submit suggestions and points for consideration via Estate Agent Today and other trade press, and relevant contributions are included in this document with thanks to all those to who have contributed.

RESEARCH OTHER JURISDICTIONS

Research into the process in other jurisdictions was undertaken based on common (mis) perceptions as to the countries which do it well. The findings below are based on conversations with property practitioners in the stated jurisdictions and web research.

SCOTLAND

The Scottish system is often quoted as being a solution to all issues, however, while many of the developments in Scotland have reduced the issues, the timescales and delays have become similar to those in England. This change in fortunes of the Scottish consumer provides a good demonstration as to how seemingly isolated constraints impact the entire moving process.

These are considered to be caused by the drop in activity in the market and the implementation of the Mortgage Market Review (MMR), plus the impact of affordability checks on the speed of issue of mortgage offers.

¹ 384 responses were received from across the industry from conveyancers and estate agents.

Prior to the issues with mortgage offers, buyers would routinely enter into an unconditional contract well in advance of the moving date, usually six to eight weeks ahead, or longer if the seller wanted to tie in a purchase, or the buyer did not have a concluded sale. Generally tying in a purchase did not present an issue as an offer of loan in principle was an almost certain guarantee that a formal offer of loan would subsequently be issued and the buoyant housing market meant a house sale would not usually present difficulties. Having to resort to bridging finance or temporary accommodation was rare but possible. Bridging finance is now only available to a few and only in exceptional circumstances.

When the market was busier, and demand was higher, properties were marketed at 'offers over' inviting expression of interest. In Scotland, the offers over price was often set keenly to encourage interest. If there were multiple expressions, then offers were invited by a closing date.

Blind bids were then submitted and the accepted purchaser would be expected to enter into contract (missives) very quickly.

Because of the issues with mortgage offers being delayed or declined, buyers are no longer expected to enter into unconditional contracts immediately but will agree missives subject to finance and/or sale. Chains are now commonplace and, although contracts are often concluded well in advance of the completion date, it is more usual to be concluding contracts close to, or even on, the completion date which causes anxiety and stress to both seller and purchaser due to the uncertainty.

The downside to the system was that buyers would often be unsuccessful in their bid but would already have obtained a survey as they would have to have finance approved in principle prior to making the offer. This meant they could be paying for several surveys before making a successful bid. This was one reason why the Home Report was introduced. The Home Report has the added advantage of flagging up at the outset what ancillary documentation (alterations, specialist, guarantees, etc.) may be required by the purchaser's solicitor so these can be located and put in place in advance of an offer being received, and also highlight any remedial work that may be required to the property.

Other factors now impacting the speed are whether the seller is using a solicitor property centre or online estate agent. If the solicitor carrying out the conveyancing is also the estate agent (which is very common in Scotland), they may try to resolve any title issues prior to a buyer being found. With the advent of online estate agents, who have no involvement in the conveyancing process, the title is not reviewed prior to sale. Often the seller does not instruct a conveyancer prior to a buyer being found.

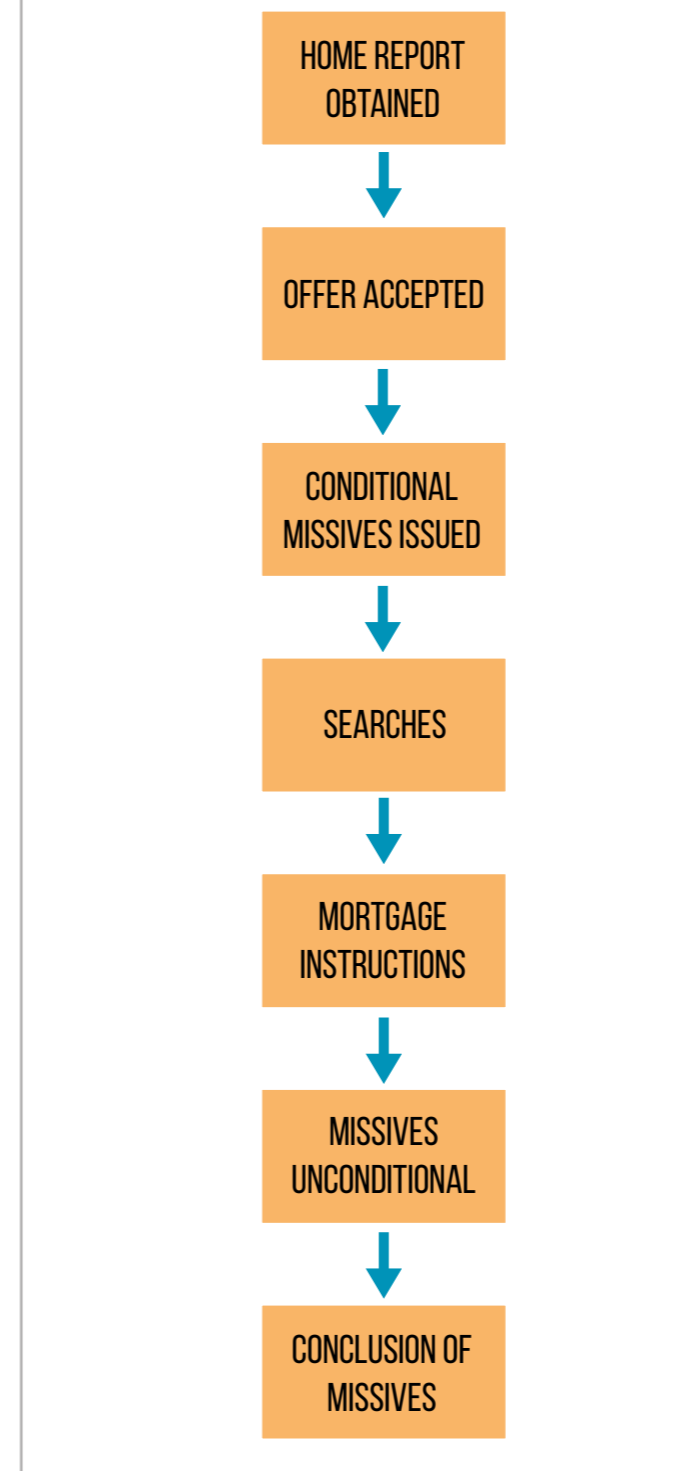
DIFFERENCES IN THE SCOTTISH AND E&W SYSTEM

The important differences in the systems are:-

1. Where possible contracts (missives) are concluded as soon as possible.
2. The seller must have in place a Home Report before they can market the property. The Home Report includes:-
 - Survey/Valuation.
 - Seller Information Forms.
 - EPC.
3. Searches can be completed within 24 hours as the three search companies operating in Scotland receive data feeds direct from the Local Authorities. Most Local Authorities no longer provide searches direct and are just data holders.
4. There are very few Leasehold properties in Scotland. These are usually for terms of around 999 years, the low rent (tack) is not collected and the landlord is rarely even identifiable. In addition, the Long Leases (Scotland) Act 2012 now automatically converts ultra-long leases into outright ownership (freehold) on a sale where the lease is registered in either the Land Register or the Sasine Register, has an initial term of more than 175 years, has more than 100 years to run and an annual rent of less than £100.
5. Owners of properties usually hold their title as outright ownership (freehold) with mutually enforceable burdens e.g. maintenance of common areas and restrictions on use.
6. The Scottish Law Society state in their regulations that Scottish solicitors cannot be involved in gazumping or gazundering and a client would have to instruct another solicitor if they wanted to proceed with another offer.

Overall, under the Scottish system, transactions without mortgages involved are routinely capable of being completed within five working days.

Fig 1 - Scottish Purchase Process



USA

The USA is another jurisdiction perceived to have a better home moving process. Average transaction times there are four to six weeks but the cost is much higher overall.

In the USA, once a buyer's offer to purchase a property is accepted, the contract and timing is fixed and binding. The closing date of the sale is defined and agreed right from the start of the process and the buyer is fully committed to completing the purchase by paying an 'earnest money' deposit into escrow as part of the agreement. Typically, around 1-3% of the overall sale price, the earnest money will be kept by the sellers if the buyer is unable to complete the sale within the agreed time.

After the contract and deposit is paid there is a 14-day inspection period where the buyer can have the property surveyed and carry out the title search.

No lawyers are required; a title search is conducted by the title insurance company through local property records to search for liens, mortgages, covenants, easements, and servitudes. There is no Land Registry per se or State-guaranteed title so title searches are protected by title insurance due to doctoring of records by the State and changes in case law as to liability as well as third-party claims.

The Seller will pay 6% of the sale price to the realtor who can act for both buyer and seller but it is more normal for each to have their own agent and the fee is then split between them, so each receives 3%. The buyer pays around 5% of the price in local taxes, documentary stamps and title insurance.

Fig 2 - USA Purchase Process



DIFFERENCES BETWEEN USA AND E&W SYSTEMS

Overall the law governing property is very different in the USA and indeed across the states themselves, many of which do not have a Land Registration system. This, together with the issues with State legislation and documentation means that they rely on title insurance.

Overall, therefore it is not possible to compare like with like, though it is immediately apparent that the USA system is far more costly to the end consumer.

AUSTRALIA

Essentially Australian land law is the same as E&W but their conveyancing is structured differently in different jurisdictions.

States will either have a caveat emptor or vendor disclosure service.

The caveat emptor States have a conditional exchange of contracts with a cooling-off period of five working days which can be conditional on searches and mortgage offer.

Vendor disclosure states provide the information upfront.

Overall Australia has 500,000 sales (so 1million transactions) per annum and has just completed its first 'electronic' conveyance.

Automated technology solutions are in place through several third-party providers within Australia, including our own Affiliate Member, InfoTrack, who provided the software platform for the first electronic exchange of contracts in Australia in August 2016.

See later for further discussion on electronic conveyancing.

Cost wise it is fairly comparable with E&W; stamp duty differs depending on State costing between 1% and 4%; conveyancing fees are around \$1,200 plus disbursements. Average estate agency fees are \$10,000.

In caveat emptor states the estimated 'fall through' rate is 12% (compared to around 30% in E&W) and in vendor disclosure states the rate goes down to just 2%.

Despite there being no 'chains' there are very low instances of bridging or renting.

DENMARK

Denmark ranks 6th in the world and 1st in Europe for the ease of doing business when it comes to property registration.

The realtor is regulated and acts for the seller and prepares the:

- Sales Report.
- Building Survey.
- Electricity Survey.
- Energy Report.

If they don't provide the Building Survey the seller will be responsible for defects for up to 20 years after selling the property.

The buyer should have finance in place and a buyer's certificate from the lender prior to putting in an offer as an accepted offer is binding subject to a six-day cooling-off period. However, if the buyer withdraws in this period they would need to pay up to 1% compensation to the seller. The Danish system enables buyers to obtain a mortgage for around 80%

of the property and a bank loan for the remainder that they need to borrow.

The realtor produces the framework agreement and the buyer pays 5% deposit which is forfeit if the buyer withdraws after the cooling-off period.

A Transfer deed is drawn up by a lawyer, paid for jointly by the seller and buyer, and provides insurance for both parties.

The Solicitor will obtain:-

- Land Certificate.
- Operating permit.
- BBR owner information – BBR is the Register of Buildings and Dwellings, providing up to 50 sets of data on the property to the home owner; it was established in 1977 to deliver a one-stop-strategy for obtaining data from the public sector, it is the equivalent to HM Land Registry but with much more information held in the data sets.
- Property Tax Note.

A closing date for moving is negotiated via the realtor.

