



Improving the home buying and selling process

Call for Evidence
October 2017

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CONSULTATION ON HOME BUYING AND SELLING PROCESS

ESTATE AGENTS

Q1.

Agents as with most Industries should be accountable. It is a case of customers are made aware of their rights. The Industry should do more to make customers aware of how to complain. Estate Agents should be no exception. Whilst it is the case that most Estate Agents are members of Regulatory bodies it is not particularly obvious where and how customers can complain. Something should be shown that is obvious on all Estate Agency literature as Lawyers have to show in the client care letter as to who to make a complaint to and how to complain not just to show the internal procedures but to be able to telephone or email a Complaints body such as the Legal firms have with the Legal Complaints Office. i.e Full details of how to complain should be included in the estate agent's terms and conditions in bold lettering and not hidden in the small print. Initially, to the Complaints Officer/CEO/Partner/Manager and thereafter to an arbitrator/ombudsman appointed by the appropriate regulatory authority to which the estate agent should be affiliated. This should not be hidden.

Q2.

- a) The Government should definitely be looking into transparency of referral fees. There are many circumstances reported where clients are informed that they are to use "recommended" Solicitors or Lawyers and customers believe what they are being told without being informed that the reason they are "recommended" is not because they provide a good service but because the Agents are receiving referral fees from the Lawyers, referral fees are probably now more the majority than the norm. The Birmingham Law Society is aware of instances where a seller has been assigned to the Agents "recommended" firm and this was the same firm that the Buyer was actually using. This appeared in the Agents particulars even though the seller had never engaged that "recommended" firm and had in fact appointed a totally independent firm to act. Practically all the large chains of estate agents have their "in-house" conveyancers or operate a panel of solicitors who pay a referral fee for each introduction by an estate agent. This practice is unfair to lawyers not on the panel and often results in the customer receiving a sub-standard service from the panel conveyancer appointed. It should be mandatory for Agents to inform customers that they are taking fees as Lawyers have to in their client care. More inspections should be carried out by the Regulators of Estate Agents to make sure that the rules and regulations are being followed. In some cases the referral fee is added to the customers final bill without them realising this.

Q3

Numerous Solicitors and Law firms would not be in favour of banning referral fees as that is the major source of how their work is fed to them. The Estate Agents become richer because each time a matter is sent to their "recommended" firm who they send the customer to because of the referral fee then the Agent collects at least £150 a time and

some Agents as much as £300. In London the referral fee is larger. The Lawyers are happy because they are being fed work but in the middle is the customer who is paying for this. However much firms say they are not increasing fees to deal with the referral fee they would not be able to absorb the fee themselves. It is known within the legal "circle" that the majority of the firms increase the fee to the level of the Agents referral fee. This cannot be fair or moral for the customer. Legal firms have survived for years without referral fees and customers should be in a position to choose which legal firm they wish without being pressurised by Agents. Customers can check in the local area by "word of mouth" or ratings to make choices as to which Legal firm they use. Removal of the referral fees would create a level playing field

Q4. Estate Agents should be regulated in the same way as Lawyers. A significant number of Estate Agents open with Agents who have no qualifications or training whatsoever. It is at present not a legal requirement to do so. Anyone can open up an Agency. This cannot be a satisfactory situation. It should be a case of anyone who is guiding the public and particularly where the public are being advised on such important information as to the value of a property, who they should sell to, checking affordability of a buyer to know that they are "good to go" should have some Regulation to stop them from not only taking advantage of the public but also to protect the public. A minimum limit should be set for indemnity insurance as with Legal firms and a Regulatory body such as Solicitors have with the SRA and Licenced Conveyancers with the Licenced Conveyancers Association should be set up for Estate Agents and mismanagement and disciplinary issues taken seriously and reported in the Regulatory body media.

CONVEYANCING

Q5.

- a) Consumers can select conveyancers by looking at the Industry standards such as CQS (Conveyancing Quality Solicitors) on the Law Society website or can rely on word of mouth as to recommendations. Some firms' websites have testimonials. For many years Conveyancing firms have been sourced by clients without the "introduction" from Estate Agents, Mortgage arrangers and others. Most clients still favour Legal firms in their area and if a firm is good it will usually be known and if a firm is bad even more so will their reputation be known in an area. If firms are so bad they would not normally be in practice in any event. At the end of the day, the best method for clients is always to make a decision based on personal recommendations. An experienced conveyancing lawyer is most likely to be busy but always find time to service a new client.

