

# Residential conveyancing thematic review

## *A review about the service provided by solicitors to the public*

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### *Executive summary*

Buying and selling a property is often the most expensive and important financial commitment a person makes in their life. Having access to reliable and good quality legal support really matters. It not only reduces stress and uncertainty, but potentially directly impacts on whether a purchase is completed, and what the long-term financial implications may be for all involved.

While most property transactions are completed relatively seamlessly, figures from the Legal Ombudsman (LeO) show that residential conveyancing accounted for nearly a quarter of all complaints it handled over the past three years.

Our own research of consumers [[/sra/how-we-work/reports/conveyancing-legal-services/](#)], conducted in 2018, also identified that up to a quarter of recent home buyers were dissatisfied with some element of the service they received from their solicitor. One common area of concern was an apparent failure to fully explain the detail and implications of contractual commitments.

### *What we did*

We carried out this thematic review to better understand how firms are delivering residential conveyancing services, and whether they are fulfilling their obligations to their clients.

We visited a sample of 40 law firms offering residential conveyancing services and conducted a detailed review of 80 case files.

### *What we found*

We found that most firms were fulfilling their obligations. In particular, we found that:

- all firms proactively communicated with clients at all key stages of a purchase, with the majority meeting them face-to-face at least once
- all firms provided clients with clear information on their complaints procedures
- firms are increasingly embracing technology, especially regarding how they communicate with clients.

However, we did identify areas for improvement. The two most significant and widespread were:

- inaccurate initial cost estimates - 34% of firms failed to include all the services/fees a matter could reasonably expect to attract in their initial quotes
- not being open about the real cost of third-party disbursement and their firm's mark-up on these - specifically telegraphic transfers. In 37% of cases firms failed to do this, with some charging up to 10 times the actual bank charge for processing the transfer.

Other areas where we identified potential concerns included:

- not processing paperwork efficiently - especially in relation to requisitions raised by HM Land Registry
- not explaining the difference between freehold and leasehold ownership
- failing to double-check that a client understands the long-term implications of contractual obligations and fees.

### *Conclusions*

This review clearly found that in the majority of cases, conveyancing firms actively engage with their clients and fulfil their obligations to them. Property deals progress in a timely and efficient manner and clients feel informed and supported throughout.

But sadly, this is not always the case.

Whether its providing unrealistic or incomplete quotes, or failing to make sure contractual information has been fully understood, solicitors are potentially leaving their clients exposed to significant risk or potential financial hardship.

### *Next steps*

This thematic review took place during 2018. In December the same year, we introduced new transparency rules which require firms offering conveyancing services to publish detailed price and services information, and their complaints procedures online.

The requirement to provide clear pricing information was not new. However, these rules, and associated guidance, now provide the profession with absolute clarity on our expectations for how they should be publishing price information.

These requirements include:

- outlining all known and potential costs a transaction may attract from the outset
- specifying all charges being added to the actual cost of any third-party disbursements.

As part of our ongoing work, we will continue to review compliance with these rules and will consider further action where necessary to make sure they are being followed.

On the specific subject of making sure solicitors explain contractual details to clients, especially in relation to leaseholds, we urge all firms to make sure that their clients understand their obligations. If we find evidence that people were not made aware of onerous clauses in their leasehold contracts, such as the regular doubling of ground rents, we will take robust action.

Following this review, we referred six firms onto our internal disciplinary processes. Five of these referrals included concerns about failing to declare that the stated telegraphic transfers fees included an additional charge/mark-up.

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### *Introduction*

Residential conveyancing makes up a large proportion of the legal services market. Around 60% of firms we regulate are involved in this area.

Buying or selling a home is a significant life event for most individuals and it is often the largest financial investment they will make. Therefore, solicitors have a vital role to play in providing high quality legal advice and a proper level of service. Poor quality legal work can lead to significant problems for homeowners in the future, which may be costly to remedy.

Residential conveyancing accounted for nearly a quarter of all complaints handled by the LeO over the past three years, making it the most complained about area of legal advice. The most frequent reasons for complaints were failure to advise, failure to follow instructions and delay.

In some cases, the potential consequences of poor legal service can be very serious. For example:

- where the title to a property is not correctly registered, legal ownership may be at risk
- if ground rent<sup>1</sup> or service charge<sup>2</sup> details are not reviewed and properly explained, a leaseholder may unexpectedly be subject to escalating charges, which in the long term may make their lease unaffordable or unsellable.

### *Our previous report*

To better understand the public's experience of using a residential conveyancing solicitor, we recently commissioned independent research from IFF: "Understanding consumer experiences of conveyancing legal services [[/sra/how-we-work/reports/conveyancing-legal-services/](#)]."