The buyer will pay:

- Half the fees for the realtor contracts, calculated at 0.6% of purchase price plus €175.
- Lawyer's fees.
- Mortgage fees - 1.5% of the mortgage plus €175.
- Stamp duty 0.6-1.5% of property value.

The seller pays 6% of purchase price to the realtor.

Because of the short timescale, to achieve a binding contract or bridging or financing is rare in Denmark.

It is worth noting that following on from this already highly-digitised approach the biggest bank in Denmark is currently working on a smartphone app to support a digital conveyancing process.

CONCLUSIONS FROM RESEARCH

CHAINS

It is noticeable that where the process is slick up to the point of exchange there are no 'chains' of transactions. In none of the jurisdictions had chains

been 'outlawed' but simply through the supply and demand pressures sellers are not prepared to accept an offer from a buyer with a property to sell.

That is not to say that people actually move house any quicker or that they do not move from one property to another. Instead, because the legal commitment can happen much sooner in the process - in most cases within five days - a seller is willing to commit to the sale without having exchanged contracts on a purchase property with a completion date six to eight weeks after exchange on the basis that they will find a property and exchange contracts with completion within that period.

While this might seem very risky to an E&W lawyer, in fact the need for bridging or renting appears to be no greater in other jurisdictions.

REDUCTION OF STRESS AND PROVISION OF CERTAINTY

Because the legal commitment happens much earlier in the process, home movers have certainty of a date by which they will move, albeit that date could be several months away.

The consumers are reportedly much happier with the process as they can plan their lives around the moving date.

Additionally, the early commitment in the process reduces or eradicates gazumping and gazundering.

Creating mutual liability early in the process, whether through reservation agreements or exchange of contracts conditional upon searches and finance, enables the home mover to plan their move with more certainty and significantly reduces the stress involved.

We see parallels with the current E&W plot sale process whereby exchange of contracts is required and often achieved within 14 days though it is fair to say that stress may still arise in E&W plot purchases if the plot is bought off plan because completion may not take place for as much as a year and only on 10 working days' notice at the convenience of the developer.

UPFRONT PROVISION OF INFORMATION

The upfront provision of some or all information was endemic to the jurisdictions, with the exception of USA, which relies on insurance and has a 'cooling-off'

period, and some States in Australia. In the 'caveat emptor' States of Australia, transaction times are marginally longer as a result.

In E&W Home Information Packs (HIPs), scrapped almost a decade ago now, did not provide the relevant information prior to sale, requiring only a short form of the property information which meant the full forms still had to be completed by the seller and were often left until a buyer was found. HIPs therefore did not have the overall impact hoped for and were perceived as a costly barrier to marketing a property due to the inclusion of searches which had to be renewed after six months.

TIMING OF MORTGAGE FINANCE

Comparing other jurisdictions, it is clear that the upfront acquisition of mortgage finance is vital to an early legal commitment and to avoiding chains of transactions.

In Scotland the transaction times have been extended markedly over recent years due to the impact of the affordability checks required by the Mortgage Market Review (MMR).

As a result, chains of transactions have now become common place in the Scottish system as buyers are not willing to complete missives without having the mortgage offer approved and, consequently, exchange and completion may need to happen very close together.

The caveat emptor States in Australia demonstrate that, even where title is not provided up front, the ability to commit to a contract swiftly is not affected because the mortgage finance is obtained prior to offer.

COST

Speed and certainty come at a price. The fees and taxes associated with buying a property in other jurisdictions regularly exceed 5% whereas on a £250,000 property in E&W it is less than 2%.

TRANSPARENCY

The speed of creating a legal commitment and the removal of chains from the process means there is less need for transparency of the progress of the steps in the process. With a five-day commitment there is little time or need for progress updates.

THE E&W PROCESS

AREAS OF CONCERN

The areas of concern to home movers and industry stakeholders alike have been identified as:-

1. Lack of transparency.
2. Lack of certainty.
3. Delay.

1. Lack of Transparency

- a. Lack of consumer information around the options available to them. Most of us only move every seven years or so and have very little understanding of the process and alternatives available.
- b. Lack of information available to consumers.

2. Lack of certainty

- a. No binding offer.
- b. Changing move dates.
- c. Last minute exchange and completion.

3. Delay - Points of constraint in the E&W system

The following figures (Fig 3 and Fig 4) show the critical path of the basic steps in the transactions and the points of constraint, identified from our research and stakeholder consultation, within the process flow in blue and orange.

The main points of constraint are coloured red with contributory factors for delays in amber.

These are:-

- a. Anti-Money Laundering processes including ID verification and evidencing of 'source of funds'.
- b. The provision of property information to the conveyancer.
- c. Leasehold sales process.
- d. Enquiries.
- e. Local Authority Searches.
- f. Mortgage Instructions.

Fig 3 - Constraints in the Sale Conveyancing Process

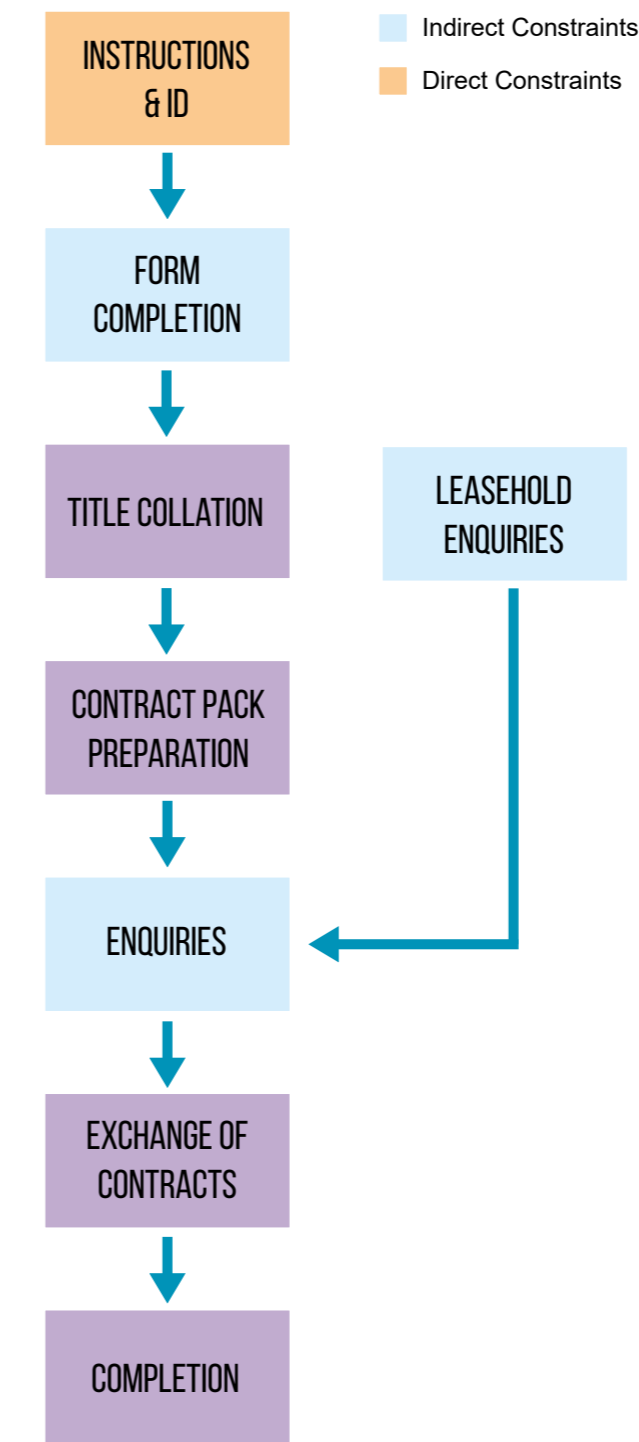
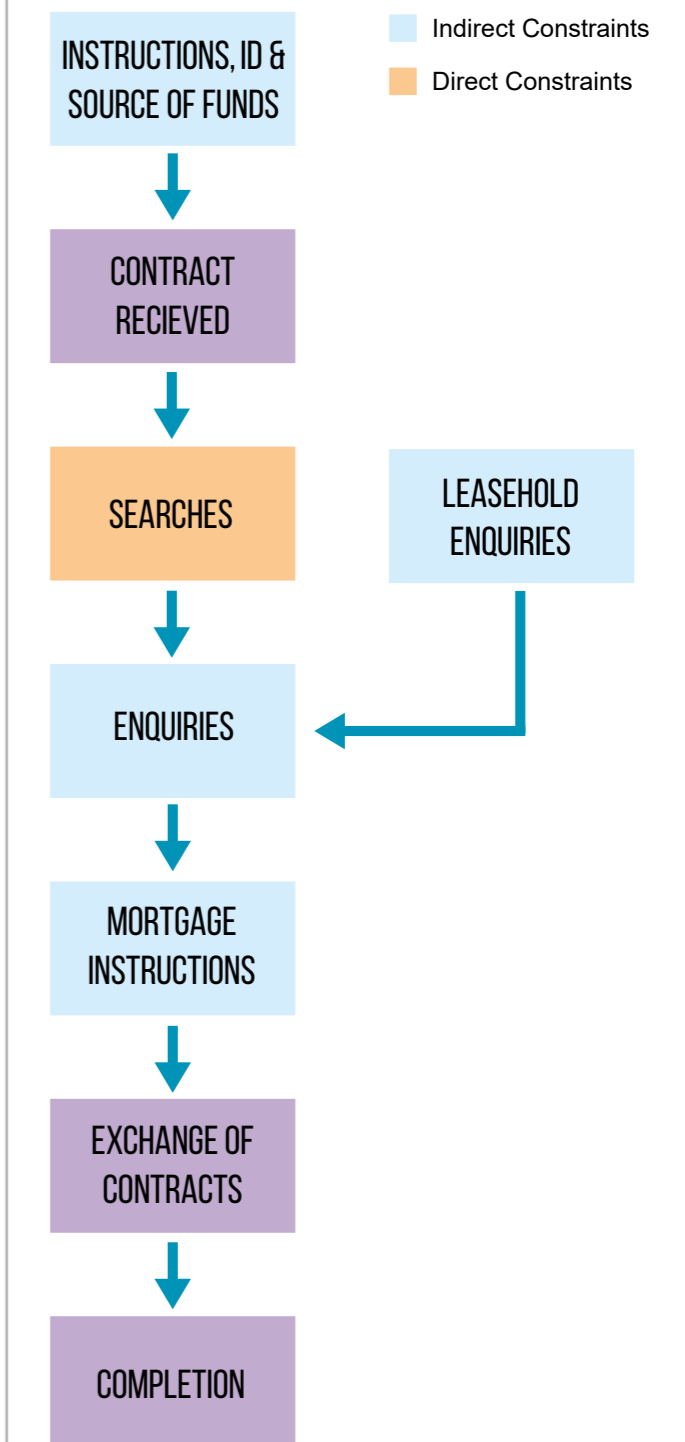


Fig 4 - Constraints in the Purchase Conveyancing Process



A. ANTI-MONEY LAUNDERING

Here we refer to processes including ID verification and evidencing of 'source of funds'.

Despite almost 10 years of the 3rd Money Laundering Directive, consumers are still slow to provide documentary evidence of the identity or the source of their funds.

The current process places the onus on the law firm to establish the source of funds and all parties regulated under the AML regulations to complete the Customer Due Diligence (CDD) process. For someone buying and selling that could be four times they have to complete the CDD process, for example, for their estate agent, conveyancer, mortgage broker and lender.

