



**Improving the home buying and selling process – A call for evidence from The
Department for Communities and Local Government**

**A response by
The Chartered Institute of Legal Executives**

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1. Introduction

- 1.1. The Chartered Institute of Legal Executives (CILEx) is the professional association for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers. This includes more than 5,000 members of all grades who work in conveyancing.
 - 1.1.1. Among these are CILEx members who have been authorised for independent practice in the conveyancing field by the frontline regulator CILEx Regulation Ltd, who approve professionals to independently delivery reserved legal activities under the Legal Services Act 2007, including reserved instrument activities. CILEx members can also establish their own law firms delivering these services.
- 1.2. As it contributes to policy and law reform, CILEx endeavours to ensure relevant regard is given to equality and human rights, and the need to ensure justice is accessible for those who seek it.
- 1.3. This response includes contributions from some of CILEx's members working in conveyancing. CILEx liaised with practitioners through its Conveyancing Specialist Reference Group, and conducted a survey of members into their experience working in the home buying and selling market. These are expanded in more detail below.

Estate agents

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

2.1. CILEx would welcome future efforts, made by the industry, to do more to make consumers aware of how to complain. In order to facilitate these efforts, CILEx recommends building upon complaints procedures that already exist in the market including, for example, redress schemes provided by The Property Ombudsman and National Trading Standards.

2.1.1. A significant number of respondents indicated that estate agents should, in all circumstances, provide instructions on how to make a complaint when initially provided with instruction.¹ This would ensure that from the outset of the process of selling or buying a property, the customer is aware of how to complain. In order to ensure that this happens however, the Government may wish to consider what regulatory framework is necessary for consumers to be assured that they will receive the necessary information and guidance from their estate agent on how to complain.

2.2. Although a lack of information impacts upon the likelihood of consumers complaining about poor service, CILEx would also welcome further exploration regarding other factors that deter consumers from making a complaint, including: the belief that a complaint will not resolve the situation, that consumers can feel intimidated, when contemplating complaining to their estate agent, the belief that making a complaint will result in poor treatment, and the belief that consumers are unsupported when making a complaint.

2.3. Half of CILEx respondents indicated that consumers are unlikely or very unlikely to complain if they receive poor service from an estate agent.² However, respondents indicated that a lack of awareness was not the most

¹ One respondent said: "Ensure that full information is provided at point of sale of services."

Another respondent said: "Could be incorporated into a Service Standards Guide issued at the point an Agent is engaged, or could be incorporated into standard Terms and Conditions. Become part of an estate agent's "Client Pack"."

Another respondent said: "Ensure that upon instructing an agent, the client has to be informed of how to complain."

Another respondent said: "Complaints procedures and handlers info revised to customers at outset."

² 50% of respondents said it is unlikely or very unlikely that "a customer will complain if they receive poor service from an estate agent."

significant contributing factor. Rather, factors including feeling intimidated and the realistic likelihood of a complaint resolving a consumer's situation were of greater significance.³

2.3.1. CILEx respondents commented that insufficient regulation has exacerbated the lack of information available to consumers, since estate agents are not formally required to provide information on where, and how to complain. This is unlike legal professionals, including Chartered Legal Executives, who are required to provide clear details and instructions to consumers on how they can complain about poor service.⁴

2.4. Whilst no respondents indicated that there are widespread instances of estate agents intimidating consumers into not complaining, respondents did indicate that consumers can be in situations dealing with estate agents who, according to our respondents, can be "aggressive," "unapproachable," and "intimidating", and may therefore feel deterred from complaining.⁵

2.4.1. Respondents also highlighted that the feeling of being intimidated is often the result of the power and influence estate agents hold over a property being bought or sold.⁶

2.4.1.1. During the process of selling a house for example, the estate agent wields a significant amount of influence over the extent to which the property is advertised, how many customers

³ Paras 2.4 – 2.5.1.

⁴ One respondent said: "As estate agents are not regulated client often do not know who to complain to." Another respondent said: "There is no obvious ombudsman or regulator." Another respondent said: "Even I am not sure what complaints procedures estate agents have in place but feel fairly sure that they do not have a similar system as solicitors have to have in place." Another respondent said: "Agents are not required to give information on how to complain."

⁵ 68% of respondents indicated that it is likely or very likely that a customer is dissuaded from complaining against an estate agent because they feel intimidated. One respondent said: "Some clients feel intimidated by the often-aggressive stance the agents take." Another respondent said: "Most estate agents will dig in their heels and are slow to react to valid concerns in a positive way." Another respondent said: "Many clients feel intimidated when they are in an unfamiliar situation and can often feel bullied by agents. I have had many clients saying that they have felt this way." Another respondent said: "Estate agents are not particularly approachable and seldom appreciate constructive feedback in the form of a complaint."

⁶ One respondent said: "Estate agents have a lot of influence when it comes to advertising a property and being positive on viewings of properties. Estate agents seem to have a lot more influence than conveyancers." Another respondent said: "They feel that they need the support of the agent and that if they complain the agent may lose interest and devote his attentions elsewhere."

may wish to view the property, and how much information is provided to the seller. It is reasonable to assume, therefore, that a seller may feel disinclined to complain to the agent as they may believe that making a complaint will result in poorer treatment.⁷

2.5. Furthermore, according to our respondents, consumers who have successfully bought or sold a property using an estate agent are less likely to complain about poor service since they believe that a complaint will not resolve their situation.⁸

2.5.1. Following the sale of a property, estate agents have little to no role to play, unless that is the customer decides to use the same estate agent to sell or buy another property. As a result of this reduced role, our respondents emphasised that customers are unlikely to complain since they will likely believe that a complaint won't change their current circumstances (having successfully bought or sold a property). Customers may instead opt to 'move on', and not go through the unnecessary stress of complaining.

a. If so, how?