This research involved more than 1,500 people who had bought or sold a property during the previous two years. It sought to explore their experiences at each stage of the process, from how they found and chose their solicitor and their satisfaction with the service, to how they thought technology could improve services in the future. Key findings included:

- 76% of legal service users were satisfied with the service they received from their conveyancing solicitor. However, several areas for improvement were identified:
  - one in five people did not think their solicitor provided a clear explanation of the legal process, rising to two out of five among first time buyers and sellers
  - one out of three of people did not remember receiving information on how to complain
  - one out of five of people who had bought a leasehold property did not remember being provided with any information on the length of the lease, service charges and other payments, such as ground rent.

### *This report*

We commissioned this thematic review in order to better understand how firms deliver residential conveyancing services to clients on a day-to-day basis, and to explore whether they are fulfilling their obligations to consumers.

We also looked at what information firms published to help consumers make informed choices when buying services and the extent to which firms are embracing new technologies.

To inform our findings, we visited a sample of 40 law firms who offer residential conveyancing services and conducted a detailed review of 80 case files.

Generally, we found that the firms were fulfilling their obligations, although there was room for improvement. In particular, we identified the following areas where more could be done:

- providing accurate cost estimates
- being open about mark ups charged on top of the actual cost of third-party disbursements, specifically telegraphic transfers
- processing paperwork efficiently - especially in relation to requisitions raised by HM Land Registry

- explaining the difference between purchasing a freehold and leasehold property.

### *Key findings*

Given the relatively small number of firms we visited, our report is intended to be qualitative and aims to increase our understanding of the concerns and issues that have been raised.

Firms generally showed they had systems and processes in place to provide a proper service to clients<sup>3</sup> [note 3]. Although there are good and bad practices in all these areas, some areas raised more concern than others. These included:

#### *Quality*

- All firms contacted clients at key stages of the conveyancing process.
- When dealing with leasehold purchases, 23% of firms did not explain the difference between freehold and leasehold properties, with some relying on the client's knowledge or information provided by an estate agent.
- 91% of firms acknowledged they had received requisitions from HM Land Registry that were avoidable.

#### *Competency*

- All firms had appropriate structures, training and supervision arrangements in place to help maintain competency.

#### *Costs*

- Firms provided clients with information about their charges and likely disbursements at the outset.
- We found no evidence of firms inflating their fees after the initial quote without explaining the reason for the extra costs.
- 34% of firms needed to carry out additional work, or charge additional fees, which had not been anticipated in the initial conversations with the client. Most typically these involved:
  - making a telegraphic transfer
  - mortgage administration
  - a gifted deposit
  - using the firm's online portal
  - an electronic ID check
  - a declaration of trust.
- We consider that a significant amount of these additions could have been anticipated at the outset and are concerned that by not including them in the initial discussions, firms could potentially be providing unrealistic initial quotes in order to win business.
- In 37% of files reviewed, firms failed to declare where the disbursement charge for processing a telegraphic transfer included a handling/management fee. In some cases, firms were charging over 10 times the actual cost of the disbursement.

#### *Innovation*

- 63% of firms were preparing for the move to conveyancing.
- As well as email, firms are increasingly using methods such as text and online portals to communicate with clients.

- Innovation at firms was not limited to technological advances and included practical changes about how advice was delivered.

### *Disciplinary referrals*

As a result of our review we referred six cases into our internal disciplinary processes. These cases concerned:

- anti-money laundering (AML) issues arising from a failure to investigate source of wealth and inadequate client due diligence documentation
- listing telegraphic transfer fees as a disbursement rather than a profit cost (five firms)
- the client care letter not referring to the client's right to complain to LeO
- charging VAT on disbursements
- authorisation issues.

## *Methodology*

### *The areas we researched*

We looked at four aspects of the residential conveyancing service firms provide:

- quality
- competency
- costs
- innovation.

### *Quality*

Issues about the quality of service provided by firms to consumers in residential conveyancing transactions have been raised:

- in the findings of the IFF (see below)
- by LeO
- by the large numbers of avoidable requisitions issued by HM Land Registry
- from information provided by our own teams.

We were therefore interested in understanding how firms:

- act in the best interests of each client<sup>4</sup> [note4]
- provide a proper standard of service to clients<sup>5</sup> [note5].