It is tempting to take a basic tick-box approach to enable the transaction to proceed as quickly as possible and staff often lack the knowledge required to identify when there may be an issue or when a Suspicious Activity Report (SAR) should be made. Few, for example, undertake an electronic ID check to fully investigate whether the client is a Politically Exposed Person or whether their ID appears on the sanctions list, etc.

Across all legal professionals, across all legal disciplines, in the period October 2014 – September 2015 only 3,800² SARs were submitted and across all estate agents only 344 SARs. This equates to barely 1% of all SARs recorded for all industries during that period.

It would appear that not only is the procedure causing delay and duplicated effort, it is also not being rigorously completed.

Given the threat of fraud to the property industry and the sanctity of the Registers, this process should warrant as much attention as border control.

B. THE PROVISION OF PROPERTY INFORMATION TO THE CONVEYANCER

Estate agents report that contract papers routinely take 14 days to issue from the point of the notification of sale.

While there will undoubtedly be some instances where the conveyancer's lack of resource impacts the delivery of the contract pack, anecdotally it takes the seller 14 days to gather together all of the information required to complete the 20 or so pages of paperwork (Law Society Forms TA6 and TA10) required for the contract pack.

These forms are sent by email or by post but in the majority of cases have to be printed, completed, signed and sent back with very few law firms able to provide access to these forms in digital format on any smart devices.

Because the conveyancer is rarely instructed prior to an offer being accepted, this process inevitably impacts the transaction timescale.

Even where the conveyancer is instructed prior to a buyer being found, the propensity for 'no sale, no fee' deals means there are no resources available to check or chase up forms and information, meaning that at the point a contract is issued, there may still be missing information which causes unnecessary delays.

C. LEASEHOLD SALES PROCESS

The number of Leasehold transactions annually is approximately 260,000³. This equates to around 20% of all transactions in E&W. Of course these transactions may be in chains of transactions and therefore the delay impacts many more home movers than the 520,000 directly affected by the four-week delay routinely experienced in Leasehold sales.

The delays occur in identifying the Lease Administrator responsible for completing the Leasehold Property Enquiries form, establishing the fee they require to complete the form, obtaining the fee from the seller and receiving the information from the Lease Administrator after payment.

Data indicates that over 37% of leasehold information arrives more than 30 days after payment is made.⁴

Additionally, the costs charged for the provision of this information is often excessive.

The lack of redress scheme means there is no policing of these fees plus the fact that at the point

of sale they need to keep the Lease Administrator on side so are unlikely to want to take legal action for the unreasonableness of the fees.

The issue of fees continues through the sale process to the point of registration by the buyer.

Due to a loophole in the Commonhold and Leasehold Reform Act 2002, there is no requirement for fees, other than those connected with the supply of consent or information, to be reasonable and no jurisdiction in the First Tier Tribunal⁵ to challenge the fee, assuming the buyer wanted to pursue someone they would be dealing with until they next moved home. This leads to increasingly excessive charges with fees charged which are six times the figure deemed reasonable in tribunal decisions.

Similarly, delay causes major issues at the point of leasehold property registration, a metric recorded by the World Bank Group in its Ease of Doing Business Index. Since Lease Administrators started to register Restrictions against the registration of transfers of title, delays have occurred in the registration process where, despite the requirements of the Restriction being met and the payment being made, the Lease Administrator has not provided the Certificate of Compliance necessary to satisfy the Restriction.

This results in unnecessary requisitions being raised by the Land Registry and, at worst, could result in the cancellation of the application for registration which risks both the security of the lender and the incoming leaseholder.

Land Registry data shows that over the first nine months of 2016 33% of the requisitions raised in relation to Restrictions were on Leasehold titles which only make up 25% of the registered titles in E&W.

D. ENQUIRIES

The enquiry process causes possibly the most stress in the transaction to all concerned.

Enquiries can be raised at any time prior to exchange and are usually triggered when new information is received.

In many cases, enquiries could have been pre-empted if sufficient information was made available

prior to the sale of the property and if the conveyancer was sufficiently resourced to review the information and deal with any issues prior to issue of the contract.

Similarly, when completing the initial paperwork, sellers are often unaware there is an issue with their responses or indeed where they can obtain the information required. Further issues have been caused by the dematerialisation of deeds as many sellers have mislaid copies of documents sent to them at the point of their purchase, whereas previously these would have been stored by the lender and provided to the conveyancer at the point of sale.

Similarly, current practice means there is confusion over who should provide the title resolution and therefore the seller's conveyancer may well feel obliged to wait to see what the buyer's conveyancer will require rather than resolving the issue early on.

E. LOCAL AUTHORITY SEARCHES

Having resolved issues around the upfront provision of information and perhaps the creation of a 'skinny e-Home Report' containing property information and title, it will be vital to be able to access the search results extremely quickly not just to ensure the advantages are not lost but also to avoid adding upfront cost by requiring the searches to be available at the point of marketing.

The cost of a HIP was considered to be a barrier to the sale of property and the searches in particular drove up the cost as well as having to be refreshed if the information went out of date.

The relevance of Local Searches in regard to delay within the process is often less to do with the search itself but more the point at which it is ordered in the process and the time taken to acquire it and thereafter the resolution of additional enquiries triggered by the information revealed by the search result.

The public's understanding of the content and risks associated with a Local Search is limited and as a result, many cash buyers will not instruct their conveyancer to request a search and run the risk of something impacting their own use and enjoyment or preventing a future buyer from obtaining a mortgage to buy the property when they come to sell.

² National Crime Agency Statistics <http://www.nationalcrimeagency.gov.uk/publications/677-sars-annual-report-2015/file>

³ Land Registry Transfer for Value transaction data

⁴ Based on 7,000 case management records provided by a CA member.

⁵ Proxima –v- McGhee 2014 – FTT have no jurisdiction of the Administration Charge of registration of an underlease. Mehson –v- Pellegrino 2009 – FTT have no jurisdiction over the charges in connection with a deed of variation as this was more than the provision of a document described in para 1 (b) of Schedule 11 to the Commonhold & Leasehold Reform Act 2002

The Local Government Association (LGA) and Local Land Charges Institute (LLCI) would welcome an education campaign to provide the home mover with clearer information on the content and risks. Some of this may be eased by the introduction of a standard CON29 response which was created by the Law Society working group, comprising representatives from Land Data, the LGA and LLCI and released alongside the recently updated form CON29 in July 2016.

Attempts to improve the English Council Local Authority Search systems have had mixed results. The National Land Information Service (NLIS) was brought in 15 years ago to enable searches to be ordered and delivered electronically. Today every Local Authority connects to NLIS electronically and 96% reply to searches electronically.

Despite Local Authorities ability to return searches electronically via NLIS many have not had the resources to enable them to invest in electronic back office systems or digitally capture all of the relevant datasets.

Since the abolition of the Audit Commission there is no official monitoring of performance of Local Authorities.

Similarly, questions on the CON29 forms have increased since their original introduction. Many of the questions now raised may be of limited practical interest to the home buyer and even less interest to the mortgage lender. Some, for example, the SuDs questions, cannot even be effectively answered by the Local Authority.

However, because these forms are mandated by the Law Society there are no recognised alternatives.

Due to the variable costs and delays in obtaining Council Local Searches, many conveyancers will opt to use Regulated Local Searches over Council Searches. However, there are issues associated with the acquisition of data from the Local Authorities.

The issues reported by Search Agents around access to data are often predicated by the impact of the obligation on Local Authorities to provide the information contained in the LLC1 and CON29 for free under the Environmental Information Regulations (EIR), after Government guidance that all data related to property in this way was considered environmental and therefore covered by the Regulations.

This means there is no funding for the resources required to produce the information to Search Agents under the inspection provisions. It is only where the Local Authority provides an enhanced service (in addition to the inspection and supply provisions) that they can recoup any of the cost.

EIR requests are processed in differing ways by Local Authorities; some are channelled through EIR/Freedom of Information Teams, some dealt with by Local Land Charges and some directly by originating departments. Each Local Authority needs to balance the competing demands of its various departments in order to best manage the resources available and meet its statutory obligations and duties. This can in some cases mean that directly-funded services can receive greater priority.

Other issues arise due to the fact most of the Local Authority data systems were designed with the intention of processing the activity appropriate to their department and not with the intention that the data should be extracted to provide raw data access to Search Agents. This means that, on some systems, personal/sensitive data or copy-written data might be displayed next to data accessible under EIR by Search Agents.

This then explains why some Local Authorities have a seemingly bizarre system whereby the Local Land Charges Team will read out to a Search Agent entries from a piece of paper rather than handing over the paper, e.g. there may be personal data on there or indeed the provision of the 'processed data' would be considered an enhanced service and therefore they would have to charge for it.

Overall, legacy systems created for a different purpose, lack of resource to enhance digitisation and the restrictions on the Local Authorities' ability to charge for the service will hamper the ability to improve access.

Put simply, why would the Highways Department at a Local Authority spend money to digitise their data to enable them to transfer it to another location when they cannot recover the cost of that digitisation work and there is no benefit to the Local Authority to digitise that data?

F. MORTGAGE INSTRUCTIONS

The CA have been running surveys over the last two years to measure the satisfaction around the issue of mortgage offers and dealing with post-valuation queries. This stemmed from the Big Question Survey responses which indicated that the mortgage instructions process was causing significant delays.

TIME TO ISSUE THE MORTGAGE OFFER

Our investigation into other jurisdictions indicates that where the mortgage process is swift and certain there are no need for chains of transactions. The Scottish experience indicates that where delays have crept into the issue of mortgage offers, due to the greater requirements for affordability checks under the MMR, chains have become a regular feature of their market where once they were a rarity.

Similarly, whereas once borrowers could produce a Decision in Principle which would almost guarantee that, as long as they had not overstated their income or understated their outgoings, they would get the mortgage at the rate indicated, now the certificate is no indication due to the varying requirements of the underwriter's affordability checks.

This is in part due to the negative impact associated with multiple 'hard' credit checks on the credit score. For a Decision in Principle to be produced a broker can complete a full application providing information around income and commitments but will only compare this against a 'soft' credit check so as to avoid the footprint of a 'hard' credit check which could impact the applicant's credit score.

This means there is a risk that the 'hard' credit check will reveal additional commitments if the applicant has guessed at, or not revealed, commitments which would prevent them passing the lender's affordability criteria.

⁶ Data supplied by Countrywide

POST VALUATION QUERIES

Furthermore, our surveys indicate that some conveyancers report holding on the phone for up to 60 minutes to get through to lenders. This in part is due to the number of post-valuation queries raised by conveyancers and the impact on the lender's resources.

Because the mortgage offer is now more often than not the last piece in the jigsaw, the pressure is on from the chain to exchange contracts. This means that if there is any ambiguity or concern about the mortgage instructions the conveyancer will fax a written request to the lender immediately and often follow up by phone to chase for a response.

The lack of certainty and transparency causes stress within the chain and may result in multiple parties chasing the lender, even where the initial referral of the issue was within the last 24 hours.

Top causes of referral⁶ are:-

1. Lack of buildings regulations or Lack of planning permission.
2. Environmental issues.
3. Lease length.
4. Title plan.
5. Receipt of certificate of title.
6. Confirmation that mortgage funds are ready for release in time for the completion date.

SOLUTIONS

A. ANTI-MONEY LAUNDERING PROCESSES

By making one stakeholder responsible for the identification process and compelling them to complete an electronic identification check the processes would be much tighter than is currently the position.