Government could assist the public by advertising with public information documents to make consumers aware that if they do not know of Legal firms to go to the Law Society website or phone or even on line for Solicitors/Lawyers in their area and the Council for Licenced Conveyancers for Licenced Conveyancers. The information should be readily available. It is depressing to learn the only reason the agents' recommended a certain conveyancer in most instances is because of referral fee they knew they would receive from that firm – often a "conveyancing factory" that clients cannot have

appointments to see anyone if they wish. Everything is done by email and telephone. Whilst emails and telephone calls are something that most conveyancing firms do, it cannot be in the best interest of the client to use a lawyer hundreds of miles away rather than the local firm that a client can readily visit if they wish. Sadly, it appears the majority of people do little in the way of homework on this subject and just rely on the agents' recommendation. It is disappointing that the agents themselves haven't appreciated a poor/below average conveyancer can derail a transaction or the fact that the Conveyancer is not in the area then causes the client to go to a local firm to find someone to witness a signature, identify them etc. causes delays. Agents are not necessarily being referred to the best Conveyancer for them but for the agents' fee. Also quite often additional charges are made to the customer", e.g. for expediting exchange of Contracts or redeeming a mortgage, and virtually on each occasion a figure is included in the estimate to include the fee that is being paid to the Estate Agent

Q6. It would seem that to be in a position to speed up the result of property searches, more "manpower" is needed within Local Government Land Charges and Highways. It is the case that the majority of searches are back exceptionally quick but the delay is usually with the Local Search at the local Authority. Some Councils are taking weeks to return searches due to lack of staff. Search insurance can be an answer but Mortgage Lenders, whilst they will allow them in certain circumstances, the onus is on the Lawyers that they are to be satisfied that the policy would protect the Mortgage Company. For that reason most Lawyers would not favour search insurance but would wait for the actual search. This would otherwise afford both the Lenders and Lawyers risk profiles in relying on such searches.

At present Land Registry also appear to be overstretched as it is taking far longer to obtain documents that are not available immediately from downloads, on some occasions there have been reports of it taking weeks for firms to receive the requisite information.

Whilst most clients are not usually concerned, having already secured the property that they were purchasing, registrations that are not "run of the mill" are also taking months to be completed. Maybe this is another area Government could look into. Land Registry need more staffing levels.

Q7. In some situations having the same Conveyancing provider could work but with the emphasis still being on Conflict of interest such as the sale or transfer of minor consideration or no consideration such as garden land or a family arrangement but in other instances it could be a dangerous area where, for example an adverse survey is given and a buyer requires a price reduction- if the same conveyancer was dealing with the matter then would that Conveyancer be in favour of the seller "sticking to his guns" or with the buyer to negotiate a reduction? It would not necessarily be any quicker for the client however as the Conveyancer may still be waiting for outside information such as the searches, mortgage or information from a seller. Also if there is a chain, then it would mean the client may still be waiting for the remainder of the chain to catch up. This may be an area that could be more problematic than is necessary for a client as they would be more likely to be stressed if a matter did not progress quickly if they thought that the fact that the same Conveyancers

were dealing with the matter the expectations of a quick completion would increase. The problem with conflict is also a great risk.

HARNESSING DIGITAL TECHNOLOGY

Q8 Digital technology has a place in certain circumstances. As with most things it could possibly assist but should not be relied on. Even with Case management systems human intervention still is paramount. Legal firms could be at the risk of becoming Conveyancing factories and that is not always what the clients want or in fact is not necessarily good for a client. We are all aware of the frustration that occurs with “call centres” in other Industries and it is imperative that Legal firms do not become tarred with the same brush. Majority of clients still prefer to be able to speak with someone on a one to one basis but with the assistance of technology where required. Most legal firms deal with emails, Downloads of documents and Uploads of documents. In practise it is doubtful digital technology could work in entirety inevitably problems relating to title, rights, covenants, planning and the like arise in the course of the process which require human skills to resolve. One model does not fit all and never will as every property is unique even if it were two properties next door to each other. Frequently, data inputted by the sellers into a seller's Property Information Form proves to be inaccurate and further enquiries have to be made to sort matters out.

Q9. E- conveyancing has been attempted on several occasions. Land Registry and legal firms involved in pilots have not yet found a way that it would have a satisfactory result. The major factor of e-conveyancing is security. In a world where there are many security issues and with fraud on the increase, particularly in the property world, this is something that should be looked at by Government as a major problem rather than trying to rush things through. The public have access to all of Land Registry properties and can present themselves to a Legal firm with falsified records to transfer or sell property. Without deeds to be handed over the security is far more lax than once was and if it was a case of the public being able to not only, in reality, just go through identification procedures which can be falsified (which happens more often than possible people know) and then they sign electronically it could be crisis waiting to happen. This area must be dealt with very cautiously.