The IFF helped us understand concerns that consumers had identified about residential conveyancing work. These concerns included:

- communication failures by firms:
  - not advising clients who had responsibility for the work
  - failing to provide easily understandable information about the legal process, what to expect during the transaction and the complaints procedure

- failing to respond to complaints of poor service or promising to progress work but failing to do so
  - a slow and inefficient service, poor communication and failing to keep consumers updated on progress of the transaction.
- legal process failures by firms:
    - not undertaking key searches
    - failing to draft an accurate title for the property
    - failing to advise consumers on important issues such as neighbouring demolition or building works
    - failing to advise on issues relating to leasehold properties and common pitfalls (for example shared ownership, increasing ground rent)
    - not providing advice or guidance on the results of searches, legal issues and the meaning of key conveyancing documents.

### *Competency*

We also looked at competency at the firms we visited. We reviewed whether staff working on residential conveyancing matters:

- had the skills to competently do this work
- are appropriately trained and supervised.

### *Costs*

The IFF noted consumer concerns about:

- the explanation they were given about the costs charged
- their inability to understand costs information due to unfamiliar terminology
- ultimately paying more than the original fee quoted without explanation.

Following the Competition and Markets Authority (CMA) report about legal services, we have published new rules that require firms to prominently publish information about their costs and services. These rules came into effect in December 2018.

We therefore reviewed:

- how firms are currently pricing residential conveyancing transactions
- how charges are explained to consumers
- what steps firms have taken/will take to publish their prices and services for residential conveyancing work.

### *Innovation*

The government aims to make the home buying and selling process faster, cheaper and less stressful. One way of achieving this involves the legal profession using digital technology to make the conveyancing process quicker and more cost effective. While each conveyancing transaction is unique, there are elements of the process which are repeated during each sale and purchase.

HM Land Registry are also working towards facilitating e-conveyancing, with the aim of residential conveyancing becoming an entirely electronic process. As technology develops, there are increasing opportunities for firms to identify how this can be applied to the conveyancing process within their own firm.

The IFF also identified that there is an appetite among some consumers to greater utilise technology and digital tools to improve the conveyancing process.

We therefore wanted to better understand the technological developments and innovation currently taking place in the residential conveyancing market. We did this by:

- reviewing the technology used by firms in residential conveyancing transactions
- finding out more about innovative steps firms have taken/will take in residential conveyancing.

### *Thematic review*

Our thematic review was undertaken between April and November 2018, with visits to firms taking place between July and September 2018.

### *Objectives*

The objectives of the project were to:

- test the concerns raised above
- better understand the quality and regularity of communications and engagement with consumers throughout a residential conveyancing transaction
- assess how consumers are charged for residential conveyancing transactions and whether the charges are transparent
- consider the potential for/resistance to, technological developments and advancements in the residential conveyancing market
- identify any emerging or potential risks that may require further analysis or mitigation
- challenge poor behaviours and practices
- raise awareness of best practice and ethical conduct
- identify whether any firms have breached the core professional principles.

### *Our sample*

Our sample included 35 firms who undertake residential conveyancing work. More information about our sample is provided at Appendix 2.

We also met with five firms that have demonstrated innovation in the residential conveyancing sector. These were identified from our knowledge of firms operating in this area who have implemented innovative practices.

### *What we did*

For all firms (except the five innovative firms) we:

- sent an online questionnaire seeking core data for us to review before an on-site visit
- interviewed a manager (partner, head of department for residential conveyancing etc) seeking more information about the firm's practices and behaviours.

We cross-checked this information by:

- reviewing two files at each firm
- reviewing each firm's documentation
- interviewing a fee earner.

For the five innovative firms, we focused solely on innovation and where appropriate, received a live demonstration of any technology used by that firm.

## *Quality*

### *Concern*

Poor residential conveyancing can result in clients receiving an inadequate service and substandard legal advice. This impacts on whether clients receive enough information to make informed decisions during the purchase or sale of a property.

In some cases, the potential consequences of receiving poor advice and service can be serious. These can include:

- title to the property not being correctly registered
- consumers being unaware that the term remaining on a lease may prevent a re-mortgage of the property
- additional costs being incurred for leasehold properties, such as service charges and/or ground rent.

Poor legal advice and service can also negatively impact on consumers overall experience of the legal process. In 2017, 24% of complaints to LeO related to residential conveyancing and one of the most common issues was a failure to advise.

The IFF identified several common issues consumers experienced. These were:

- the service from firms was slow and inefficient, communication was poor and there was a failure to provide updates on the progress of the transaction
- firms failed to detail who was responsible for the work
- firms failed to provide information about the legal process or the complaints procedure
- firms relied on lengthy documents and legal jargon.