Additionally, this would prevent the current duplication of the process which causes delay and frustration

to the consumer and is anticipated to be the aim of the proposed wording to the 4th Money Laundering Directive.⁷

Under the provisions of the Money Laundering Regulations this stakeholder could then provide the information to other regulated stakeholders in the process, either through the principle of reliance or agency, and each stakeholder would then only have to undertake ongoing monitoring.

For example, Land Registry could hold overall responsibility for verifying the identity of the parties, the estate agent could verify the physical relationship between the seller and the property (by meeting the seller at the property) and the conveyancers and brokers could be vigilant for suspicious aspects of the financing and transactional process.

Together the stakeholders could build a picture of the parties and the transaction to identify money laundering activities that would otherwise have been missed if the stakeholders continue to work in the current silo'd process.

In Summary: ID verification should be centralised within Land Registry's Verify processes and taking place when the seller puts the house on the market and when the buyer's offer is accepted.

B. THE PROVISION OF PROPERTY INFORMATION TO THE CONVEYANCER

This could be resolved by requiring a seller to provide information upfront either through legislation or the method of sale, for example, with auctions or sale by tender the seller will routinely provide the property information form and title documents at the point of marketing.

The introduction of a self-compiled 'skinny' electronic Home Report (e-Home Report) would provide a cost neutral solution. If the seller were able to complete the information online, on their preferred device, using artificial intelligence to prompt them to provide additional information required as a result of their responses, and download the Title Information Document from the Land Registry, the information could be compiled well ahead of time and provided both to their conveyancer and estate agent who would

then be able to provide this to interested parties as part of their obligations under the Consumer Protection from Unfair Trading Regulations 2008.

To prevent delay and unnecessary cost, title defects need to be resolved as early in the process as possible. Experience in other jurisdictions is that, where a conveyancer is instructed prior to a buyer being found, issues can be addressed whilst the property is being marketed so that exchange of contracts can take place upon an offer being accepted. A conveyancer should therefore provide a certificate to confirm the arrangements to resolve title defects or missing documents revealed in the e-Home Report so as to provide a good and marketable title but without regard to the eventual buyer's intended use and enjoyment.

We understand that the Law Society Publications team are currently reviewing the TA forms and the ability to sign electronically and we would urge them to review the controls over licensing to enable third party suppliers to obtain licences to produce and to manipulate the forms to provide an enhanced user experience on a digital platform.

However, for the e-Home Report, a new form will be required to include the information required by Consumer Protection from Unfair Trading Regulations. Therefore, a general review of the various standard Property Information Forms should be undertaken in respect of relevant content and to enable them to be more flexible e.g. allow for electronic signature and to be completed digitally on multiple media platforms with the relevant segments only being displayed.

The resulting forms should become the standard basis for the information collected upfront. The copyright for the agreed form should be held across the industry and freely licensed to all users – in the same way as the LPE1 - so that licensing does not stand in the way of innovation and the forms are regularly reviewed by representatives across the industry to ensure their relevance to current practices and consumer requirements.

In Summary: Sellers should be mandated to provide a e-Home Report supported by a certificate from a conveyancer as to title issues and their proposed resolution.

C. LEASEHOLD SALES PROCESS

1. Identification of Lease Administrators

Create primary legislation to enable the Land Registry to create a new register of Lease Administrators, which would enable the seller's conveyancer to immediately identify the individual responsible for answering the Leasehold Property Enquiries. There is precedent for this with HMLR already registering Right to Manage Companies though this is optional at the moment.

2. Reduce cost and delay

By closing the loophole in the Commonhold and Leasehold Reform Act 2002, the Government could require that administrative fees be reasonable and administrative activities be undertaken within a reasonable timescale.

Creating a fee scale set by the Secretary of State would ensure certainty at the point of quotation for the consumer and relieve the need for court action in the majority of cases. It would also bring costs set out in ancient leases (often only one guinea for a notice of assignment in a 999-year lease) to a reasonable fee without the need for an application to the FTT for each lease.

Compelling anyone charging for the provision of a leasehold administration service to be a member of a leasehold redress scheme would provide an alternate means of redress in respect of cost and delay.

Lease Administrators should be required to provide the required document within 10 working days of receipt of payment.

In Summary:

- The Land Registry should maintain a mandatory register of Lease Administrators.
- Land Registry should accept certificate of compliance with requirements of restrictions to dis-apply the restriction.
- Administration fees should be set by the secretary of state.
- All Lease Administrators wishing to charge for the service should be part of a fast-track redress scheme able to resolve complaints in relation to cost and delay.

e. Required information or documentation should be provided by Lease Administrators within 10 day of receipt of payment.

D. ENQUIRIES

Enquiries arise at the point that information is received. A properly resourced conveyancer will check through the information provided upfront by the seller and identify any issues that would cause delays.

By applying the presumption that the seller sells with a title without defect the onus will be on the seller to provide indemnity title repair so this can be put in place prior to sale.

This position is successfully adopted by all conveyancers employing the CA Technical Protocol.

Using intelligent property information forms, additional enquiries can be pre-empted and the seller prompted to provide missing information at the earliest possible stage. Links to the planning portal and environmental data direct the seller in downloading information required to complete the information and reduce unnecessary additional enquiries.

A general review of the standard conditions of sale could also reduce enquiries by addressing a few of the anomalies around insurance and completion arrangements and who should bear the costs of the legal work involved with a delayed completion. Consideration should also be given to the language to ensure that it is in plain English and more accessible to consumers.

Overall, communicating enquiries through a secure portal viewable by the conveyancers and the seller could enable the seller to provide the required information more efficiently.

In Summary: Conveyancers should apply protocols such as the CA technical protocol to reduce enquiries and, when acting for a seller, review the title and property information prior to sale to resolve any title issues. A review of the standard conditions of sale could also reduce enquiries.

E. LOCAL AUTHORITY DATA

The LGA and LLCI believe that the changes to the CON29 layout and the impact of the upcoming changes should be allowed to bed in and a further

⁷ Clause 35 of the 4th Money Laundering Directive 2015

review undertaken after six to 12 months to establish what further actions might improve the process.

The LGA and the LLCI are alive to the fact that in some circumstances there may be anomalies where Local Authorities might be able to make access easier and will make representations to the relevant Authority where they become aware of these and they are members of their respective organisation.

In Scotland, the digitisation of all Local Authority Data appears to have solved the issue, enabling conveyancers to obtain search results within 24 hours and at set fees around £60. In line with a stated desire to create an open and accessible economy within Scotland the information is required by various pieces of legislation to be available for public inspection at all reasonable times⁸ and published online as soon as reasonably practicable.⁹

It should be noted that the number of questions in the Scottish search (known as the Property Enquiry Certificate) are far fewer than in the prescribed CON29. Given that the Land Registry's plan to take on 12 elements of the data to create a Land Charges Register are not expected to be completed until 2023, the timescale to digitising the remaining 109 or so other data sets could take considerable time in the public sector.

However, much of the data would be of little use even if digitised. An alternative would be to consider the implementation of more relevant searches, for example, by creating a search which would only provide data relevant to the security of the lender and an optional enhanced search which would provide additional information relevant to the use and enjoyment of the buyer.

For example, a lender would be unlikely to be interested in whether a traffic-calming scheme is to be implemented whereas a buyer might opt to have this information.

By reducing the requirements of the search to key elements such as public rights of way, adopted roads, planning and building regulations enforcement, compulsory purchase and listed buildings, the conveyancer could effectively advise lenders on matters which would impact their security whilst reducing the cost and delay in the process.

By appointing a body with the formal monitoring of Local Land Charges performance, those who fall behind in the delivery of searches within a reasonable timescale could be reviewed to establish whether additional resource is required to get them to the standards required and to reduce the postcode lottery of search cost and turnaround times.

In Summary:

- a. A body should be appointed to monitor the performance of Local Authorities.
- b. The search forms CON29 should be reviewed to create alternative pro-forma relevant to the needs of the party.
- c. The relevant data should be digitised.

F. MORTGAGE INSTRUCTIONS

Many of the issues could be resolved by reviewing the risk impact of affordability and items highlighted in the Lender's Handbooks which set out which issues must be referred to the lenders.

The increased requirements on the lenders on assessing affordability means the borrower must supply a significant booking/product fee to cover the cost of the work involved in these checks. This means there is a significant barrier to borrowers applying for an offer in principle until they have had an offer accepted on a property.

Additionally, anecdotal evidence indicates the affordability application is often at times illogical e.g. we heard of borrowers declined their mortgage because they had regular payments which took them over the affordability criteria, these payments included (in separate cases) regular Monday night takeaways, additional voluntary pension contributions, payments into an ISA.

Since the recession, we are now at the lowest repossession rate, which inevitably are generated from mortgages approved prior to MMR. It would appear that lenders have gone too far the other way in their attempt to comply with the FCA requirements. We would recommend a softening of the affordability requirements to reduce the costs and delays associated and provide buyers with certainty.

Additionally, reviewing the impact of multiple 'hard' credit checks on credit scoring would enable brokers to obtain a genuine decision in principle based on the credit checks and affordability which would be applied upon a full application.

Similarly, when asked, lenders advise they do not review the instances of the reduction in value on the sale of a repossessed property caused by title issues.

The lender's replies to the Lender's Handbook seem to be based entirely on a theoretical risk as opposed to an actual risk.

For example, the risk of enforcement for lack of buildings regulations for the installation of cavity wall insulation, double glazing or gas or electrical installations is minimal after 12 months; however conveyancers will routinely obtain insurance policies to cover these risks to enable them to satisfy the lender's requirements. These are an unnecessary cost to the consumer and insurers report that there are few, if any, genuine claims made under such policies.

The majority of the referrals around lack of planning permission and buildings regulations stem from the impact of Cottingham v Attey Bower & Jones [2000], conveyancers will refer any missing Local Authority consents to the lender to seek their valuer's advice as to whether the lack of consent impacts their valuation.

One solution to this would be for valuers to state in their valuation report whether a lack of Local Authority consent would affect their valuation. Words along the lines of, 'It is assumed that Local Authority consents have been obtained for all alterations, however if buildings regulations or Competent Person Scheme Self Assessments have not been obtained for cavity wall insulation, window replacement, gas or electrical installations carried out more than 12 months ago, we do not consider that these would affect the value of the property.'

Similar wording could be provided for planning permission carried out over four years ago or structural alterations where the valuer does not consider them to create a structural issue.

The valuer would be asked for an opinion in any event so by bringing it forward to provide opinion at the point of valuation it would reduce delays, additional work for the valuer (which is usually unpaid) and also

accuracy, with the property fresh in the mind of the valuer.

Another solution would be for valuers to value properties against the amount of mortgage. Therefore, rather than providing a fixed value, they would simply state whether the property provides sufficient security for the mortgage. This would enable a much quicker valuation process and provide greater leeway for 'approval for security' with or without Local Authority consents for alterations or installations.

Overall, improved and secure communication platforms would save delays as well as reduce risk from cyber criminals by managing the delivery of the mortgage instructions, post valuation queries, certificate of title and redemption figures in a secure environment.

When it comes to post valuation queries, a standardised referral process into the lenders would go a long way to reducing the impact on resources and the CA has a standardised referral form in pilot.

Similarly, call times could be reduced with systems which automatically acknowledge the referral, certificate of title or redemption figure request and confirm the expected timescale for a response, release of funds or redemption figure respectively.

Lender's report they do not have the financial resources to develop their systems in this way so these solutions could be provided by third-party providers such as Lender Exchange or Countrywide panel management, etc.