- 2.6. CILEx welcomes the Government's plans to require all letting agents to register with an appropriate organisation. CILEx recommends that the Government may wish to consider similar reform in the case of estate agents. This would help establish a more robust regulatory system in which estate agents could, for example, be required to satisfy minimum training requirements, abide by an industry code of conduct, or otherwise demonstrate compliance with existing requirements.
- 2.7. CILEx believes that assured levels of competence, qualifications and training would likely ensure greater levels of professionalism and quality of service in

⁷ 73% of respondents indicated that it is likely or very likely that a customer is deterred from complaining against an estate agent because they believe making a complaint will result in poor treatment

⁸ 86% of respondents indicated that it is likely or very likely that a customer is dissuaded from complaining against an estate agent because they believe a complaint will not resolve their situation.

the estate agent market. This view was similarly expressed by almost all of our respondents.⁹

2.7.1. Although CILEx is aware that this may result in increased costs faced by estate agents which may be passed on to its customers through increased service prices, CILEx believes that the lack of regulation that exists currently has proved insufficient in protecting customers in a variety of circumstances, including those in which a customer wishes to complain about poor service from their estate agent.

3. Q2. Should the Government take further action to enforce current transparency regulations regarding disclosure of referral fees? a. If so, what action should be taken?

- 3.1. CILEx supports the principle of price and service transparency, and we encourage our members working in conveyancing to be as open as possible about their pricing structures and service models so consumers know what to expect. Consumers from the outset should have a clear transparency on how costs are accrued, including the circumstances under which costs might change.
- 3.2. CILEx has received feedback from our members that the current transparency regulations are not effectively enforced.¹⁰ We therefore recommend that the Government take further action to enforce current transparency regulations provided in the Estate Agents Regulations 1991 which require an estate agent to inform a seller about services which a third party might offer, and from which the estate agent would derive a financial benefit.
- 3.3. Furthermore, CILEx is concerned that by failing to disclose referral fees, and/or failing to explain fully to the buyers or seller what referrals entail, estate agents may be failing to comply with the Consumer Protection from Unfair Trading Regulations 2008.

⁹ 97% of respondents agreed or strongly agreed that estate agents should be required to register with an appropriate organisation.

100% of respondents agreed or strongly agreed that estate agents should satisfy minimum training requirements.

100% of respondents agreed or strongly agreed that estate agents should abide by an industry code of conduct.

¹⁰ 59% of respondents disagreed or strongly disagreed that “current transparency regulations regarding disclosure of referral fees are effectively enforced.” A further 35% neither agreed nor disagreed.

- 3.3.1. Under these regulations, professionals and service providers are prohibited from impairing a consumer's ability to make an informed decision, thereby causing them to make a decision that they would not have taken otherwise. By failing to disclose referral fees fully, estate agents could be considered to be impairing a consumer's ability to make an informed decision since they are failing to disclose that they will derive a benefit from a consumer choosing the suggested conveyancer, mortgage broker or legal professional. It is in CILEx's view, that the disclosure of this benefit to consumers would likely impact upon a consumer's decision. As a consequence, CILEx recommends that the Government take further action to ensure that the Consumer Protection from Unfair Trading Regulations 2008 is sufficiently enforced.
- 3.4. Despite the financial and time-saving benefits referrals provide estate agents, CILEx is concerned that these benefits are not similarly reflected in the case of the consumers who fail to benefit directly from being guided towards using a certain conveyancer or mortgage broker. Consequently, CILEx believes that referral fees are not always in the consumer's best interest. This view was similarly reflected by a number of CILEx members.¹¹
- 3.5. CILEx reiterates the recommendation made earlier that the Government may wish to seek to take steps to strengthen regulation of estate agents.¹² By

¹¹ In response to being asked whether customers benefit from arrangements where they are guided by their estate agents towards using a certain conveyancer or mortgage broker, one respondent said: "Most estate agents see the relationship as a benefit to them, not the client. They use the relationship to try and work the lawyer into an awkward position or try and obtain updates every day, which is impractical. I previously worked for a firm who employed close to 100 people - one third of their entire business comes from one London estate agent - if a situation arises where they will either annoy the client or the estate agent, who do you think they will side with? The estate agent is seen as a client and all that they can do to please them is done - the lines are blurred beyond recognition and it cannot be argued that the client gets the best service possible." Another respondent said: "We have frequently found that Consumers have been told they must use the estate agent's approved solicitors firm or that they should because it speeds the process up. The only one benefiting is the estate agent."

Another respondent said: "Customers do not benefit. I am involved with these agents and referral companies and it is simply a way for agents to make more money, the referral company to make money when they have no role in the transaction. I have myself had several transactions recently where the referral company made more in fees that I did due to their large referral fees that we as solicitors have to pay to them. They do not explain their role to the clients either and lie frequently about who they are. The company I am familiar with do not even explain who they sufficiently when they take money from the clients who often think they have been speaking to their solicitor. There must be transparency."

¹² Paras 2.1 – 2.7.1

strengthening the regulations that oversee estate agents, the Government could sufficiently ensure that referral fees are suitably disclosed to consumers wishing to buy or sell a property, as well as establish standards for how referral fees should be disclosed, at what point in the process, and the maximum amount an estate agent can receive for a referral.

3.6. CILEx also provisionally recommends that the Government should strongly consider banning referral fees.

3.6.1. 81% of respondent agreed or strongly agreed that referral fees should be banned. Members commented that referral fees provide little to no benefit to consumers, that they place an unfair financial burden on those wishing to buy or sell a property, and that they inhibit consumer choice.¹³

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

4.1. Four key impacts were identified by CILEx and its respondents:

4.1.1. Banning referral fees will likely result in reduced revenue for estate agents. While this impact is appreciated by CILEx and its members, we believe that with appropriate notice estate agents will be able to make sufficient preparations to mitigate the impact on their finances.

4.1.1.1. CILEx recognises that as part of these preparations estate agents may choose to pass the losses on to their consumers. Any new regulatory regime may play a role in minimising the impact this practice may have on consumers, and in particular to ensure unfair charges are not levied.