The IFF also identified common issues experienced by consumers about the quality of legal advice provided including failures to properly:

- investigate the title of the property, carry out relevant searches and address issues affecting the property
- advise clients on title and searches relating to the property
- advise on the consequences of purchasing a leasehold property.

There have also been concerns about:

- clients being prevented from using their first-choice conveyancer because the firm is not on a mortgage lender's panel
- solicitors' independence being compromised when acting for both the buyer and a mortgage lender



- solicitors acting outside the scope of their authority and exchanging contracts without client instructions
- the volume of avoidable requisitions made by firms to HM Land Registry.

### *What do we expect?*

Those we regulate must provide a proper standard of service<sup>6</sup> and act in the best interests of each client<sup>7</sup>. They should:

- provide services to their client in a manner which protects the client's interests<sup>8</sup>
- provide clients with a competent service in a timely manner. The service should recognise the needs and circumstances of the client<sup>9</sup>.

Clients should also be informed in writing about their right to complain:

- to the firm and how they can do so<sup>10</sup>
- to LeO and how they can do so together with relevant time scales<sup>11</sup>.

### *Key findings*

- All firms contacted clients at key stages of the conveyancing process. This is significant as these stages represent key parts of the transaction that clients should be aware of.
- Most firms (29 out of 35) physically met with clients one or two times each transaction.
- Every firm provided details about their complaints process to clients. This was confirmed by both firms and our file reviews.
- Firms with a higher volume of files tended to have a lower ratio of complaints.
- When engaged in a leasehold transaction, 23% of firms did not explain the difference between freehold and leasehold property, with some firms relying on the client's knowledge or information provided by an estate agent.
- Our file reviews demonstrated that fee earners did not routinely keep telephone notes of key conversations held with clients throughout the course of a conveyance.
- We asked firms in advance about the number of requisitions they had received. In general, most firms were unable to provide a clear or specific number and acknowledged that this data was not routinely collected.
- 91% of firms acknowledged they had received requisitions that were avoidable. 60% of firms believed the approach of HM Land Registry artificially increased the requisition rate.
- 60% of firms were unable to provide information about the number of cancellations they had received from HM Land Registry.

### *Findings*

#### *Contact the client*

We were interested in when and how clients were contacted. Good communication helps the client explain what they want and provides them with the information they need to make sensible decisions. Each client is different, and firms will need to use a variety of methods to make sure the client understands the process and the information that is provided. The IFF suggested that this is an area that required improvement.

Most firms (29) physically met with clients one or two times each transaction. Three firms told us that they rarely meet clients because they act remotely for clients across the country:

Face-to-face meetings provide firms with an opportunity to build a rapport with their client. Clients can discuss issues and raise questions more easily and the fee earner can assess the client's level of understanding. Various firms told us that the use of face-to-face meetings gave them a competitive edge and it was a specific strand of their business model. Clients preferred face-to-face meetings and considered it to be evidence of excellent customer service. Some firms had altered their opening hours (including opening on Saturdays) to make them more client friendly.

It was interesting to see the frequency of contact between fee earners and clients. The IFF suggested that some clients felt they had not been kept informed about their transaction. We therefore reviewed how firms managed client contact. 15 firms had an explicit policy about when they contacted clients. Other firms relied on case management systems to prompt fee earners to contact clients at key points. In addition, some firms implemented key performance indicators to monitor how long it took fee earners to respond to queries from clients.

Essentially, all firms contacted clients at the following key stages:

- pre-contract
- exchange of contracts
- post exchange
- completion
- post completion.

One firm told us that they did not contact their client following the post completion phase. Post completion is an important part of the process because registration of the transaction is required to protect the interests of the client. Firms should make sure that the client receives all relevant information and contact continues.

In addition to each significant stage, firms told us that they regularly contacted clients throughout the process:

Our file reviews reflected this.

#### *Client care information*

We were also interested about the core client care information that was provided to clients. All firms provided information about:

- their charges
- likely disbursements/costs
- the name of the supervisor
- the name of the fee earner.

Other information was not always provided by firms:

- 91% explained the likely tasks that would be carried out
- 89% provided details of the legal process
- 80% provided likely time scales
- 69% provided a list of documents that were required to be drafted/signed

- 57% provided a list of likely issues or problems that might occur.

A few firms told us that they avoided providing this information because it was not helpful. Discussions about likely time scales and problems that could occur were deemed by some firms to be pointless because each transaction was different. Some firms also believed this needlessly raised client expectations. We consider that general information about these areas help to inform the client and manage their expectations.