Additionally, using the Lender's Handbooks to provide more concise instructions would reduce referrals.

In Summary:

- a. Buyers should obtain an offer in principle based on a full credit check prior to making an offer.
- b. Lenders should communicate with conveyancers through a secure portal to avoid fraud and provide an audit trail.
- c. Post valuation queries should be reduced through a review of the CML/BSA Handbook and valuers statements.

TRANSPARENCY & CERTAINTY

As we have seen from the learnings in other jurisdictions, much of the issue with transparency and certainty is solved by reducing the time to legal commitment which could be achieved through the solutions outlined above.

To improve certainty and remove gazumping or gazundering, the emulation of the current new-build process would assist.

By providing information upfront at the point that a property goes on the market, the time taken to issue a contract pack can be (and routinely is) reduced to less than 48 hours.

Solving the issues with access to Local Authority data it is feasible that all searches could be available within five working days.

The provision of the title information document, copy Lease, and completed property information forms would be far more affordable than the Home Information Pack.

Following the examples of other jurisdictions, if buyers were required to have finance in place prior to offer then we could routinely see exchange of contracts within five working days of acceptance of offer.

To compel this, sellers and buyers could be required to enter into a contractual liability at the point of acceptance of offer using an agreed industry standard reservation agreement with a financial deposit held by the buyer's conveyancer in escrow in accordance with the terms of the agreement. Financial penalties could be imposed upon the seller for failing to comply with the agreement, secured by a charge against the property if unsettled.

This system is already successfully used in other jurisdictions as well as in the new-build sector in E&W but routinely conveyancers are adverse to the use of such agreements in mainstream transactions due to the cost to the client in checking and advising on 'ad hoc' agreements. In the same way as the industry now accepts the Law Society Standard Conditions of Sale, a 'pre approved' standard reservation agreement could be created for use throughout the industry

Alternatively, the parties could be required to enter into a full contract after a cooling-off period of five working days of acceptance of offer, conditional upon elements such as finance and searches. This way there would be financial liability on both sides to provide compensation if a party withdraws because, for example, they have received a better offer or 'changed their mind'.

CERTAINTY ON COMPLETION

One of the other key areas of stress and additional cost to the consumer is on the day of Completion.

On occasion, monies get delayed in the system between conveyancers, meaning that a buyer at the end of a chain might not receive the keys to their new property until late in the day, particularly with the advent of the extended CHAPS hours.

This results in additional costs, where removal companies may not be able to complete the move on the completion date and therefore charge for overnight storage or overtime for working passed agreed working hours.

By amending the current Law Society Standard Conditions of Sale to require that completion monies are sent the day before completion, the completion can take place first thing on the completion date, giving all parties certainty of the time they'll be able to collect the keys for their new property.

Under the requirements of the Law Society Conveyancing Quality Scheme, amendments to the Law Society standard conditions are not permitted so there would need to be an amendment to the CQS requirements to achieve this.

In Summary:

1. All communications should be via a secure portal
2. Contractual liabilities should be created much earlier in the process
3. Completion monies should be transferred on the day before completion

ELECTRONIC CONVEYANCING

As outlined in the research of other jurisdictions some are moving toward electronic conveyancing.

In Australia, for example, Lawlab created Rundl a technology delivering a flexible workflow to enable the different jurisdictional processes to be completed securely within one piece of software.

Rundl delivers a variety of 'customer journeys' which can be added to, to run parallel or intersect, e.g. the customer may start with a sale then add a purchase and then add a mortgage journey.

Each journey has Activities, Steps and Files and enables the customer to invite in any other parties, e.g. broker, estate agent, etc. who then have their own steps displayed and can update steps and view files.

This way the complete picture of the progress of the transaction can be viewed from the conveyancing steps to the mortgage application process and the other party's progress.

Elements of progress are viewable to the invited parties and, over the tens of thousands of applications which Rundl has now processed, only one customer has ever asked to block progress reports.

Rundl also has a variety of other journeys, not just home moving, everything from getting fit to planning applications, etc. so the consumer is motivated to continue to use the platform and will gravitate there for any activity related to their home ownership (e.g. planning application, insurance application, property maintenance, tenancy, remortgage) which would then store all the documentation to be available immediately when they come to resell or deal with the title.

Currently there are varying degrees of electronic conveyancing, the majority of 'electronic' conveyancing is simply the use of email and over recent years more and more conveyancers are accepting contract packs by email over post, However, this movement towards emailed contracts may well reduce as the ever increasing risk of virus' such as the crypto-locker virus pose a significant cyber risk when dealing with emails and their attachments.

InfoTrack completed the first electronic exchange of

contracts in Australia in August 2016 and provide integrated facilities by way of a middleware platform which links case management systems with outside agencies.

For example, its system enables the law firm to benefit from full integration with Land Registry Business Gateway, SDLT and electronic signature software and it continues to develop integrated solutions for the UK market based on existing solutions delivered in the various Australian States.

We also need to consider the ever-present threat of cyber fraud and the lack of security afforded by current communication systems. By providing a secure portal accessible only to a registered and verified user we can create a safe environment and trusted e-community.

Solutions are already being developed with products such as SafeMove Scheme and Free2Convey which provide secure communications portals. Docs4Home, a recent development from Free2Convey, also allows collaboration on relevant documents by all parties within a secure environment enabling, for example, the upload of the Replies to Requisitions on Title which contain the seller's conveyancer's client account details. This would avoid the risk of redirection of completion monies by fraudsters intercepting bank details sent by email.

THE FUTURE?

To be able to remove delays from the process the industry needs access to a consistent level of truly digitised conveyancing enabling the delivery of data packets and interrogation of data and creating the beginnings of artificial intelligence.

These will remove delays caused by:-

- a. Post/DX – this would remove up to 12 days of delay in an average transaction where post is still used to communicate between law firms, the estate agent and clients.
- b. Errors or omissions in forms.
- c. Additional enquiries.
- d. Duplicated data input.

Examples already exist where varying degrees of digitisation have been successfully implemented and save time and support customer service.

The LSB and Legal Services Consumer Panel research indicates consumer demand for unbundled legal services. Consumers are used to 'self service' thanks to the insurance industry where consumers now routinely complete all of the data for their insurance policy.

So what would this look like?

Clients wishing to market their property visit the 'home movers' website where they are provided with advice on the options available to them to sell their property with an explanation.

In this way, consumers can be exposed to a wider number of options than they currently have through the traditional services of estate agents, e.g. sale by tender, assured sale, auction or open market.

The consumer is then routed to complete the information necessary to market their property, this starts with an identification process via the Land Registry providing a double verification process (currently in beta test for the Land Registry digitised mortgage).

Once they have passed the ID verification they will then complete property information which will include the Consumer Protection from Unfair Trading Regulations requirements so will, to an extent, remove the burden of seller enquiry from the estate agent, leaving the estate agent to provide only the verification from their own local knowledge.

Links to the Planning Portal, Local Building Control, Environment Agency, etc. would assist the seller in providing documentation either through uploads or through data feeds.

The seller, having completed the relevant forms would then invite their chosen estate agent and conveyancer to join the group and access the forms and the title information document downloaded from HMLR automatically through the business gateway (together with the Lease if the property is Leasehold or related documents referred to in the title) after payment by the seller through credit/debit card or Paypal, etc..

Any stakeholder invited but not already registered with the home mover system would have to complete their verification process and, in the case of the law firms, provide their client account details which would be verified by Lawyer Checker or a similar product.

The Domestic Energy Assessor would be invited either by the seller or the estate agent and could provide further information on the structure of the property to ensure the seller is prompted to complete sections in the Property Information Form relevant to the alterations or installations.

The completed Energy Performance Certificate would be viewable by the buyer and their conveyancer.

All communication from there would be via the home mover portal to improve security and provide transparency.

Once a buyer was found, the estate agent would then invite into the group the buyer and their conveyancer and the buyer, having completed the verification process, would be prompted to invite their mortgage broker and lender.

There would be secure areas for confidential communications, e.g. between client and lender or client and conveyancer. The provision of bank details would be locked down within the portal to prevent interception of monies by fraudsters.

Progress would be visible as each step is completed but the client could opt out from the visibility.

The data and communications would be stored in the cloud, however integrations with case management systems and Outlook would ensure the law firms could continue to use their preferred case management system so they are only having to access one system.

A dashboard with management information and reporting would enable the law firm to prioritise work where the rest of the chain is moving forward and avoid wasted resource where a chain has collapsed.

Overuse of notifications and actions can overwhelm anyone's inbox so only actions requiring their attention would be emailed from the system with a link to access the case from the email.

FORMS

The seller would be invited to complete for marketing purposes:-

- Property Information form (TA6).¹⁰
- Leasehold Information form (TA7).
- Transaction Information form.¹¹
- Fixtures and Fittings List.¹²

A buying consumer would be invited to complete:-

- Transaction Information form.
- Source of funds form.¹³
- Joint ownership form.¹⁴

By including artificial intelligence in the forms, sections can be included or excluded as required to improve the user experience, e.g. if there is a conservatory at the property, a seller can be asked to provide details on the construction and consent required.

Further, by identifying the alterations the seller can be prompted to upload the documents required by a buyer's solicitor and if they advise that consents were not obtained, a link into a title insurance comparison website would enable the seller's conveyancer to provide a quote for indemnity insurance which, if accepted by the seller, would generate the policy to be activated on contract issue and be delivered with the contract pack avoiding any further enquiries or negotiations on this point.

Using a nudge, nag and alert cycle, sellers are sent reminders to complete forms. The reminders escalate (e.g. to describe how they are delaying the transaction) and if uncompleted after five working days an alert is sent to the estate agent to contact the seller and establish whether there is an issue.

Links to the planning portal and Local Authority Building Control assist clients in obtaining copies of missing documents.

Links to the Valuation Office and Environment Agency

auto complete the questions on Council Tax and flood risk.

All forms and documents are signed using digital signatures.

CLIENT IDENTIFICATION

The client is prompted to complete their ID verification through the Land Registry portal. This enables the Land Registry to prepare for the digital signature of the Mortgage and Transfer and prepare a notional register as well as reviewing any suspicious activity which might indicate that a fraud was underway.

MORTGAGES

Links with lenders or their panel managers' software would enable the upload of updates and documents to the homemover site and the submission of post-valuation queries direct to the lender or their valuer as appropriate. By creating the actions outside of the lenders' own system it would remove the need for redevelopment of their systems.

As valuations are now based on the property providing security, these now enable the valuer to state whether the lender's security would be affected by lease term, lack of building regulations or planning permission, etc. up-front.

Risk assessment of title defects against records of repossessed property sales means that lenders are routinely comfortable accepting flying freeholds, etc. with specific parameters around mutual enforceability of covenants, leases with less than 80 years left, etc. where statutory lease extensions are available.

LEASEHOLD

Through the HMLR Lease Administrator register the LPE1 is submitted to the Lease Administrator with payment sent by the seller at the fee scale set by the Secretary of State and the Lease Administrator is invited to join the home mover journey. The buyer's conveyancer will then be able to prepare the

¹⁰ Subject to Law Society licencing of the forms, alternatively the data for the form could be collected and delivered to the law firm's case management system to populate the TA forms locally under their own licence.

¹¹ This form would collate all of the information required by the conveyancer about the client and their transactions.

¹² This would be optional at marketing stage with prompts to complete it.

¹³ This form would collect details of how they were funding the transaction and invite them to upload evidence of the source of their funds.