4.1.2. The second key impact is the likely redistribution of work from conveyancing firms who have well-established commercial relationships with estate agents. Estate agent referrals, as noted earlier

¹³ One respondent said: "Clients feel obliged, and often forced, to use the referral solicitors rather than their own local firm."

One respondent said: "They should only be allowed in more specialist areas - conveyancing is an area where it is so easy to shop around I cannot see it is of much benefit, unlike looking for someone qualified in a niche area."

Another respondent said: "I think that referral fees should be banned. They only benefit the agent and they increase the legal costs to the consumer. How can this be good?"

Another respondent said: "Clients believe they are referred on the basis of quality service. what they get is poor service from lawyers who are paying agents to provide them with work that they cannot keep up with."

Another respondent said: missing text? "

by one of our respondents,¹⁴ provide a number of conveyancing firms with a significant, and somewhat assured, amount of work. A ban on referral fees may likely reduce the amount of work and referrals received by some conveyancing firms. However, this negative consequence may likely be mitigated by factors including those discussed below:

- 4.1.2.1. Providing that a ban is made clear to all individuals and firms working with the property buying and selling market, and that a ban is gradually phased into the market, the Government could provide sufficient enough warning to allow firms and the industry to adjust to a change in their commercial relationships and a likely redistribution of work.
- 4.1.3. Banning referral fees will open up competition within the conveyancing and mortgage-broker markets. By minimising instances of estate agents referring consumers to a preferred provider, consumers will be required to search for a suitable conveyancer or mortgage broker themselves. This will likely lead to consumers having greater choice and flexibility, and them choosing a conveyancer or mortgage broker based on previous consumers reviews and price; giving greater weight to market forces to drive greater competition, reduce costs for consumers, improve the quality of services provided, and increase innovation among service providers.
- 4.1.4. The obverse of this potential impact is that some consumers may not wish to spend time selecting a conveyancer or mortgage broker, preferring the current prevalent arrangement whereby they would simply be referred to select a provider by the estate agent (though of course they may not be aware that the agent had done so in return for receiving a referral fee, the cost of which the consumer would themselves have to cover through the fees charged by that provider).

¹⁴ See footnote 11.

5. Q4. Should the Government introduce more regulation for estate agents? a. If so, what sort of regulation would be appropriate?

- 5.1. CILEx is reticent in suggesting that more regulation is the only answer, when arguably the effective enforcement of current regulations is lacking. We recognise though that there is a case for strengthening current regulations, ensuring more effective enforcement of those regulations, and that this may be achieved best through revisions to the regulatory regime.¹⁵

Conveyancing

6. Q5. What should industry do to help consumers make more informed decisions when selecting a conveyancer? a. How could Government help facilitate this?

- 6.1. The frontline regulators of legal services providers, including CILEx Regulation Ltd, are already engaged in a significant programme of work to enhance the transparency of price and quality information, to help consumers make more informed decisions.¹⁶ Consumers will benefit from these efforts to encourage those in the market to provide information to consumers and/or to advertise their services appropriately.
- 6.1.1. These are on top of already established mechanisms for consumer awareness, including the LegalChoices website.¹⁷
- 6.2. There is a potential role for government to complement these efforts with enhanced public information on the conveyancing process, such as through the .gov.uk website.
- 6.2.1. We would encourage the Government to consider carefully the information provided to ensure that it does not unintentionally favour some suppliers over others.¹⁸
- 6.3. The Government may also wish to consider the role accreditation schemes have within the home buying and selling market. Some accreditation schemes

¹⁵ See paragraphs 3.2 – 3.3.3, 3.5 – 3.5.2.

¹⁶ More information on CILEx Regulation Ltd's efforts is available here: https://www.cilexregulation.org.uk/news/cma_consultation

¹⁷ <http://www.legalchoices.org.uk/legal-choices/got-a-legal-issue/houses/im-buying-or-selling-a-house/>

¹⁸ Such as by only referring to 'solicitors' when Chartered Legal Executives and CILEx Practitioners also run conveyancing firms.

are exclusively open to some individuals and groups, leaving others unable to apply for accreditation.

6.3.1. This is of concern to CILEx and the Competition and Markets Authority (CMA) because “the possibility that the use of an accreditation scheme as a requirement for access to a particular part of the sector can create an issue for competitions, for example when the scheme is only open to one type of provider.”¹⁹ As a result, consumers may be misled into believing that a conveyancer with an exclusive accreditation is better than one without, and will not be aware that other conveyancers may simply not be able to apply for that accreditation.

6.4. If other reforms are taken forward,²⁰ it is likely that consumers will conduct their own research in order to select a conveyancer. This research will likely include: asking friends and family for recommendations, looking on the internet for reviews of conveyancers and their firms, and searching for local conveyancing or legal professional firms that know the local area to a greater degree. The time taken to undergo this research will in itself likely result in a consumer becoming more informed about the decision they are making.

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

7.1. Our members have indicated that some problems with property searches lay with the limited resources that local authorities have to meet the demand.²¹ A number of respondents indicated that a lack of staff and resources are largely to blame for the slow processing speed.

¹⁹ CMA Legal Services market study: <https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>

²⁰ Such as the mooted ban on referral fees.

²¹ When asked what improvements can be made to the process of property searches, one respondent said: “Give Local authorities the funds and resources to provide a quicker turnaround and also ensure that online search providers all have the same standards and a timescale for returning searches.” Another respondent said: “Local authorities have more staff available.” Another respondent said: “Only local authority searches are delayed.” Another respondent said: “Local Authority Utility Company searches can take several weeks to come back due to lack of staffing levels, particularly at Local Authority level. We have seen delays of up to 3 months with some Local Authorities.”