We asked firms about how they provide client care information:

- 100% used client care letters
- 60% used leaflets
- 57% used e-mails
- 54% used specific face-to-face meetings
- 46% discussed the information over the telephone.

All firms used a variety of these methods. Given this information is crucial, firms should make sure clients understand the detail and a one size fits all approach is unlikely to help every client.

#### *Complaints*

In light of the IFF, we were interested in finding out what complaints information was provided to clients.

Reassuringly, we found that every firm provided details about their complaints process to clients. This was confirmed by both the firm and our file reviews. Each process was similar and was based on fee earners initially trying to resolve the issue before the matter was escalated to a complaints officer.

The 35 firms had received 288 complaints about residential conveyancing in the last 12 months. One firm accounted for 33 of the complaints.

Significantly, more files did not result in more complaints. The table below shows the 35 firms grouped by the total amount of files.

Volume of files <sup>12</sup> [note12]	Number of files	Number of complaints	Complaint ratio
Large	123,941	170	729:1
Medium	39,432	63	626.1
Small	15,950	65	245.1

Firms with a smaller volume of files had a higher complaint ratio. Meanwhile, firms with a larger volume of files tended to have a lower ratio of complaints. It is difficult to suggest a single reason for why this may have occurred

We also asked firms about what clients complained about. The information supplied by firms broadly supported the findings of the IFF and the information provided by LeO. We found:

- 26% had received complaints about delay
- 20% had received complaints about a failure to advise
- 20% had received complaints about a failure to be kept informed.

## *LeO*

When a client has exhausted the firm's internal complaints process, they can contact LeO. We asked firms about the number of complaints they had received from LeO in the past 12 months:

Of the 31 complaints to LeO:

- five resulted in a finding
- 17 resulted in no finding
- seven complaints were settled
- two were ongoing.

On average, the combined firms completed 59,774 matters each year. Given this figure, the number of LeO complaints seems to be very low. The IFF's findings mentioned that clients were not provided with complaints information for LeO. We could not conclude whether the lack of LeO complaints reflected the firms providing a good standard of service or simply that consumers were unable or disinterested in complaining. Although we did not find evidence that LeO's contact details were intentionally obscured, we believe that this data could and should be provided in a prominent position in the firm's literature.

### *Title, searches and property issues*

It is essential that firms carry out appropriate searches for both freehold and leasehold properties and we expect to see firms do this. Fee earners should properly review those searches and advise the client appropriately and in plain English.

Firms will typically undertake local authority searches, HM Land Registry searches, environmental searches and water authority searches. 18% of firms regularly carry out a chancel repair search. Some firms told us this had reduced in importance due to the availability of cheap chancel repair liability insurance. Firms also told us that they would carry out property and location specific searches where appropriate, for example mining and coal. 62% of fee earners told us that they had a checklist of searches to use.

### *Leasehold issues*

HM Land Registry figures show that the proportion of new build properties sold on a leasehold basis increased from 22% to 43% between 1996 and 2015. This rise in the proportion of newbuilds that are leasehold dwellings has been driven, in part, by an increase in the development of flats.

Over recent years there have been an increasing number of reports in the media and Parliament about leasehold residents who have discovered terms in their contracts which mean their ground rents will keep doubling after a set number of years.

Not only can this leave the leaseholder facing unanticipated and ever-increasing costs, but in extreme cases the level of the charge can become such that the leasehold becomes unsellable, with the attendant problems.

The government has released a Housing White Paper which highlights its aim to improve choice and fairness in the leasehold sector and following consultation issued its 'Implementing reforms to the leasehold system in England'

[[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/748438/Leasehold\\_consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748438/Leasehold_consultation.pdf)] report in October 2018.

It is important that a conveyancing solicitor carries out proper due diligence on every leasehold transaction. This includes considering the long-term implications of any fee clauses and properly advises any client wishing to purchase a leasehold.

Our previous "Understanding consumer experiences of conveyancing legal services [[sra/how-we-work/reports/conveyancing-legal-services/](#)]" research, published in March 2018, found that:

- a fifth (20%) of those who had bought a leasehold property within the last two years did not remember being provided with specific information about this type of property
- 26% did not recall being given a draft copy of their leasehold contract to review prior to signing it
- 17% did not think that their solicitor had clearly explained the features of their leasehold arrangement – rising to one in three among first time buyers.

In this thematic review we wanted to explore what type of advice solicitors were providing to clients purchasing a leasehold.

It was encouraging that firms advised clients on key areas of a leasehold transaction including ground rents. However, 23% of firms did not explain the difference between freehold and leasehold property.