Q10. For the reasons mentioned above it is already a source that sometimes can be too open. In reality there would not appear to be any advantage in opening data of public sector datasets as Lawyers would rely on information from the people who are the experts in the field.

Q11. This answer is encompassed in what has been said in 9 and 10.

MORTGAGES AND THE REQUIREMENTS OF LENDERS

Q12. Majority of borrowers already do obtain a Decision in Principle from a Mortgage Company. Virtually all Estate Agents will not accept an offer unless they have seen proof of funds including a Decision in Principle from Mortgage companies. The problem lies in the fact that it is only “in principle” as such the borrower then has to go through the affordability in more

detail and also a valuation and survey is carried out by the Mortgage Company. All of those factors can then fail.

Q13. Improvements are always a difficult thing when not working in an Industry that is looking at safeguards both to themselves and Borrowers. If the affordability was relaxed then it could be that Borrowers end up in debt as we saw some years ago where Borrowers were overstretching themselves. The mortgage company could be quicker with the valuation and survey as they do sometimes take some time before they are carried out. However, the problem with granting a mortgage before a survey is done as with some mortgage companies such as HSBC and Handelsbanken is that there is a risk that the offer is withdrawn in the event of an adverse survey. Further, no lender is going to rely on a survey carried out by a seller, always requiring its own survey. It's true to say a mortgage offer takes considerable time which inevitably slows up the process. Any steps the majority of lenders can collectively take to expedite the process would greatly assist the conveyancing process. Borrowers however must be made aware that processes are there to protect them as well as the Mortgage companies. Whilst mortgage company's valuations and surveys cannot be relied on by Borrowers if a Mortgage company were unhappy with the valuation then there would normally be references in the offer to certain conditions which would alert a Borrower to a problem or indeed the Mortgage Company may decide not to lend or downvalue the property. Surely this should be seen as a "warning" to the Borrower as to whether to continue with the property.

EDUCATING BUYERS AND SELLERS

Q14. It is the case that this could be the crux of the matter. Buyers and sellers expectations are too high when moving home. It is a perception that in an age where everything moves quickly that this should be an area that also does the same. Sellers and buyers need to be educated to the fact that it is probably the largest investment that most people will encounter and it has to be right especially when lenders also need to know that their security is protected, were things to go wrong. As mentioned previously every property is different even if a property is next door and built at the same time and to all intents and purposes would appear to the average person to be the same. If matters are not looked into thoroughly the seller/buyer could end up with problems at a later stage and in particular on resale. It is genuinely a case that sellers/buyers do not understand the amount of factors that are looked into by the lawyer that is acting for them. Estate Agents inform clients that the process should be quick and in some instances give a target date on which an exchange or completion should take place. Invariably there is little or no consultation with the Lawyers other than target dates are issued by Estate Agents. This increases expectations and clients are stressed when that date does not happen. Education of clients is paramount so that they are aware there could be many complications that their lawyer is looking into such as rights of way for them or others, conditions, covenants, encroachment, disputes and all other aspects as well as the contract, plans, mortgage if they are having one, searches and if leasehold a whole swath of items that need consideration.

Clients expectations are increased due to the impression that because emails are instant they consider that when an email is sent it should be answered immediately and this is not always the case as there are other clients that have to be dealt with who have pre arranged appointments and sometimes questions have to be raised of others before responses can be sent. Also research quite often has to be done on issues with a particular title.

Information is already available on the internet and most legal firms give out leaflets stating how conveyancing works but unfortunately most people are not interested in what has to be done but only require to know when they are moving.

Maybe a joint campaign by the Government and the Law Society could be considered to educate the public by a series of advertisements in what your Conveyancing Lawyer does

BETTER INFORMATION AT THE POINT OF SALE

Q15. From a Conveyancers' point of view it is always good to have as much information as possible to be able to start a process. Whilst it is the case that deeds have in most instances been disposed of, it is always the case that if clients do have some deeds or in deed any guarantees, regularisations certificates, building regulations or other items that are relevant to the property that they are holding then agents could ask that those are handed over to the conveyancer at the point of sale to save the time of a conveyancer finding so far down the line that they require certain items and have to wait for their delivery.