- 7.1.1. Although some respondents suggested that standardised or maximum turn-around times should be introduced for property searches,²² CILEx is concerned that this may unfairly impact upon local authorities who are, according to a number of CILEx respondents, already struggling with limited resources and staff.
- 7.2. As a result, CILEx would welcome an assessment of the extent to which local authorities are able to meet the demands of the property buying and selling market where property searches are required. This would help ensure that any other improvements the Government seeks to make in order to speed up the process of property searches are founded on evidence and do not cause additional concerns for local authorities.
- 7.3. CILEx also recommends that the Government may wish to consider the ways in which property searches involving Local Land Charges Register Searches (LLC1) and CON 29 could be streamlined.
- 7.3.1. The Infrastructure Act 2015²³ provided the transfer of responsibility for Local Land Charges from local authorities to HM Land Registry. However, respondents indicated that LLC1 searches are seemingly hampered by lack of developments in the storage of documents in HM Land Registry.²⁴
- 7.4. Anecdotally, some CILEx members indicated that local property searches are not a particular issue in causing delay, with most delivered electronically, half within two days and the remainder within 2 to 3 weeks. However, others report that there can be wastage in relation to searches being supplied to buyers after an abortive sale.

²² One respondent said: "Standard turnaround times for all councils." Another respondent said: "There needs to be an industry standard for production of search results and penalties for late production."

²³ <http://www.legislation.gov.uk/ukpga/2015/7/contents/enacted>

²⁴ One respondent said: "Land registry will need to be funded or be allowed to use its operating surplus to develop services in particular the provision of documentation that is often associated with the transaction and possibly secure email and identification of consumers. Land registry do not need to release further datasets in order to drive innovation for conveyancers; what is needed is for them to make the storage of documents easier, complete the LLC one project, and then move to con 29. Given the timescales that these projects are taking it is imperative that land registry be encouraged and financed move these matters forward."

- 7.5. Another potential area is to reform chancel repair liability, which is forming part of the Law Commission's 13th Programme of Law Reform, and that currently requires searches to be conducted.
- 7.6. Lastly, another approach worth considering to speed up the process of property searches might be to review the existing regulations (which have grown organically over time) and ensure that they engender clarity and transparency rather than the confusion that is anecdotally reported.

8. Q7. Would there be an advantage to encouraging buyers and sellers to use the same conveyancing provider? a. If so, how could it work, without creating conflict of interest problems?

- 8.1. CILEx recommends that the Government does not seek to make, or facilitate changes that would encourage buyers and seller to use the same conveyancing provider.
- 8.2. A significant majority, 76% of respondents, disagreed or strongly disagreed with the proposed arrangement.
 - 8.2.1. Respondents highlighted that the chance of a conflict of interest arising was too great, and therefore the buyer and/or the seller could not be suitably protected.

Harnessing digital technology

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

- 9.1. A predominantly digital conveyancing process could likely provide buyers and sellers with up-to-date information relevant to their process of buying a home, without having to rely on posting documents and updates that can not only take longer, but can get lost in transit. They would also likely benefit from being able to track their progress whilst having access to recent developments within minutes.
- 9.2. However, one serious risk that comes with any digital legal service is the likelihood of the system being hacked or altered. Significant amounts personal information, including sensitive financial details, may be accessible via an insecure digital conveyancing system. As a result, any developments must

ensure, to the highest possible degree that the information contained within a digital conveyancing process is kept secure.

- 9.3. Any digital conveyancing process will need to ensure that all participants can understand the more complex legal terminology involved in buying a property. Furthermore, vulnerable clients, including the elderly, may struggle with a predominately digital conveyancing process and could therefore be disadvantaged as a result.
- 9.4. The development of a digital conveyancing process should be mindful of any adverse effects on competition in the sector: for example, depending on the pace of change, in a market with already very tight margins, adopting digital conveyancing could disproportionately favour the medium/large-sized to large firms who, unlike smaller firms, have the resources and capacity to adopt/purchase such systems. A possible outcome could be that smaller firms cannot compete, potentially ceasing to trade and reducing consumer choice as firm numbers decline.

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

- 10.1. CILEx is aware that there are a number of e-conveyancing tools that are being used or considered in our members' firms,²⁵ however their market penetration is still limited, owing in part to difficulties in encouraging often competing firms to implement the same or similar e-conveyancing systems.
- 10.2. A number of CILEx respondents indicated that the Government may wish to consider establishing the extent to which the Land Registry can play a role in e-conveyancing.
 - 10.2.1. The Land Registry's 'Digital Street' initiative, for example, is worth considering, though we recognise it is currently a long-term and costly exercise.

²⁵ One respondent said: "More firms using case management systems such as proclaim."

Another respondent said: "There have been several attempts over the years, Land Registry Matrix - failed. Law Society Veyo - failed. There is a free system currently on offer called "Free2Convey" - we joined up and have tried to use the system but without other conveyancers, estate agents accepting our invitation to share information on the system it will not work."

10.2.2. Changes are also under discussion to the Land Registry's ID verification process, and the development of secure email, as part of the Law Commission's review of the Land Registration Act 2002, which could further provide opportunities for the development of e-conveyancing.

10.2.3. However, some respondents perceived that the Land Registry's limited resources limit its ability to contribute fully to implementing new e-conveyancing tools that can be used more widely in the sector.²⁶

11.Q10. Are there any particular public-sector datasets which you think should be released as open data in order to drive innovation in the home buying and selling process?

11.1. CILEx is reticent in suggesting any particular public-sector datasets should be released as open data. Though on the whole respondents indicated that they agreed in principle that datasets on leases, restrictions, and covenants and easements should be released as open data,²⁷ provided that sufficient explanation is provided to enable accurate interpretation of the data, and that no sensitive data is inadvertently included.

Mortgages and the requirements of lenders

12.Q12. What more could be done to encourage borrowers to seek a Decision in Principle from their preferred lender before they start house hunting?

12.1. CILEx welcomes the Government's efforts to encourage the use of Decisions in Principle (DIP) in order to speed up the home buying and selling process.²⁸

²⁶ One respondent said: "The Land Registry is not sufficiently funded or staffed which is why many e-conveyancing programmes have not proceeded."

