

Department for Communities and Local Government

Improving the home buying and selling process – Call for Evidence

A response by  
CILEx Regulation

13 December 2017

## **Introduction**

This response represents the views of CILEx Regulation, the regulatory body for Chartered Legal Executives, CILEx Practitioners and legal entities. Chartered Legal Executives (Fellows) are members of the Chartered Institute of Legal Executives (CILEx). CILEx Practitioners are authorised by CILEx Regulation to provide reserved legal activities. CILEx is the professional body representing 20,000 qualified and trainee Fellows and is an Approved Regulator under the Legal Services Act 2007 (LSA). Fellows and CILEx Practitioners are authorised persons under the LSA. CILEx Regulation regulates all grades of CILEx members.

CILEx Regulation is also a regulator of entities through which legal services are provided. It authorises entities based upon the reserved and regulated activities.

CILEx Regulation and CILEx provide an alternative route to legal qualification and practice rights allowing members and practitioners, who do not come from the traditional legal route to qualify as lawyers and own their own legal practice. With the implementation of the practice and entity rights, CILEx Regulation has demonstrated its emphasis on economic growth, as it aims to capture a wider range of individuals and entities within its regulatory remit.

CILEx Regulation is able to authorise:

- individuals to become a CILEx Conveyancing Practitioners if they can demonstrate their competence in conveyancing work; and
- entities to carry out conveyancing transactions.

In addition to CILEx Conveyancing Practitioners, these entities may have either solicitors who specialise in the transfer of land or licensed conveyancers owning and working within the entity.

## **Improving the home buying and selling process – Call for Evidence**

We welcome the opportunity as a legal sector regulator of both individuals and firms within the home buying and selling process to be able to contribute to the shaping of future changes.

We are fully supportive of the government's intention to embrace innovation and change in any new proposals. It is important that buyers and sellers have increased trust in any new proposals and we believe that there are some particular areas relating to transparency and openness of arrangements that we can contribute towards. We would further welcome the opportunity to work with stakeholders in the sector to input to and test the programme of action that the Government is seeking to put in place over the coming period.

We hope our observations will be of value.

### **Response to the DCLG call for evidence**

1. As has been set out any transaction in the home buying and selling process will involve the consumer engaging with a number of parties including lenders, estate agents, conveyancers' and surveyors. In reviewing the question of transparency of information, we believe that government should consider the impact on the consumer if differing standards of transparency and protection are applied across the various professions.
2. We believe that the requirements for disclosure of information should be consistent across all parties involved in the buying and selling process.
3. The Competition & Markets Authority (CMA) published the final report of its legal services market study in December 2016. It included recommendations to increase transparency of information for consumers, by legal regulators requiring firms to publish minimum information for consumers. We are now responding to this by consulting on our plans to require our regulated firms to publish information to provide transparency for consumers in the future.

4. The information that our authorised firms will be required to provide in the public domain covers:
  - price;
  - service
  - redress; and
  - regulatory status.
  
5. One of the first areas of law, in which we (and other regulators) plan to require that transparency information be published, is residential conveyancing.
  
6. To ensure that consumers have the full information throughout the house buying and selling process, we believe it is important that other stakeholders involved in the process should be equally transparent and provide similar information in the public domain so that it is available to consumers.
  
7. In addressing the particular question raised (Q1), it is important that stakeholders should clearly communicate information on how to complain. This information should be provided via all communication mediums with the public, including consumer information and websites. It should be accessible before the consumer commences work with a provider in a stakeholder industry so that consumers are aware of any differences in the protections and redress available to them.
  
8. We recognise that there is a preference from various parties for referral fees to be banned so as to allow greater choice within the conveyancing sector. We are unable to comment from our own evidence on whether referral fees have an adverse impact on the operation of the market but, if there is evidence, then action should be taken to enforce their removal from the market, similar to action taken to remove fetters to competition in other areas of law.
  
9. We are concerned that by allowing referral fees to be paid, Estate Agents have substantial control over which conveyancing providers work goes to. This would appear to be contrary to the best operation of the market.