In most circumstances, the forms such as Property Information forms and Fixtures and Fittings forms are sent to clients immediately usually by email and these are dealt with quite speedily.

As previously advised, it is often the case that information provided such as in the Property Information Forms is inaccurate and needs further investigation, e.g. the seller may say there have been no extensions and then you read the agents' particulars which states "extensively extended". It is difficult to know how to deal with this. A poor conveyancer may well accept everything as stated and make no further investigations, with frightening consequences. That said, the seller's Property Information Form does, at least, provide some useful information if correctly completed and all relevant documentation provided, e.g. FENSA certificate, Building Regulations Completion Certificate etc.

It could be worthwhile providing a local search at the onset but the problem being that they are invalid after 6 months, unless extended by an indemnity policy, some lenders do not accept and there is also the question of the cost being borne by the sellers which they may well be reluctant to incur.

The problem with obtaining too much information before the point of sale is that it could take us back to the days of HIPS where it was quickly discovered, no one was prepared to rely on them and were very quickly seen as a source of wasted money.

- Q16. The one substantive item that delays matters on a leasehold property is the production of the Managing agents and Leasehold pack. It could well be that a client who is selling a leasehold property could apply for those packs as soon as they are aware they have a buyer and request that it is sent to their lawyer. The only issue would be that some lawyers may have additional queries and unless they are asked at the same time Management companies and freeholders can ask for additional fees for extra queries. When a client has already paid £200 to £300 for a standard pack and then has to pay more this could be a problem.

SHARING INFORMATION AND INCREASING COMMITMENT

- Q17 There are already standard agreements provided by Law Society. All members of the Conveyancing Quality Scheme have a protocol to which they should adhere which amongst other things states that Lawyers should not be adding additional clauses to those contracts unless there is a very good reason. i.e. an out of the norm property transaction where additional clauses would be necessary. There is the fear that a requirement to provide a standard agreement to be implemented at the start of a transaction could potentially be "hijacked" by estate agents and further erode the conveyancers' involvement in the process.
- Q18. Unless it is made illegal gazumping is always a factor of moral standards. Lock in agreements have been used in the past particularly when dealing with London properties and are not satisfactory as there is always a "get out" provision in the event of a defective title, adverse survey, failure to secure a satisfactory mortgage offer and the like. A standalone lock in agreement giving a specific period to the buyer to exchange may possibly solve the problem but invariably a buyer will seek to alter its terms if the circumstances change, e.g. if the buyers are planning to link their purchase with the sale of their existing property and for some reason that transaction falls through during the process or is delayed.
- Q19. It is usually a case of if people are educated into what is necessary and the reasons why majority of people will appreciate that things are being done to protect them and then confidence is built as a matter of course. Unfortunately we are living in a world where people are at present educated to believe, particularly by estate agents, that a sale and purchase is an easy matter to deal with and should be quick, whereas in reality for the reasons stated in the reply above to Q14 this is not the case. Education of the public expectations is paramount. In a recent television interview with a member of the National Association of Estate Agents it was quoted when showing a Land Registry title that "all a lawyer has to do is download this from Land Registry, check it out and then they can move on" If that is what is being portrayed to the public then it is no wonder they become frustrated. Education and the public knowing that it is in their best interest for matters to be thoroughly checked for their benefit is the way to confidence. If something goes wrong then they will very quickly be blaming the lawyers.

BUYING A LEASEHOLD PROPERTY

- Q20 Ideally, the leasehold management pack should be obtained from the managing agents prior to marketing the property to avoid inevitable delay. Sometimes, two packs will be required, e.g. both freeholders and head leaseholders have separate requirements for giving notice of transfer/mortgage etc. In any event, there should be a maximum time limit for providing the information imposed by whatever body the particular agent belongs, e.g. RICS, CIS. Also one body could take control of all the information rather than on many occasions you have to go to a Managing Agent and a landlord or two managing agents.
- Q21 A maximum fee should most definitely be set for the provision of management packs possibly imposed by the agents' regulatory authority, e.g. RICS, CIS. It is surprising as to how much prices of the packs can vary, it not being uncommon to pay in this area £300-£400. In London, prices are higher. I have recently paid £600 for a pack and the agents still managed to take nearly 4 weeks to produce it. Also some Managing agents impose other documents that are required where there is legally no necessity but clients have to pay for those documents but even though advised the documents are not needed clients pay so as not to delay matters. This is something that Managing Agents do to enhance fees.
- Q22 These are already in force but Managing Agents and Landlords do not use them and use their own packs on the basis that they charge higher fees.