Another respondent said: "I think that what we have at the moment is sufficient although having local authority searches done via the Land Registry portal could be useful."

Another respondent said: "Funding so there is a level playing field central email system via the Land Registry."

²⁷ 57% of respondents agreed or strongly agreed that datasets on leases should be released as open data in order to drive innovation in the home buying and selling process.

48% of respondents agreed or strongly agreed that datasets on restrictions should be released as open data in order to drive innovation in the home buying and selling process.

59% of respondents agreed or strongly agreed that datasets on covenants and easements should be released as open data in order to drive innovation in the home buying and selling process.

²⁸ 90% of respondents that agreed or strongly agreed with the proposal that borrowers should seek a DIP from their preferred lender before they start house hunting.

12.2. A significant proportion of respondents recommended that estate agents encourage, ensure or require potential buyers to have a DIP in place before an offer is accepted.²⁹

12.2.1. The Government may wish to consider whether such measures could be included in any new regulatory settlement of estate agents.

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

13.1. CILEx would welcome consideration of how to improve the speed at which mortgage and finance applications are processed by lenders when consumers are seeking to purchase a property.³⁰

Informing consumers

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

14.1. CILEx members who work in conveyancing provide relevant information to their clients on buying or selling a home to enable them to make decisions that are right for them.³¹

One respondent said: "There can be some delay in obtaining mortgages so it would be helpful if clients know how much they can borrow, what property they can afford etc. at the outset."

Another respondent said: "Buyers should obtain a mortgage in principle before putting in offer to purchase."

²⁹ One respondent said: "Agents should insist on seeing a DIP before letting buyers view."

Another respondent said: "estate agents requiring sight of it before accepting an offer."

Another respondent said: "If estate agents could not accept an offer unless a DIP was produced or other evidence of funding."

³⁰ One respondent said: "Apart from a number of lenders, formal offers seem to take far too long to arrive - it is incredibly difficult to speak to anyone if there is a query."

Another respondent said: "Better and quicker reference checks with credit agencies."

Another respondent said: "Lenders could speed up their processes, be more accessible and open up their panels to more conveyancing firms so that they are not restricting consumer choice regarding their conveyancer."

³¹ One respondent said: "I have always provided a selling/buying information sheet to buyers, particularly first-time buyers but lawyers are no longer the first port of call so unbiased independent information is required early on in a transaction - perhaps some sort of online help guide might be useful."

Another respondent said: "Most lawyers, if only for self-protection will tell the client on day one what the client should be doing and when."

Another respondent said: "Accurate, honest and impartial advice which they are unlikely to get from an estate agent particularly one who is only interested in their referral fee/commission."

14.2. Although good guidance on buying and selling homes is available, the vast amount of guidance available from conveyancing firms, estate agents and independent information, advice and guidance (IAG) providers can often result in consumers becoming unsure over which guidance to follow, or suffering from information-overload.³²

14.2.1. Furthermore, vulnerable consumers, especially those who lack the suitable knowledge and skills to conduct this type of research online, are less likely to be able to access good and updated guidance.

14.3. CILEx recommends that the Government may wish to consider providing impartial information on buying and selling homes through a suitable webpage, such as www.gov.uk for example. We also recommend that any improvements made to the provision of good guidance for consumers should include an explanation of the expected time it takes to buy or sell a property.³³

Better information at point of sale

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

15.1. CILEx believes that there would be benefits to supplying better information at the point of sale in particular where the property is leasehold or where there is a managed estate in particular.³⁴ It is also important that information is provided in context. For example, if a lease has 60 years left to run, it is of little use to simply state the length of the lease. Instead, it must be made clear that a lease extension is desirable and the cost of the lease extension should be provided.

³² One respondent said: "All the information is available online for those who want to find it." Another respondent said: "It is readily available but some lack the sense to access it. If you are not financially sensible then property purchase might not be a good idea unless guidance is on hand."

³³ One respondent said: "One website with up to date and reliable information, perhaps on gov.uk." Another respondent said: "More information in the public domain." Another respondent said: "The Government could supply an information pack that agents give to consumers." Another respondent said: "There could be central Government information available in a consumer-friendly form - at the moment it is up to individual law firms to provide this, some do, some don't."

³⁴ See CILEx's response to the Department of Communities and Local Government's consultation "Tackling unfair practices in the leasehold market" here: https://www.cilex.org.uk/~media/pdf_documents/main_cilex/policy_and_governance/consultation_responses/cilex_submission_-_leasehold_reform_consultation_-_final.pdf?la=en

15.2. CILEx provisionally recommends that sellers should be required to provide more information on the property before they market their property, however the Government may wish to consider how it intends to address the issues associated with information becoming outdated at a notable rate,³⁵ and how this requirement will differ, and prove more successful than Home Information Packs.³⁶ The Government may also wish to consider how this requirement could be effectively introduced and applied in the wake of the potential strengthening of regulations overseeing estate agents.

15.3. In addition to the third of CILEx respondents indicating that buyers are not able to access all necessary information on the property by the point of sale, 66% of respondents agreed or strongly agreed that sellers should be required to provide more information on the property before they market the property. Respondents emphasised that upfront information is crucial for buyers since it allows them to make an informed decision.³⁷ However there is a risk that this information can prove ineffective over time.

15.3.1. A significant number of respondents expressed concerns that a requirement placed on sellers to provide more information before they market their property may prove irrelevant as information in the property market can change considerably.³⁸ Not only would this require sellers to continually update complex information they are required provide in order to be able to market their property, but in cases where

³⁵ Paras 15.3.1 – 15.3.2

³⁶ One respondent said: "This (the proposal to require sellers to provide more information before they market their property) sounds very much like Home Information Packs which did not work."

Another respondent said: "I think that they should carry out required surveys before proceeding but I do not believe in the old Home Information Packs which did not prove successful or help in anyway."