Several firms said that they saw no reason to do this because they assumed the client would know the difference or the estate agent would have explained it to the client. We consider this a dangerous assumption.

We expect all firms to clearly report in writing to clients on whether a property is offered on a freehold or leasehold basis, and what the implications of this are to the buyer. More time should be spent discussing these issues where a client falls into one of the below categories:

- all clients purchasing a leasehold property
- first time buyers
- a client who is purchasing a commonhold property<sup>13</sup> [note13] or has instructed the firm to deal with a leasehold enfranchisement<sup>14</sup> [note14]
- a client where there is a purchase of both the leasehold and a portion of the freehold.

#### *Time spent on key stages of the conveyancing process (leasehold and freehold)*

We asked firms how much time they typically spend looking at title, search results and other potential property issues (for example, neighbouring demolition or construction). We also asked firms specifically about the amount of time they spent on leasehold issues. We found that fee earners spent the longest period reviewing property issues:

This is reassuring as property issues can have a significant impact on a client's decision to proceed with a sale or purchase.

91% of firms said that they would spend more than one hour looking at leasehold issues, this compares with 74% spending more than an hour in relation to freehold issues. This is because leasehold purchases are likely to raise more issues such as service charges or ground rent.

We saw fee earners consider a range of property conditions or issues that affected title, for example easements<sup>15</sup> [note15], rights of way<sup>16</sup> [note16] and restrictive covenants<sup>17</sup> [note17].

There was only one file where the fee earner failed to adequately explain these issues to the client.

Several fee earners spoke of imaginative ways to investigate a property's title such as looking at the property and surrounding area on Google Maps, visiting the site, checking neighbouring property titles for any hidden issues or likely issues and drawing on the firm's local knowledge. This was in addition to reviewing the title documents.

We were pleased to see all firms provided a written report to the client advising on the property's title, search results and any issues. Clients were typically advised of the search results within two weeks of them becoming available. Fee earners told us of simple steps they took to summarise and signpost crucial bits of information such as highlighting text, using bold type, headings and post it notes to direct clients to signature pages.

Most firms said they then take steps to check whether the client has understood the information sent to them. The most common methods were by a follow up call or face-to-face meeting. Contrary to earlier concerns, there was no evidence of conveyancers posting on information to clients without providing substantive advice. However, some firms referred to witnessing this from "conveyancing factories" and poorly trained fee earners.

Some firms told us that if there were any "red flags" on the property, they would call the client to forewarn them of any issues and see whether the client wanted to proceed. We consider this to be good practice as it could potentially save the client time and money.

Interestingly we found that very few matters were aborted once a solicitor had been instructed. The greatest likelihood of this occurred following the investigation of property issues. Firms tried to resolve issues with the seller but if that was not possible, clients were advised that they could purchase an indemnity policy<sup>18</sup> [note 18]. Firms told us that ultimately it would be a choice for the buyer (and lender) whether to proceed with the purchase if there were any property issues.

#### *Completion*

Firms estimated that it took around three months for a typical freehold purchase file to complete (from first instruction to registration at HM Land Registry) and four months for a typical leasehold purchase. This position was reflected during our file reviews. Fee earners told us that leasehold purchases tended to take longer to complete because they were more complex and there were additional documents to request and review, for example the management pack.

#### *Authority to exchange*

All firms confirmed they would seek client authority to exchange contracts before taking this step. This was commonly done by telephone or email as they were quick. Most firms told us that evidence of authority to exchange would be recorded on file, however, our file reviews revealed that this was not always the case. Some fee earners told us that they would not routinely keep telephone notes for all conversations held with clients throughout the course of a conveyance. We recommend that fee earners keep attendance notes of all key conversations with the client and certainly when authority to exchange is received orally.

#### *Lender panels*

When consumers take out a mortgage, they will need to consider whether the firm can also act for the mortgage lender. All lenders maintain a panel of solicitors. If the firm is not on a lender's panel, they cannot act for that lender. The consumer will then be faced with a choice:

- try to find another firm who is on the mortgage lender's panel
- wait for the lender to appoint the firm to their panel or

- choose to remain with the firm but change their mortgage lender.

All these options could lead to delay and the seller may decide to pull out. It is generally quicker and cheaper for a firm to represent both the buyer and mortgage lender.

We asked firms how many lender panels they were on. All firms were on at least 10 lender panels and 91% of firms confirmed that they were on at least 21 lender panels. Despite this, firms lost clients because they were not registered on a mortgage lender's panel.

86% of firms said they had lost a client or a client has had to dis-instruct them because they were not on a mortgage lender's panel. 50% of firms said they have had to do this between one to five times.