10. If a decision is made by government to retain referral fees, then it is important that any fees paid should be disclosed to consumers prior to commencing work, so that they are aware of the basis on which they are being referred to a third party. This should form part of the information that is provided to the consumer on pricing.
11. Information should also be published to make clear to consumers where there are connected businesses, so that the consumer can make an informed choice about who they wish to act on their behalf. Consumers should have the opportunity to make their own, fully informed choice of provider without restriction.
12. If referral fees are removed, then this may enable new entrants to the market and open up greater choice. Currently legal regulators are helping to improve competition by providing access to certain regulatory information for digital comparison tools, and considering what further information can be made available, to enable them to operate better for consumers in the legal sector the operation of comparison websites.
13. The adoption of digital tools such as comparison websites can assist consumers in making informed choices about estate agents and conveyancers. However, it will be important that the information provided through these websites to consumers is independent and, where there is a commercial relationship, then this is made clear to consumers. Some other sectors have seen a lack of clarity in the independence of the information provided and care should be taken to avoid one type of referral fee replaced by another.
14. Whilst the market indicates a general satisfaction with the level of service provided, there remains the challenge on how information on the quality of service can be measured and presented in a way that is both useful to the consumer and appropriate for the provider.

15. It is also important that comparison websites are accessible to all those operating within the estate agency and conveyancing sectors and that there are no unintended barriers to competition. This would be particularly relevant for CILEx Conveyancing Practitioners and CILEx Authorised Entities, authorised for conveyancing.
16. We would not wish to see exclusions placed on additional competition or innovation within the market place. Some accreditation schemes are only open to particular groups and therefore they can act as a barrier to new entrants being able to gain full access to the home buying and selling process. The CMA noted "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 competition, for example when the scheme is only open to one type of provider."<sup>1</sup>.
17. We do have concerns from a regulatory position with the suggestion that buyers and sellers could use the same conveyancing provider (Q7). This is a key area for all conveyancers and we would wish to clearly understand how the risks of creating conflict of Interest problems could be addressed or mitigated in all circumstances.
18. There is a risk that this could cause the demise of the smaller conveyancing firms as it would only be larger firms that may be able to offer the appropriate separation between buyers and sellers. This would also mean that the existing system is just being recreated within a large firm structure and does not really benefit the consumers.
19. We would be keen to be involved in future discussions around application of any changes that relate to conflict of interest as this may have impact on other areas of legal services.

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<sup>1</sup> para 3.121 CMA Legal Services market study  
<https://assets.publishing.service.gov.uk/media/5887374d40f0b6593700001a/legal-services-market-study-final-report.pdf>

20. There is now starting to be greater innovation within the legal sector and this will undoubtedly mean changes within the conveyancing sector, which should be of benefit to the consumer.
21. Work is currently being carried out by the regulators and the Legal Services Board to assess the impact of new technologies and innovation on the sector and how to ensure the appropriate safeguards are in place for the public.
22. Through the rules we have in place, we are supportive of innovation in the sector and are open to new delivery methods. However, it remains important that risks are considered so the appropriate regulatory processes can be adopted.
23. The area of conveyancing is seen as a high risk area for money laundering, fraud and cybercrime. So while we welcome change it is important that government considers what protections are in place and that these remain both robust and proportionate. New technologies may be able to provide solutions to some of the challenges, for example, remote consumer due diligence checks, but it is important that there is a clear understanding of the security that supports these new technologies. The impact of data breaches through criminal activity is now seen on a frequent basis.
24. Across the home buying and selling process there should therefore be the appropriate regulatory requirements providing the consumer with trust and security as well as the opportunity for appropriate redress. This is already seen within the legal sector where client protection schemes and redress via an Ombudsman are provided, alongside appropriate qualifications.
25. It is vitally important that buyers and sellers are able to make informed decisions and this can only help in reducing the number of transactions that fall through. This can in part be addressed by ensuring that any shortfall in the knowledge of both buyers and sellers is addressed through the provision of good guidance.
26. Within the legal sector, the frontline regulators provide independent consumer facing information to help consumers make choices about who may help them

with their legal problems via the website Legal Choices <http://www.legalchoices.org.uk>. The website and linked social media also allows consumers to have a voice about issues affecting them. It may be possible to provide more information relating to the home buying and selling process through the website.

27. Ideally, there should be guidance that can easily be adopted by the stakeholder groups within the various sectors involved in the conveyancing process. Then there could be a requirement that they provide this guidance in an easy way for consumers to access. For example on their websites and in consumer communications.

### **Conclusion**

28. We are supportive of changes to streamline the home buying and selling process but would wish to see a consistent approach to transparency and consumer protection across the various sectors that a consumer has to deal with in the conveyancing process.

29. We are keen to be involved in any discussions that relate to changes to regulatory arrangements for our Conveyancing Practitioners and Authorised Entities.