³⁷ One respondent said: "Upfront important information is crucial to buyers making an informed decision, not just on whether to buy but on how much to offer. Sadly, many estate agents do not understand the implications of short term lease terms and their effect on mortgage."

Another respondent said: "Property could be on the market for months/years and info would need continually updated."

³⁸ One respondent said: "We tried this with home information packs and the information is quickly out of date. A seller may complete the form where the information is correct, but the property may not be sold for a while. A buyer and his conveyance must be free to raise other relevant enquires based on the property and its location so one size does not fit all."

Another respondent said: "Since it can take some months of marketing a property, leasehold information particularly can become outdated. Basic information is generally already held by the estate agents. Sellers are reluctant to instruct legal advice prior to agreeing a sale since they do not wish to incur the additional fees in preparing a pre-sale pack either to the legal advisor or to the Management Company on a leasehold property particularly if information will have to be updated at a later stage and additional fees will become payable."

the information provided to a buyer is incorrect, the seller may be considered liable for falsifying documents.

15.3.2. Respondents also highlighted concerns that requiring sellers to provide additional information may cause buyers to make offers based solely on the basic information provided to them.³⁹ Under these circumstances, buyers and sellers risk entering into an agreement which may result in either one, or both parties suffering from unforeseen circumstances later on in the process. Providing both the buyer and the seller have access to adequate legal representation and / or guidance, this risk can be mitigated to a great degree, however CILEx is aware that some consumers may seek to purchase or sell a property with as little influence from legal representation as possible.

a. If so, what information should be provided?

15.4. CILEx recommends that the Government consider requiring property sellers to provide information including title deeds, information regarding the lease if applicable, and planning permission information.

15.5. Respondents provided information that the Government may wish to consider requiring property sellers to provide before placing the property on the market:

15.5.1. A significant proportion of respondents indicated that individuals looking to sell a property must provide proof or evidence, likely through provision of a title deed, that they are owners of the property, and have the right to sell the property too. Similarly, respondents indicated that in cases of leasehold properties, consumers selling a property should be required to provide information on the lease, including its length and costs associated with service charges and ground rent.

15.5.2. A smaller proportion of respondents also commented that the seller of the property should provide any approved or previously

³⁹ One respondent said: "Most problem areas show up after an offer has been made on only the basic of information."

unapproved planning permission. A number of additional suggestions are provided for the Government's consideration.⁴⁰

16.Q16. Should sellers of leasehold homes be encouraged to engage with their freeholder before marketing their home for sale? a. If so, in what ways should they engage?

16.1. CILEx is strongly agrees that leaseholders should be encouraged to engage with their freeholder before marketing their home for sale, A majority of CILEx respondents expressed concerns that leaseholders are failing to sufficiently engage with their freeholder before putting their home to market.⁴¹

16.1.1. Respondents commented that leaseholders are often not aware that they should notify the freeholder, and in the majority of cases the engagement is left to the conveyancer or legal professional.⁴²

16.1.2. Respondents also highlighted that, leaseholders will often avoid engaging with the freeholder as a result of the cost of asking the freeholder to provide the necessary information (such as completing the LPE1 form). This shifts the financial burden on to the buyer, who is then required to engage with the freeholder, and they may therefore not be inclined to pay these fees unless they are reasonably assured that they have a buyer lined-up.

16.1.3. The Government may wish to take these concerns into account when considering encouraging leaseholders to engage with their freeholder before marketing their home for sale.

16.2. CILEx recognises that a requirement that individuals seeking to sell a property should provide sufficient information before a property can be placed on the

⁴⁰ Additional proposals for information that should be required of sellers to provide before placing a property on the market include: completed leasehold property enquiries, boundary information, guarantees, and electrical and gas certificates.

⁴¹ 87% of respondents disagreed or strongly disagreed that sellers of leasehold homes sufficiently engage with their freeholder before marketing their home for sale.

⁴² One respondent said: "They often wait until issuing the contract pack before dealing with this. But, to be fair, we often (as conveyancers) only hear from our prospective client once they have got a buyer, so have not been able to prepare ahead."

Another respondent said: "I don't think they engage at all until the solicitors approach for the LPE replies." Another respondent said: "They are totally unaware of leasehold information packs or are reluctant to pay for one until they are relatively certain that the buyers will proceed."

market,⁴³ will likely ensure leaseholders will have to engage with their freeholder. This is because leaseholders may likely have to notify the freeholder in order to obtain leasehold information and sales packs from the freeholder. CILEx therefore reiterates its previous recommendation that the Government may wish to consider requiring property sellers to provide sufficient information about the property before it can be marketed.

Sharing information about each other and increasing commitment

17.Q17. How can Government increase commitment to a sale between buyers and sellers? a. Would development of standard agreements help?

17.1. CILEx and its members are concerned that current options available to consumers fail to sufficiently tackle issues associated with a lack of commitment to buy or sell a property. These include: lock-in or lock-out agreements,⁴⁴ reservation contracts,⁴⁵ cost guarantee agreements,⁴⁶ and registered deposit schemes.⁴⁷

17.1.1. Respondents commented that, whilst lock-out agreements can apply in purchases where there is no chain, they can be less effective where there are simultaneous transactions⁴⁸, and the time it takes to negotiate agreements and contracts like these often result in increased delays for buyers and sellers.⁴⁹ This delay may also impact upon the commitment of both parties involved, leading to potential withdrawals.

⁴³ Paras 15.1 – 15.5.2.

⁴⁴ 31% of respondents agreed or strongly agreed that lock-in or lock-out agreements sufficiently tackle issues associated with lack of commitment to buy or sell a property.

⁴⁵ 14% of respondents agreed or strongly agreed that reservation contracts sufficiently tackle issues associated with lack of commitment to buy or sell a property.

⁴⁶ 15% of respondents agreed or strongly agreed that cost guarantee agreements sufficiently tackle issues associated with lack of commitment to buy or sell a property.

⁴⁷ 19% of respondents agreed that registered deposit schemes sufficiently tackle issues associated with a lack of commitment to buy or sell a property.