¹⁴ This would be generated only if more than one client was buying and provide standard advice on ownership and directing the consumer to select their preferred option. If their selection is edited an update would be issued to their conveyancer.

paperwork for any required certificate of compliance and submit it to the Lease Administrator with the set fee.

The Land Registry, having visibility of the documents and fees submitted in compliance with the Restriction in the Proprietorship Register, can then register the transfer without delay upon completion.

SEARCHES

The conveyancer's area would include a setting for their preferred search provider and search pack. Once the buyer invites the conveyancer to the group, the buyer would be prompted to order and pay for the searches required by their conveyancer and those which they choose to have in addition.

CO-ORDINATING DATES

The clients would be prompted to record dates to be avoided for completion and based on this information throughout the chain as well as the selected lender's notice requirements for certificate of title, the 'next available completion date' would be calculated.

AFTER MOVING

Evidence of redemption of existing mortgages and payment of stamp duty is visible to Land Registry through the home mover website and therefore registration can take place almost immediately that the duty is paid.

After completion any requirements for Trust Deeds or Wills would be notified to the client and six-monthly reminders sent.

Homeowners would be able to continue to access the homemover portal to add details of alteration, etc. so that on the sale or remortgage of the property all of the information would already be there and they would just need to invite in the relevant parties to access it.

COMPETITION AND DIFFERENTIATION

Far from removing any ability for conveyancers to differentiate their service, the system enables conveyancers to automate their own internal technical and communication processes to deliver the customer experience in the way they chose.

Some will continue to commoditise the activities and others will chose to offer a 'traditional' service.

Similarly, law firms can continue to develop artificial intelligence and automation through their own case management systems to improve quality and speed, supporting continued competition in the form of customer service as well as price differentiation.

Overall, the improved process and transparency will enable conveyancers to manage resources more effectively than they have been able to in the past. For example, the provision of 'no sale - no fee' services may well have impacted the conveyancers' ability to resource the pre-review of the property title prior to issue of contract.

Reserved legal activities continue to be controlled by the conveyancer but the generation of information to support those activities are either automated or unbundled.

The instances of cyber fraud and property fraud are reduced, therefore reducing indemnity insurance premiums and because the Land Registry has completed its identity verification checks, which encompass much more data than any other stakeholder has access to, the impact on the Land Registry indemnity scheme is reduced also.

CONCLUSION

Whilst much of our vision of a data sharing, collaborative, digital home moving service may appear fantasy at the moment, other jurisdictions have proven that, working together, these can be delivered.

Denmark's vision in 1977 has led to a completely digitised registration process and the examples of Rundl and InfoTrack in Australia demonstrate how the consumer can play their part in the process, and indeed much prefer to be managing their own transaction rather than relying upon other parties to keep them updated.

Australia's multi-jurisdictional comparison demonstrates the differences in timescales when information is provided up front.

The Scottish experience also similarly confirms that the upfront provision of information has a positive impact on the transaction timescales whilst at the same time identifying the impact of the constraints

imposed by MMR and the Mortgage Credit Directive on the consumer experience.

Scotland also proves that it is possible to digitise relevant Local Authority data.

We acknowledge that this will not happen overnight, and indeed there are many questions to answer, not least who would own and operate a national 'homemover website' without creating a monopoly or adversely disturbing the current commercial relationships but we encourage the stakeholders and policy makers to work together to this end.

Overall however, it is clear that to achieve a positive home moving experience for all we need to create certainty earlier in the process by:-

1. Centralising the identity verification of the parties to reduce the risk of fraud and money laundering.
2. Collating the Property Information and Title Information on marketing the property to be supported by a conveyancer's certificate as to any missing documents will provide greater information to the buyer upfront, avoid delays in completing the information and ensure that title is reviewed early to give the seller the opportunity to resolve any title issues ahead of the sale.
3. Requiring a legal commitment on offer with a five working day cooling-off period, either through a reservation agreement or conditional contract.
4. Review the standard conditions of sale to require completion monies to be sent through the day before completion to provide certainty on the day of completion.
5. Amend the Commonhold & Leasehold Reform Act 2002 to resolve the unreasonable cost and delay associated with the Leasehold sales process (see our attached synopsis and proposed redress scheme for further details).
6. Reducing additional enquiries through artificial intelligence during the collection of the property information.
7. Reviewing the CON290 and R to create separate relevant searches to satisfy lender's and buyer's needs
8. Monitor and resource the performance of Local Authorities.

9. Providing a reliable lending decision in principle based on a 'hard' credit report without impacting the applicant's credit score.

10. Reviewing the CML Handbook to remove anomalies and ambiguous entries which generate post-valuation queries.

11. Reviewing the statements within valuation reports to anticipate and avoid post-valuation queries.

12. Provide a secure portal for communication to protect conveyancers, estate agents and the home mover from fraud.

NEXT STEPS

At the Conveyancing Association we recognise that we don't hold all the answers or indeed the right answers so the next step is to invite the industry to debate and discuss the issues and the solutions and how they might be delivered.

Once we have industry approval we can then plan together how the agreed solutions might be delivered.

None of the recommendations can be delivered overnight or by one entity and we recognise this will take the will of the entire industry working together. However, every journey starts with a first step and every step, no matter how small, is a step towards reaching our goal to create a positive home moving experience for all.

CONTRIBUTORS

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APPENDICES

THE LEASEHOLD ISSUE

There are 5,000,000 Leasehold titles registered in England and Wales and 260,000 are sold annually.¹⁵ 62% of estate agents, the buffer between the consumer and the process, state the Leasehold Sale information causes real issues in the house moving process, with 34% branding it 'an absolute nightmare'. 89% of respondents in a recent CILEx survey indicated that it was sufficiently endemic to the industry and detrimental to the home moving transactions to warrant set fees.

The CMA Management Market Study, whilst a study of the property management which did not focus on the issues which arise at the point of sale of Leasehold dwellings, provided recommendations which this group seeks to build on, and where possible, deliver these remedies, and identify other issues and solutions deliverable through industry initiative and those which will need parliamentary time.

The following is a synopsis of the issues and the potential solutions.

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¹⁵ Land Registry statistics 2015

RECOMMENDATION

1. Update to the Commonhold and Leasehold Reform Act 2002 to:-

- Update para 1 of Schedule 11 to include all administrative payments to Lease Administrators by any party to be a reasonable fee and that these fees should not be duplicated were there are multiple Lease Administrators.
- Include an obligation to provide the data within 10 days of receipt of payment.
- To require any Lease Administrator providing this service to be a member of one of the three existing property ombudsmen schemes.
- To grant jurisdiction to the relevant Tribunal to hear all cases not resolved by the Ombudsmen.

2. Digitisation of Lease Administrators held by HM Land Registry to create a Lease Administrator's Register.

DEFINITIONS

Lease Administrator - Any Landlord or Management Company or an individual or company authorised by the Landlord or Management Company to administer the terms of a Lease.

Landlord - The person or company which owns and rents or leases the Property. This person may also own the freehold or may have a superior leasehold interest in the property themselves.

Management Company - A Management Company referred to in the Lease, or a Right to Manage Company created under the Commonhold & Leasehold Reform Act 2002, to provide services and

administer the terms of the Lease either directly or through Managing Agents.

SCALE OF THE PROBLEM

Number of Leasehold Transactions annually¹⁶ is 260,000.

making up 260,000 transactions in 2015.

- 57% of transactions in Greater London are Leasehold and 40% in the North West.
- The trend in all regions is toward more Leasehold transactions.

Percentage of 'unreasonable' Fees

Anecdotally from the CA Leasehold Survey of Conveyancers¹⁷

- 56% believe that Lease Administrators often (in over 30% of transactions) charge unreasonable fees.
- A further 32% believe that Lease Administrators regularly (16-30% of transactions) charge unreasonable fees.

What is really surprising is that when you look at the actual data the position is in fact worse! One of the CA members is MyHomeMove, the largest conveyancing operation in the UK. They have provided an extract from their case management data for the period 2014/2015. This is a computer generated report of the data which was completed by their staff during the transactions and is used to generate the payment requests so is likely to be as accurate as it is possible to get.

Using data from Lease Administrators on the time taken to undertake the administrative work, we have created a schedule of reasonable fees based on an hourly rate of £100 and using the top end of the time taken to complete the administrative activities

Percentage of transactions which were leasehold

	2011	2012	2013	2014	2015
East	15	15	16	18	20
East Midlands	7	7	7	8	9
Greater London	50	52	54	57	57
North East	16	16	17	17	18
North West	36	36	37	38	40
South East	20	19	21	24	26
South West	17	17	18	20	21
Wales	10	10	10	11	11
West Midlands	13	13	13	15	16
York & Humber	15	15	15	16	16
Total Transfer	22	22	23	25	26

- In 2011 22% of all transfers for value were Leasehold. That number has now risen to 26%

	Administrative time in mins	Reasonable fee ¹⁹	Total records	Total records over reasonable fee	% over reasonable fee
Notice of assignment	15	£25	7501	6573	88
Notice of charge	15	£25	5595	4750	85
Notice of assignment & charge	20	£35	8083	6144	76
Deed of covenant	45	£75	2667	1379	52
Certificate of Compliance	30	£50	1557	1403	90
Stock transfer	30	£50	884	614	69

¹⁶ Data source: HM Land Registry May 2016

¹⁷ CA Leasehold Survey 2015

¹⁸ CA Lease Administrator's Survey 2015

¹⁹ Spencer Wade –v- Orchidbase Ltd CAM/42UD/LAC/2014/0003 gives some indication of reasonableness.

(according to the Lease Administrators¹⁸). From this we have calculated the percentage of transactions over the reasonable fee. Up to 90% of fees are excessive.

It would be reasonable to suppose, therefore that at least 75% of leaseholders are being charged excessive fees. Based on 260,000 transactions a year that's almost 200,000 buyers. But add to that the sellers who have to pay for the LPE1 and you are looking at 400,000 consumers affected per year.

Transactional Delays

The MyHomeMove data shows that in 37% of cases it takes over 30 days for the Leasehold Information to be provided by the Leasehold Administrator after request. Whether that is due to inability to locate the right individual or down to the tardy response from the Lease Administrator, this is impacting both on transactions times as well as the number of cases which fall through.

OVERALL AIMS

The overall aims are to:-

- Reduce delays in the provision of information required in the conveyancing process.
- Enable the delivery of reasonable and proportionate administrative charges and in particular in respect of administrative charges not covered by the Commonhold and Leasehold Reform Act 2002.
- Create a level playing field across Managing Agents, Management Companies and Landlords.
- Provide information in a timely fashion to reduce the delays in the home moving process.

IDENTIFIED LEASEHOLD SALE ISSUES

1. Identification of the Lease Administrator
2. Cost of administration:-
 - Leasehold Pack(LPE1)
 - Notice Fees
 - Deed of Covenant
 - Certificate of Compliance
 - Share Transfer

3. Duplication of Cost
 - LPE1 information
 - Notice of Transfer and Charge
4. Delays to the sales and registration process
 - Provision of the LPE1 information
 - Deed of Covenant
 - Certificate of Compliance

RECOMMENDATIONS

1. Identification of the Lease Administrator

Significant delays are caused in identifying and locating the relevant party who administers the Lease. Lease Administrators often complain that conveyancers leave requests for information to the last minute but investigation has shown this is due to the difficulties in tracking down the right person.