Over half of the firms said that they had been removed from lender panels. We thought this was interesting as it erodes client choice. It could potentially also cause difficulty if there are not many firms offering residential conveyancing in the local area. Common reasons for removal included inactivity or the lender not wanting firms with a particular corporate structure on the panel. Firms told us that they are not normally taken off a panel through their own fault. We did not encounter any firms that were removed due to concerns over the quality of their work.

We found no evidence that a client's best interests were not protected when the firm acted for both the client and the lender. Firms told us that the process was broadly the same whether they acted for a buyer and a lender or a buyer only.

#### *Requisitions and cancellations*

HM Land Registry are responsible for registering ownership of land and property in England and Wales. It is their duty to provide:

- records about the ownership of land/property and associated interests
- owners with a land title, guaranteed by the government
- a title plan to show the boundaries of the land/property.

Most registration applications are made by solicitors on behalf of clients. This work is sometimes referred to as post completion work as it takes place after the sale and purchase have concluded.

Sometimes, HM Land Registry cannot complete a registration application because the information supplied by a solicitor is missing, incomplete or inaccurate. To correct this, they will raise a requisition. A requisition is a formal request by HM Land Registry for the recipient to supply more information. HM Land Registry may cancel the application if the information is not provided within the set time limit. This is called a cancellation.

HM Land Registry estimate that nearly 20% of registration applications result in a requisition, but the requisition rate varies widely among firms. It believes that nearly half of all requisitions could be avoided<sup>19</sup> . Avoidable requisitions broadly refer to applications which are incomplete or inaccurate. These issues could and should be spotted by a solicitor before they are sent. Avoidable requisitions duplicate work for HM Land Registry and the individual who sent the application.

By successfully registering the new owner/beneficiary of an interest in the land:

- registration of a document (such as a transfer of land) gives it priority over unregistered documents and documents registered after it

- it places other individuals on notice of who owns the property
- any individual dealing with the property will be bound by the registered document
- individuals interested in a property, for example, a purchaser or mortgagee, can obtain more information from the land register. If necessary, they or their legal adviser can check and verify each document affecting that property, so they can make decisions about dealing with the property.

Requisitions occur during the post completion phase of a transaction. This is a significant stage and firms tackled it in different ways.

We asked firms in advance about the number of requisitions they received. In general, most firms were unable to provide a clear or specific number and acknowledged that this data was not routinely collected. A prudent firm should gather information about the number and type of requisitions they receive. By monitoring trends and data, firms can learn from their mistakes and take steps to increase supervision and improve their processes. This will ultimately benefit the client, HM Land Registry and the firm.

We asked firms to provide approximate data about the type of requisitions they had received in the past year:

Firms told us that requisitions occurred for different reasons, some giving more than one:

- 77% accepted that they were solely or partially responsible for the requisitions
- 17% believed they were not at fault
- 60% suggested that the situation was exacerbated by inconsistent decision making by HM Land Registry.

We accept that some requisitions are unavoidable. However, we asked firms about whether they had received avoidable requisitions. 91% of the firms acknowledged they had within the last 12 months. During our visits we also undertook 70 random file reviews. We found 19 of these files featured requisitions from HM Land Registry and 10 of these were caused by avoidable human error.

We consider each of these requisitions represents a needless delay and a duplication of work for both HM Land Registry and the solicitor. This is costly for both parties and has potential repercussions for the client.

#### *Post completion work*

We found there was no uniform approach to post completion work and it was handled by qualified and unqualified individuals. Interestingly, some firms:

- considered that post completion work should be done by specialist teams/individuals. Specialists were used by big and small firms. They believed this reduced the number of errors and sped up the turnaround time. It also allowed fee earners to concentrate on other profitable work. This was significant because many firms used a fixed fee model and relied on volumes of completions. Specialist post completion teams require training and appropriate supervision. Where this was absent, firms said this had caused significant issues
- required fee earners to carry out post completion work. They said it was important that fee earners took responsibility for files from start to finish. Naturally, some firms did not have a choice due to cost or size.

We do not consider that either model is a definitive solution. However, firms should make sure



that post completion work is carried out by a competent individual with appropriate levels of supervision.

### *Improvements*

Following our initial enquiry about each firm's requisition volumes, we asked what they were doing to reduce the figure. 80% of firms decided to take further action to reduce the number of requisitions they received. The proposed changes ranged in cost.

### *Cancellations*

A cancellation is a significant event. Importantly, the client's ownership and/or interest in the land is not registered and this affects their ability to prove ownership of the land and/or the benefit of the interest.