⁴⁸ One respondent said: “Lock-out agreements only really work in commercial or standalone transactions. These will not work in chain/simultaneous transactions where there are multiple properties involved with multiple parties.

Another respondent said: “Reservation contracts do tend to encourage quicker conveyancing transactions.” Another respondent said that cost guarantee agreements make it “possible to plan financial aspects better.”

⁴⁹ One respondent said that lock-in or lock-out agreements “Take too long to negotiate fair terms and there are more costs involved.”

17.1.2. Furthermore, the effectiveness of these options is limited as a result of a lack of consumer awareness. Less than a quarter of respondents agreed or strongly agreed that consumers are aware of reservation contracts, while only 7% agreed or strongly agreed that consumers are aware of lock-in or lock-out agreements and registered deposit schemes.⁵⁰

17.2. Respondents proposed a variety of changes which the Government may wish to consider as part of its efforts to increase commitments to a sale between buyers and sellers in the property market,⁵¹ including removing the property being bought and sold from all websites, databases and searches once an offer has been accepted. CILEx believes that this option may help ensure that the buyer does not also suffer as a result of gazumping, whereby another buyer offers more money for the same property, and the seller accepts.

17.2.1. Respondents also highlighted that the Government may wish to consider the impact “no sale, no fee” arrangements have on fall through rates. Respondents emphasised that no sale, no fee arrangements are often combined with a referral fee, and can often result in higher fall through rates.⁵²

17.3. CILEx also believes that promoting the use of DIPs will likely increase the commitment between buyers and sellers since they will reduce the delays that so often lead to a breakdown of commitment and trust between parties involved.

⁵⁰ 21% of respondents agreed or strongly agree that consumers are aware of reservation contracts. 3% of respondents agreed or strongly agreed that consumers are aware of cost guarantee agreements.

⁵¹ One respondent said: “Surveys being done an earlier stage possibly before further legal costs and search costs are incurred.”

Another respondent said: “transparency on property value/sold/under offer prices rather than the current shrouded in secrecy approach by estate agents on true property/market value.”

⁵² One respondent said: “End no sale no fee then consumers are committed no sale no fee has much higher fall through rates.”

Another respondent said: “No sale, no fee arrangements cause two problems: the average cost per transaction increases because somebody has to pay for the time spent on a transaction that does not proceed, and the client is not as financially committed to the transaction as somebody who has paid for the work to be done from the start of the process. In my experience, the fall through for firms who provide rate on no sale, no fee deals is at least twice that of firms that do not provide for this arrangement.”

18.Q18. How should we best tackle gazumping?

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

18.1. CILEx reiterates recommendations made previously that the Government may wish to consider requiring the removal of properties being bought and sold from all websites, databases and searches once an offer has been accepted.⁵³ Additional recommendations provided by CILEx respondents are provided below for the Government's consideration also.⁵⁴

Buying a leasehold property

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

19.1. CILEx agrees with the Government's consideration that managing agents and freeholders should be required to respond to enquiries within a fixed time period. This would ensure that crucial, and often time-consuming, communications are conducted within a reasonable time frame as to ensure that the time period of buying or selling a house is reduced.

19.2. CILEx respondents similarly agreed,⁵⁵ commenting that their experience with both managing agents and freeholders has at times proved difficult, largely as a result of the time delays that occur during communications and enquiries.⁵⁶

⁵³ Para 17.2.

⁵⁴ One respondent said: "Once an offer has been accepted the seller should not remarket unless the buyer has not exchanged within a specified time period of say three months."

Another respondent said: "Have a period of say 4-6 weeks during which no other offer can be accepted / negotiated etc."

⁵⁵ 93% of respondents agreed or strongly agreed that managing agents should be required to respond to enquiries within a fixed time period.

97% of respondents agreed or strongly agreed that freeholders should be required to respond to enquiries within a fixed time period.

⁵⁶ One respondent said that managing agents should be required to respond to enquiries within a fixed period of time because: "There are many examples of buyers withdrawing because they can see difficulties ahead with the Management company if responses are not timely. There are also punitive fees attached to information requests which should be reviews and reduced where possible to cover the ACTUAL costs of providing copies of the information and a small fee for the time spent."

Another respondent said managing agents should be required to respond to enquiries within a fixed period of time because: "they frequently take a long time to respond. However, a management company could be a large profession organisation or could be a private individual acting as Director of a small freehold owning

19.3. 54% of respondents indicated that if both managing agents and freeholders are required to respond to enquiries within a fixed time period, the time period should be set at 2 weeks or 10 working days. CILEx would however welcome future Government proposals on what they believe to be the most appropriate time period for managing agents and freeholders, if a fixed time period is introduced.

a. If so, how could this be done?

19.4. Although a number of respondents indicated that the most effective way in which to enforce a fixed time period for managing agents and freeholders is through strengthened regulation,⁵⁷ some respondents also indicated that penalties may be necessary. If managing agents and freeholders do not comply with the proposed requirement, penalties including fines or the removal of fees faced by the buyer or seller could be enforced.

19.5. CILEx would welcome further discussion on the extent to which penalties like those proposed by CILEx members would require additional or strengthened regulation.

20. Q21. Should maximum fees be set for the services and information provided by managing agents / freeholder to home buyers and sellers? a. If so, how could this be done?

20.1. CILEx believes that maximum fees should be set for the services and information provided by managing agents and freeholders to homebuyers and sellers. Respondents emphasised to CILEx that in their experience managing agents and freeholders have been able to charge excessive fees.⁵⁸ Almost all

company in whom the seller has a share and who knows little about the legal requirements of acting as a Director of a company."

⁵⁷ One respondent said: "New regulations for management companies / agents / landlords." Another respondent said: "Fines put in place for delays and reduce their admin fees. This should be introduced by a governing body who oversees management company."