The issue arises as there is no registration or regulation required for the Lease Administrator. In many cases there will be multiple parties involved in the collection of rent, service charges and insurance premiums and for the organisation of insurance and services as well as recipients of notice of assignment and requests for certificates of compliance and deed of covenants etc.

Tracking down the party responsible for providing the information necessary for the sale of a property can be difficult and time consuming, in some cases Landlords have been known to request a charge of as much as £100 simply for providing the details of their Solicitors.

This, coupled with the reticence on the part of conveyancers to pay the fees on behalf of their clients before a buyer is found, as data may go out of date prior to sale, on average adds 4 weeks delay to the transaction.

Recommendation

The government should work with delivery partners such as Land Registry to create a register of Lease Administrators.

The Land Registry currently register the interest of Right To Manage Companies and the Freeholder on a voluntary basis, if the Right to Manage

Companies apply for this entry to be made under rule 79A, Land Registration Rules 2003 (LRR 2003). There is no obligation to apply or to update this information if a new RTM company is appointed.

Primary legislation to mandate and extend this requirement to all Lease Administrators would create new registers to register the Lease Administrator. This will further the digitisation and improve the ease of doing business.

To create a robust system, it would also be necessary to for the grant of a registrable lease to trigger first registration as it does not currently trigger compulsory first registration under section 4, Land Registration Act 2002 (LRA 2002).

Making the collection of administration fees dependent upon the registration of the Administrator would support the process and ensure that the register was kept up to date. Land Registry point out that there may be issues such as where a company is dissolved, where problems of obtaining evidence of compliance would remain but these are unlikely to negate the overall improvement provided by such a scheme.

Land Registry also express concerns that there would certainly be an impact on administrators not least that the new register would require a registration fee for the delivery partner to recover its costs, the impact would have to be costed and the Business Impact Target requirements would have to be complied with on any change.

Whilst there are other voluntary organisations such as the Association of Residential Managing Agents and the Association of Residential Letting Agents who may argue they are better able or suitable in keeping a register of administrators they are membership organisations who do not span all types of Lease Administrators such as Landlords and Management Companies.

2. Cost of administration

There is an imbalance of bargaining power between the Lease Administrator and the Leaseholder. Save for as set out in the RICS Service Charge Code, which whilst admissible in court cannot be used to instigate a court action, there is no requirement for the publication of costs and no control over the extent of those costs, in relation to receipt of service of notice, deed of covenant, share transfer or certificate of compliance.

The existing legislation, which only operates in respect of supply of information and approvals²⁰ is not working effectively for the Leaseholder.

There is no redress system available to existing or incoming leaseholders as:-

a. There are no effective consumer rights; the Consumer Rights Act 2015 only applies to leases after October 2015. Even where they do apply, the contract is between the Landlord and the Lease Administrator and not the incoming leaseholder.

b. The Ombudsmen have no jurisdiction over costs unless the complaint is in respect of a breach of an agreement for costs, yet there is no agreement for costs in place between a Lease Administrator and Leaseholder as the contractual relationship is between the Lease Administrator and the Lessor.

c. The Ombudsman process in respect of complaints against Managing Agents, which does not currently cover administration fees, takes 26 weeks. This is inappropriate within the constraints of a property sale timetable.

d. The majority of Lease Administrators do not fall under the requirement to be a member of a redress scheme as they are not Managing Agents.²¹

e. The First Tier Tribunal do not have jurisdiction over many of these costs due to the restrictions of the Commonhold and Leasehold Reform Act 2002 Schedule 11 wording, which only covers the administrative costs for consents or the provision of information²² and not the costs involved in, for example, a Deed of Covenant, Certificate or Compliance or receipt of Notice of Assignment.

Activity	Lease Administrator modal estimate of the time taken for each activity	Conveyancer modal opinion of typical charge applied by the Lease Administrator	My Home Move actual data on the costs paid to the Lease Administrator	My Home Move range of costs paid to the Lease Administrator
Leasehold Sale Pack (LPE1)	30-60 minutes	£250	Data not available	Data not available
Leasehold Sale Pack (Conveyancer's ad hoc questionnaire)	30-60 minutes	£300	Data not available	Data not available
Notice of assignment	10 minutes	£100	£60	£0.5 - 945
Notice of charge	10 minutes	£100	£60	£0.25 - 427.50
Combined notice of assignment & charge	Data not available	Data not available	£120	£0.5 - 945
Deed of covenant	30 minutes	£100	£120	£1.20 - 834
Certificate of compliance	30 minutes	£100	Data not available	Data not available

f. Current membership standards such as ARMAQ and RICS Service Charges Code whilst admissible as best practice in Court cannot be used to instigate a court action. In both cases no action will be taken until the member's complaints procedure and the Ombudsman and First Tier Tribunal have heard the case – yet the cases are not covered by either of the latter.

g. The Consumer Rights Act 2015 is only applicable to contracts created after October 2015 and arguably would not apply to the relationship between the Lease Administrator and the Leaseholder in the case of a managing agent or management company as their contract is with the Landlord and the Leaseholder is paying their costs on behalf of the Landlord.

3. Evidence as to reasonableness of costs

Surveys of Lease Administrators have been conducted. Whilst the number of respondents was relatively small (between 9 and 11 for each question) there were significant agreements in the time taken to administer the various activities.

Conveyancers were also surveyed with 141 respondents providing their opinion as to the typical charges applied for each administrative activity.

These were then compared to actual data exported from MyHomeMove's case management systems which provided between 2,135 and 8,082 records dependent upon the activity e.g. 8,082 cases required a notice of charge and 7,500 required a notice of assignment (the difference will be due to the number of remortgage cases completed which only require notice of charge). 2,135 records exist in relation to Deed of Covenant as not all leases or lease administrators require a deed of covenant be entered into.

We can see from the data above that the perception from conveyancers is that typical charges are higher than the reality but this can be put down to the fact that although the modal number is lower the range of charges indicates that there are Lease Administrators charging significantly more. Many of these are the large corporate Lease Administrators with a higher instance of transactions.

The lower ranges are due to ancient leases, where the amount payable for the activities is contained in the lease and therefore binding upon the Lease Administrator unless they apply to the First Tier Tribunal. Many of these will be 10 shillings to one

²⁰ Para 1 Schedule 11 Commonhold & Leasehold Reform Act 2002

²¹ Part 6 Enterprise & Regulatory Reform Act 2013 s.84 defines that property management only relates to someone acting under instructions from someone else so would not include a Landlord or Management Company acting on their own accord.

²² Proxima –v- McGhee 2014 – FTT have no jurisdiction of the Administration Charge of registration of an underlease Mehson –v- Pellegrino 2009 – FTT have no jurisdiction over the charges in connection with a deed of variation as this was more than the provision of a document described in para 1 (b) of Schedule 11 to the Commonhold & Leasehold Reform Act 2002

guinea in 999 year Victorian leases. A set fee would therefore also resolve the issues where the Lease Administrator is not paid a modern fee reasonable for the work required and could not charge one without application to the First Tier Tribunal in every case.

From the data we can see that Lease Administrators are charging between £250 per hour and £360 per hour for administrative work.

To verify the work required in a receipt of notice of assignment we interviewed a Lease Administrator. They indicated that their process is as follows:-

- Notice received
- Lessor contacted to verify that there are no arrears of ground rent and no known breach of covenant
- Managing agent contacted to verify that there are no arrears of service charges and no known breach of covenant
- Records updated with the incoming lessee's details and if notice of charge serviced the details of the lender
- Notice receipted and returned.

It should be noted that the notice of assignment and charge is not contingent upon there being no arrears or breach of covenant and therefore these are activities undertaken on behalf of the Landlord and not the leaseholder. This is supported by the Lender instructions in the CML Handbook²³ which are that evidence of submission of notice (e.g. via recorded delivery) is sufficient.

It should also be noted that the registration of the details of the lender is the only extra work involved in a combined notice of assignment and charge and therefore cannot reasonably justify a duplication of the entire fee. Since the 31st December 2012 changes in the agreement with the Association of British Insurers there is no longer any need for the lender's interest to be noted upon the buildings insurance policy, for example.

Recommendation

- Trade Association requirement for all costs to be proportionate and transparent, with the benchmarking of the number of hours of work

involved in dealing with the core Leasehold sale activities.

- Inclusion in the Code of Practice for Redress Schemes a requirement to charge in a proportionate and transparent way, therefore providing a remit for the Ombudsmen to provide a course for redress.
- Creation of a fast-track process within the Redress Schemes for cost and delay issues based on a statements of fact to enable complaints which might jeopardise a sale to be dealt with within 28 days instead of 28 weeks. Complaints should be allowable 10 days after the Lease Administrator has been given notice of the complaint in writing rather than the normal 6 weeks requirement for their complaints procedure.
- Create a tariff of administration fees, set by the Secretary of State to benchmark reasonable fees to reduce complaints.
- Update the Commonhold & Leasehold Reform Act 2002 to create a legal requirement for all Lease Administrators receiving payment for a service to be a member of a redress scheme and to charge reasonable fees for all administrative activities.

4. Duplication of Cost

On occasion, Leaseholders are required to pay multiple parties to complete the LPE1. These parties are interconnected companies who could be expected to provide the information through one source rather than requiring multiple payments.

Similarly, the incoming Leaseholder is required to pay for administration of the registration of notice of their acquisition by the Landlord but in many cases this now extends to other parties such as the Management Company and Managing Agent. This may also extend to double charging where the notice includes reference to a mortgage being taken.

Recommendation

Commonhold & Leasehold Reform Act 2002 to be updated to restrict duplicate fee payments where there are multiple Lease Administrators.

5. Delay

There can be significant delay in the provision of the LPE1 information and dealing with other requirements post sale necessary for the registration and protection of the Leaseholder's title. This causes significant distress to a chain of house movers and can cause sales to fall through.

The high charges for the LPE1 information are also prohibitive when it comes to requesting the information prior to a buyer being found or, in some cases prior to the buyer receiving a mortgage offer, much of the data contained in the LPE1 is time sensitive and will need refreshing for which the Lease Administrators will charge an extra cost.

Similarly, post completion delays in responding to documentation can endanger the Leaseholder's title and the lender's security but also their Conveyancers status with mortgage lenders who require registration within a certain time frame. Inevitably this also has an impact on the number of Requisitions raised by Land Registry in respect of Certificates of Compliance. The proportion of restrictions related requisitions raised is 66% on Freehold titles and 33% on Leasehold titles. This is disproportionate to the number of Leasehold to Freehold titles registered at Land Registry which is 25% Leasehold to 75% Freehold.

The redress schemes have no jurisdiction to assist and the timescales involved in pursuing a complaint are inappropriate to the issue at hand, being as they are a minimum of 28 weeks.

There is legislation in place²⁴ prescribing the timescale (30 days) for delivery of basic information such as service charge accounts and insurance arrangements but these are a very small part of the information required by a buyer's conveyancer to confirm that the arrangements are compatible with the buyer's expectations and the lender's requirements.

MHM provided over 5,000 records from 2014 and 2015 of the time taken to obtain Leasehold Information. This data was recorded in their case management system where the date requested and the date received is recorded. This indicated that only 30% of the requested data was received within 30 days.