BUYING A NEW BUILD PROPERTY

- Q2 It is fair to say that time limits initially proposed by developers for exchange are unrealistic given the amount of work needing to be carried out by the solicitor. The local search will invariably take longer than the time limit proposed, not to mention the obtaining of mortgage instructions from the client's lender. There is also the fear that the developers could go into liquidation or bankrupt prior to completion, particularly where there is a long period between exchange of Contracts and completion taking place, e.g. when the property is bought off plan and sometimes hasn't been built at the point of exchange of Contracts it can be many months before completion. In most cases, developer's solicitors will obtain approval from their clients to an extension of time for exchange but that all adds to the buyer's stress. More realistic timeframes for exchange would be helpful. In order to safeguard the deposit, under no circumstances should the seller's solicitors hold the deposit otherwise than as stakeholders and Contracts should make this clear in every case. Some developers will amend the contract to a conditional contract i.e. being conditional on the mortgage and search results. However in reality this does not help in the case of a chain. Developers do not help in that in this day and age they refuse a retention if the Road making agreement has not been finalised and other factors where the Land Registry Estate Layout plan is subject to change. These are items that then have to be referred back to mortgage lenders. Developers if imposing time constraints should only be allowed to do so if they have everything in order from their end.
- Q24 As previously stated, buyers should obtain confirmation in writing from the lender that they will be eligible for a mortgage based on their circumstances before

embarking on any property purchase, e.g. decision in principle document. The mortgage company could inspect sites prior to them being marketed and that may relieve the wait for inspections to be carried out as the properties are not build complete at the time of a mortgage offer in any event but clients would still have to go through the affordability process.

ADDITIONAL SUGGESTIONS

Q.25 All Conveyancers are bombarded during the day by estate agents wishing to know the progress of the transaction and Conveyancers often gain the impression timescales banded around emanate from the agents. It would be much better for the Conveyancers to be left alone to actually do the job rather than being continually interrupted in this manner. Agents continually go up and down chains to find out information which in the opinion of the majority of lawyers breaches confidentiality and data protection. Lawyers cannot do this and in any event is not legal. Presumably this is allowed as they are not properly regulated. Along the way it is increasingly found that in any event what has been said has been altered to manufacture information to frustrate clients. Most of the anxiety that Conveyancers have from clients when it is boiled down as been generated from what the agents have said to them, sometimes to the extent that they actually "lie" to the clients in the hope that if they work clients up enough they will become irate and move the matter along.

If the Government were to carry out a survey of all Conveyancers as to what they feel of Agents constantly interrupting it is the one thing that is consistent that Conveyancers feel Agents slow down the conveyancing process. There are constant interruptions from Agents and Mortgage arrangers ringing for updates. Sometimes it is done on the back of the fact they say they need to inform the clients whereas most clients in reality have already been updated. Conveyancers feel they are pressurised intentionally from agents as the quicker a matter comes to an exchange then the quicker they receive their commission and some agent even have a bigger bonus based on how quickly the matter can be pushed through. Agents work on bonuses and commissions on how many exchanges can be obtained by the end of a month. It adds no benefit to a client because it is a case of if something could be done it would be but the agents cannot dictate the conveyancing procedure. An Estate Agents job is to sell a property once that has been done they should as was once the case, stand back and allow the legal experts to take over. This no longer happens as Estate Agents believe they can push matters through to a speedy conclusion without an inkling of how the law works.

Conveyancing is probably slower now that it was around 10 years ago and also at similar cost but is slowed down due to outside forces particularly the constant chain progression queries from Agents which stops conveyancers and support staff from doing the work in hand. Even if Agents are copied into what is happening (with the clients agreement) they still then telephone or email to ask the whys and wherefores because basically they do not understand the legalities and the process other than they know that searches have to be done and enquiries answered. The more information that is given the more that is asked. It has also been known for Agents to obtain information from clients that has been asked for by the Conveyancer to find that it has been handed to a seller or buyer direct and the Conveyancer is still chasing for the information which has not been sent to them to be checked over.

The cost of Conveyancing in relative terms is less expensive than 15/20 years ago and can only add that if experienced lawyers were left to do the job that they have been given without constant interruptions then the process would be quicker in any event. It is the case that Estate Agents now have too much control and it is the case of the tail wagging the dog to the detriment rather than assistance to the clients.

17 December 2017

A handwritten signature in blue ink, appearing to read 'A. Beedham', with a stylized, cursive script.

Andrew Beedham

President

Birmingham Law Society