⁵⁸ One respondent said: "Some are simply extortionate for the release of electronically held information." Another respondent said: "Fees can be extortionate and vary across the country. Often there are also two sets of companies, one dealing with ground rent and one with service charges – doubling the fees."

CILEx respondents agreed or strongly agreed that maximum fees should be set for the services and information provided by managing agents and freeholders.⁵⁹

a. If so, how could this be done?

20.2. CILEx respondents emphasised that the most effective way in which to enforce maximum fees for the services and information provided by managing agents and freeholders to home buyers and sellers is through strengthened regulation. This could help ensure that penalties are applied appropriately, and all registered and regulated managing agents and freeholders are required to provide services and information at a reasonable price, therefore preventing individuals or firms charging extortionate and unfair fees.

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

21.1. CILEx proposes that the Government should consider establishing the Leasehold Property Form 1 (LPE1) as a standard mandatory form for collecting information about leasehold.

21.2. In conjunction with CILEX, the Royal Institution of Chartered Surveyors, the Council for Licensed Conveyancers, the British Property Federation, the Association of Residential Managing Agents, the Association of Residential Letting Agents, and others, the Law Society launched the LPE1 to capture all necessary information held by landlords, management companies and managing agents.⁶⁰

Another respondent said: "Some charge an outrageous amount for both information packs, which are standard and can be dealt with by clerical staff, and deeds (such as consent to assign) which are truly staggering – I've seen well over £1,000 + VAT for a standard deed which would take a competent conveyancing assistant 15 minutes to fill in."

One respondent said: "IT is in many cases a license to print money, and this needs regulating."

⁵⁹ 97% of respondents agreed or strongly agreed that maximum fees should be set for the services and information provided by managing agents.

93% of respondents agreed or strongly agreed that maximum fees should be set for the services and information provided by freeholders.

⁶⁰ Information collected by the LPE1 form can be found here:

<https://www.cilex.org.uk/pdf/LPE1%20with%20form%20fields.pdf>

21.3. 77% of CILEx respondents agreed or strongly agreed that the LPE1 form collects a sufficient amount of information about a leasehold property for buyers. Furthermore, a larger proportion of respondents agreed or strongly agreed that the LPE1 form should be made mandatory when buying or selling a leasehold property.⁶¹

Buying a new build property

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

- 22.1. CILEx agrees with the Government's analysis of the new build property market that found "that once buyers have reserved and paid the reservation fee for their new home, they are often under a lot of pressure to exchange contracts within a short period of time, often 28 days."
- 22.2. 80% of respondents also agreed or strongly agreed that the time in which to exchange contracts for new build homes is too short,⁶² with a further 89% of respondents agreeing or strongly agreeing that this short period of time makes it difficult for buyers to arrange finance from their lenders.⁶³
- 22.3. Although we believe that previous proposals discussed, including DIPs and requiring sellers to provide more information before they market their property, could help in relieving the time pressures placed on consumers to some extent,⁶⁴ CILEx recommends that the Government may wish to consider other ways in which the experience of buying a new build home could be improved.

⁶¹ 90% of respondent agreed or strongly agreed that the LPE1 form should be made mandatory.

⁶² One respondent said: "Such a short time to exchange is unreasonable as this often forces clients to commit too quickly."

Another respondent said: "The pressure is often on the buyer's lawyer as searches and mortgage offers if required may not arrive until near to the deadline. Where the property is purchased off plan, and completion will not be for many months this should be extended. Where is it built the 28 days may be acceptable, but consideration should also be taken to slightly extend this where a buyer is involved in a chain."

Another respondent said: "The time limits imposed by developers are unworkable where a client also needs to sell and try and tie in the sale of an existing property unless they are doing this by part-exchange with the developer which is frequently not the best financial deal for the client."

⁶³ One respondent said: "lenders just are not capable of turning around a mortgage application in the short time allowed."

Another respondent said: "Lenders require a survey/valuation - very difficult to do when there is no property to value since it is "off-plan"."

⁶⁴ Discussion of DIPs: paras 12.1 – 12.2.1.

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

23.1. CILEx restates its previous recommendation,⁶⁵ that the Government should make efforts to encourage the use of DIPs in order to help buyers of new build homes quickly secure a mortgage. DIPs would likely help relieve buyers of the stresses caused by the limited window in which to secure finance and exchange contracts.

Any additional points

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

24.1. CILEx engaged with conveyancing practitioners through our Conveyancing Specialist Reference Group, to identify any other areas the Government may wish to consider as part of its efforts to help improve the home buying and selling process, and reduce the costs for consumers.

24.2. CILEx conveyancing practitioners identified a number of issues that hamper the home buying and selling process, including the considerable amount of extra time and paperwork associated with help-to-buy mortgages, and the impact this has on practitioners' costs, which are ultimately passed on to consumers. Government may wish to consider whether efficiencies can be achieved with these forms to keep costs down for first time buyers.⁶⁶

24.2.1. Respondents also emphasised a number of issues associated with covenants, especially those that impact upon new build properties, including the ambiguity of the law and the difficulties this brings for conveyancing practitioners and consumers. CILEx is aware, however, that issues relating to the law of covenants are considered in the recently released Law Commission's report on easements, covenants and profits à prendre.⁶⁷ The Government may therefore wish to consider the Law Commission's report, and the recommendations it

⁶⁵ Discussion of DIPs: paras 12.1 – 12.2.1.

⁶⁶ One respondent said: "Scrap 'help to buy' mortgages-they are aimed at helping people on the ladder but lawyers must charge clients much more for taking them out given the considerable amount of extra work involved in them, and the voluminous paperwork brought by them."

⁶⁷ <https://www.lawcom.gov.uk/project/easements-covenants-and-profits-a-prendre/>

has provided, which could provide suitable changes that may improve the home buying and selling process, and reduce the costs for customers.

- 24.3. CILEx would like to invite the Government to liaise further with our conveyancing practitioners in order to establish what other factors, associated with the home buying and selling process, require consideration.

For further details

Should you
require any
further
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