Recommendation

- Update the Commonhold & Leasehold Reform Act 2002 to require the provision of information within 10 days of receipt of payment.
- Trade Association benchmarking of the appropriate time involved in dealing with the core Leasehold sale activities to provide an expected response time.
- Creation of a fast-track process within the Redress Schemes for delay and cost issues based on a statements of fact to enable complaints which might jeopardise a sale to be dealt with within 28 days instead of 28 weeks. Complaints should be allowable 10 days after the Lease Administrator has been given notice of the complaint in writing rather than the normal 6 weeks requirement for their complaints procedure.
- Requirement for all Lease Administrators charging a fee for the service to be a member of a redress scheme.
- Enable Land Registry to dis-apply restrictions where the Lease Administrator is uncommunicative and the conveyancer can confirm that the obligations required by the restriction have been complied with.

6. Impact

a. Efficiency improvement - It is likely that creating requirements in respect of cost and delay will motivate Lease Administrators to improve their processing and develop efficiencies to save time and money. Despite the LPE1 having been the accepted industry form of enquiry for 3 years, the Lease Administrator main case management supplier (Qube Global) advises that they will not integrate the form into their system as there is no demand from their customers. Integrating the form would enable the responses to be populated from the information already held within the Lease Administrators databases.

b. Loss of jobs - There are unlikely to be any significant job losses as a result of the limit on charges as, coupled with the limit on delay, Lease Administrators will need to become more efficient and process the requests more quickly, thus increasing

²³ <https://www.cml.org.uk/lenders-handbook/englandandwales/#C9113> s. 5.14.13 CML for England and Wales

²⁴ Landlord & Tenant Act 1985 (Landlord & Tenant Act 1987 inserting Schedule 3) and Service Charges (Summary of Rights & Obligations, and Transitional Provisions) (England) Regulations 2007

the throughput.

c. Economic disadvantage - Research indicates that the majority of the Lease Administrators charging unreasonable fees are commercial organisations geared towards maximising profit, rather than tenant owned management companies or private Landlords. Additionally, by setting the fee scale those Lease Administrators currently contracted under an ancient lease to charge fees insufficient to cover their costs would benefit from a set modern reasonable fee, therefore balancing out economic disadvantage.

d. Transfer of cost to other services - There is a concern that by requiring Lease Administrators to charge reasonable fees they would simply increase the cost of other services. However, existing legislation²⁵ restricts the charges which can be made for providing services such as management costs which must be provided for in the lease.

LEASEHOLD REDRESS SCHEME

This document seeks to outline the needs and potential operation of a FastTrack Redress Scheme.

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THE ISSUE

There are 5,000,000 Leasehold titles registered in England and Wales. An estimated 200,000 incoming leaseholders are charged unreasonable fees and over 60% of all leaseholders experience delays caused in obtaining leasehold information.

The identified issues are:-

- delays in the provision of information required in the conveyancing process
- delivery of reasonable and proportionate administrative charges as required by the Commonhold and Leasehold Reform Act 2002
- transparency of payments for information provided.

²⁵ Landlord & Tenant Act 1985

LEGISLATION & CASE LAW

The Commonhold & Leasehold Reform Act 2002 (C&LRA) requires that administration charges in respect of the provision of information and consents and made by or on behalf of a Landlord should be reasonable.

First Tier Tribunal case law exists from the Lower Tribunal which states that a reasonable amount to pay for the provision and acknowledgement of the Landlord's standard Deed of Covenant.

However, the Tribunal does not have jurisdiction over the majority of lease administration fees e.g. notice of assignment, deed of covenant etc. The delay involved in going through the Tribunals is disproportionate to the amounts charged and inappropriate during a sale transaction.

Additionally, the protections are currently only available to a party to the Lease and as such any action by the incoming leaseholder can only be taken after payment has been made to enable the transaction to complete.

REGULATOR & TRADE ASSOCIATION CODES OF CONDUCT

Multiple organisations have comprehensive codes of conduct which include the need for transparent and proportionate charges and for requests to be dealt with in a timely fashion.

RICS, ARMA and ARLA in particular have codes and recommendations as regards transparency and availability of information and the proportionality of reasonable fees. However, trade associations are not able to deal with complaints about their members and these must be dealt with via an ombudsman scheme.

However, these codes only relate to members of their scheme.

Existing Ombudsman schemes require the completion of a complaints procedure, or for the complaint to have been ongoing for more than eight weeks, prior to

considering the case and the Scheme processes take around 28 weeks, which is not fit for the purpose of a sale transaction.

Currently, only Managing Agents are required to register with a redress scheme, which means that there is no enforcement option available to a consumer during the sale process other than the First Tier Tribunal.

OTHER CONSIDERATIONS

Consideration should also be given to problems experienced in connection with the arrangements for Freehold properties on managed estates which are not covered by the C&LR and are excluded from ARMA Q.

The sales process is often the same as for leasehold properties in that the buyer's lawyer will require information on the payment of service charges and management and insurance of the estate. These operate via Deeds of Covenant in place of a Lease but which often contain similar obligations as regards the service of notice, entry into a Deed of Covenant and transfer of membership of the Management Company as if there was a Lease. These arrangements should also be open to a redress scheme as well Commonhold arrangements. An unintended consequence of resolving the leasehold issues could be the creation of more of these schemes, unless they are under the same obligations.

THE PROPOSAL

A Fast Track Redress Scheme enabling the Ombudsmen, through statements of fact, to deliver decisions on the timeliness of provision and proportionality of fees, within two weeks of receipt of the complaint.

This should be added into existing schemes to ensure that Administrators do not have to be part of multiple schemes, and are covered for this element where they are members for other purposes.

Requirements:-

- the Administrator must be registered with the redress scheme.
- the complainant must have contacted the Administrator to highlight to them the issue and either have received no response within 14 days or an unsatisfactory response.
- the complainant must complete a complaints form stating:-
 - their name and contact details
 - whether they act on behalf of a third party with their authority
 - whether they or the third party is the current Leaseholder or an incoming Leaseholder
 - the address of the property
 - the Administrators name and contact details
 - whether the complaint is in respect of cost of delay

1. If cost, the nature of the service requested e.g. LPE1 completion, Notice of Assignment, Notice of Charge, Deed of Covenant, Transfer of Share etc.
 - the cost being levied
 - the cause for complaint unreasonableness duplication (e.g. it is unreasonable to charge for a notice that is required to be served on the Landlord for a charge also, containing the same information)
2. If delay, whether payment has been made for the service,
 - if so the date of payment for the service

THE REDRESS

For those Administrators found to be at fault, redress should take the form of apologies, specific performance or fines. Failure to adhere to the decision of the Ombudsman could lead to higher membership fees, increasing per case of failed adherence. This will ensure that members of the public have a redress process open to them but will incentivise the members to adhere to decisions. Contractual provisions within the membership terms of business will enable court action by the Ombudsmen for failure to pay and provide a further incentive to abide by the decision.

LAND REGISTRY INFORMATION IN RELATION TO THE PROPOSALS BY THE CONVEYANCING ASSOCIATION

PREVIOUS WORK BY LAND REGISTRY TO ALLEVIATE REGISTRATION DELAYS

The lodgement of evidence of compliance for management-company type restrictions is a longstanding problem. Land Registry send a significant number of requisitions each month for evidence of compliance and some applications are cancelled because the customer is unable to provide the evidence by the required date. We agree there is a problem to solve.

Land Registry worked with the Law Society and the Association of Residential Managing Agents (ARMA) some years ago in producing a code of conduct which would help in speeding up the production of evidence but we could not secure agreement on the way forward.

In October 2014, we published Practice Guide 19A – Restrictions and leasehold properties and clarified our practice to help deal with some particular situations, i.e. where a landlord or management company has changed or been dissolved. This included improved guidance on when it is possible to apply for a

restriction to be cancelled or dis-applied. We also improved our guidance to try to ensure restrictions are only applied for if necessary and are worded appropriately.

Although helpful, these changes do not resolve the fundamental question of whether these restrictions are necessary or why lease administrators (when identifiable) take as long as they do in providing evidence of compliance.

THE LAW COMMISSION'S PAPER – UPDATING THE LAND REGISTRATION ACT 2002²⁶

In its recent consultation paper, the Law Commission discusses restrictions to protect contractual obligations including in registered leases and whether such restrictions should be allowed:

*'Restrictions protecting obligations in a registered lease also have the potential to cause unfairness and hardship where the lease itself has been complied with (for example, the requisite deed of covenant has been supplied), but the landlord or management company has not provided the necessary consent or certificate to allow the registration to proceed.'*²⁷

The Commission's view though is that the practical benefit secured by the use of restrictions to protect contractual obligations is not outweighed by the problems in obtaining evidence of compliance and that it should still be possible to protect such obligations by means of a restriction.

In Land Registry's response to the Commission, we said:

'Land Registry is concerned about the adverse impact that restrictions have on all of those involved in conveyancing transactions, including Land Registry and questions whether restrictions are giving those with their benefit too great a degree of control.'

It is Land Registry's experience (and that experience is supported by conversations that it has with many of its customers) that there are two areas in particular where the problems are particularly acute (and which have been identified in the consultation paper). The first is where restrictions are entered in the register to prevent disposals following the registration of charges and the other is where obligations to comply with leasehold covenants are allied with restrictions.'

While we note the Law Commission's view that any reform of the use of restrictions in such areas is not appropriate for a project considering the land registration regime, we note that the restriction is a tool that owes its existence to that regime and we would urge the Law Commission to reconsider its conclusion and to discuss with its stakeholders the extent to which restrictions impact adversely on the conveyancing process.'

PROPOSAL THAT THE REGISTRAR SHOULD BE ABLE TO REMOVE RESTRICTIONS

The proposal that CLRA 2002 is amended to allow the registrar to remove restrictions:

'The Chief Land Registrar is granted powers to remove a restriction on the Proprietorship Register requiring the provision of a certificate confirming the compliance with the terms of the Lease, Commonhold Community Statement, Transfer or Deed of Covenant where the conveyancer can provide a certificate confirming that the requirements of the Lease, Commonhold Community Statement, Transfer or Deed of Covenant have been complied with and that the Lease Administrator, Commonhold Company or

Freehold Management Company have not responded to application for a certificate of compliance after 10 working days of submission to them along with any reasonable fee payable..'

Comments on the proposal:

- some of the restrictions this proposed change is seeking to address are intended to remain in the register following a disposal so removing them would not be appropriate; the correct procedure would be to dis-apply them
- it is unclear if the proposed change would override the existing statutory process in place for the dis-application of restrictions – in relation to particular types of restrictions;
- some restrictions require consents, not certificates - this is more a drafting issue
- the threshold for a management company to have responded to the application for a certificate by 10 working days seems low given the chain of events required as described in point 3 of the paper? This is lower than Land Registry notice periods.
- There is reference to Freehold Management schemes therefore the proposals would appear to apply to disposals of freehold titles also but there is no detail about freeholds in the paper, they seem to deal only with leaseholds.

DISPUTES

Land Registry might be seen as a Regulator for the purpose of resolving disputes and delays. This is not our role. We need to remain impartial in the applying the rules relating to restrictions. We have an existing responsibility and quasi-judicial function in dis-applying restrictions which should not become entangled with administering or regulating compliance.

The reference to the First tier Tribunal does not state which division of the Tribunal is in mind. Is it the valuation tribunal and not the Land Registration division who would bear the cost of the additional casework?

OTHER MATTERS

We have assumed that the proposals regarding restrictions are aimed at residential sales.

²⁶ Consultation Paper No. 227

²⁷ Para 10.18

NOTES

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Contact Details

The Conveyancing Association
Registered Address
Maxwell Chambers
34-38 Stow Hill
Newport
South Wales
NP20 1JE

T 01633 261 757

W www.conveyancingassociation.org.uk

E brudolf@conveyancingassociation.org.uk



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