A worryingly high number of firms (60%) did not know the cancellation rate for the applications they sent to HM Land Registry. We asked firms why these events occurred, and they provided various reasons:

- 54% said it was due to the lawyers on the other side of the conveyance
- 14% said it was due to an error on the part of the firm
- 26% said it was due to an error on behalf of the lender
- 9% said it was due to an error on behalf of the client.

Firms should know their cancellation rates and be able to explain why they have occurred. Unless a firm can do this, it may be generating repeat cancellations which are avoidable. We do not consider this is in the best interests of clients, firms or HM Land Registry.

### *Good practices*

- The firm contacts the client at key stages of the conveyance including post completion.
- The firm provides straightforward complaints information in a prominent position on their client care letter.
- Details about how to make a complaint to LeO are provided in a prominent place within the client care information.
- The client is advised in writing and in plain English about title, search results and any property issues. If there are any issues, a fee earner will contact the client in advance and discuss options.
- The firm uses simple ways to summarise and signpost crucial items of information to clients such as highlighting text, using bold type, headings and post it notes to direct clients to signature pages.
- The firm checks with the client whether they understood the information sent to them.
- The firm seeks the client's authority to exchange contracts and record that authority on file.
- The firm gathers data about requisitions and cancellations. Trends in the data inform the firm's approach and appropriate changes are made to limit the amount of avoidable requisitions.

### *Poor practices*

- No updates are provided to the client at key stages of the conveyance.
- The client is not provided with details of complaints information.
- The firm does not advise the client about the difference between freehold and leasehold

properties.

- Clients are not advised about ground rents, service charges or restrictions on use in leasehold properties.
- Fee earners fail to keep a written record of key decisions made on the file.
- Fee earners take no steps to check whether the client has understood the information provided.
- The firm fails to collect requisition data and cancellation rates and does not monitor trends.

## *Competency*

### *Concern*

We reviewed whether staff undertaking residential conveyancing had the skills to competently do this work and were appropriately trained and supervised.

### *What do we expect?*

Solicitors must:

- reflect on the quality of their practice by reference to our competence statement for solicitors
- address identified learning and development needs
- make an annual declaration that they have considered their training needs and taken measures to maintain their competence.

The competence statement is an integral part of our new approach to continuing competence. For a solicitor, meeting the competences set out in the competence statement forms an integral part of the requirement to provide a proper standard of service<sup>20</sup> [note20] to clients.

### *Key findings*

- Firms had a structure and process in place to help fee earners maintain competency.
- Training and supervision occur regularly and in a variety of forms.

## *Findings*

### *Training*

Firms told us that training was compulsory for all residential conveyancing fee earners and was provided by a variety of methods. Some firms kept a training schedule outlining when and where residential conveyancing training was available.

In more than half of firms, residential conveyancing training was compulsory for all non-fee earning staff and several firms mentioned that secretaries, administrative and finance staff were invited to attend. Although not directly involved in the conveyancing process, it is helpful for different types of staff to attend training so they are familiar with the terms and processes used.

Formal training delivered by internal and external individuals were popular methods of training as were internal updates provided at team meetings. While fee earners also used webinars as a method of training, online courses were less popular.

We were pleased that all fee earners received some form of training in the last six months. 20% of firms said that training was undertaken every week with a further 31% of firms saying that some form of training was undertaken every month.

### *Qualified and non-qualified staff*

On average, we found that two-thirds of residential conveyancing work were undertaken by legally qualified staff. However, firms did use non-legally qualified staff during the process.

Non-qualified staff would typically be involved in general administration, straightforward tasks and post completion work.

Three firms mentioned that their unqualified but experienced staff were just as capable as their legally qualified counterparts. One firm said that one individual with thirty years of experience "...could do everything (and probably better than a solicitor)". Some firms had supported fee earners to do the Chartered Institute of Legal Executives qualification and one fee earner said that she had started off as an assistant and had progressed by learning on the job.

### *Supervision*

Fee earners told us that they were supervised through a mixture of formal and informal measures.

Other popular supervision methods included team meetings, an open-door management policy and peer to peer support. One firm told us that it had set up a dedicated internal email account that fee earners could email queries to and peers would answer. This allowed fee earners to draw on the expertise of a range of people at the firm.

### *Good practices*

- The firm uses a mixture of formal and informal training and supervision methods.
- Training is delivered by experienced staff with relevant expertise.

### *Poor practices*

- Little evidence of supervision on files.
- No training is provided.

## *Costs*

### *Concerns*

Legal fees and associated disbursements incurred during a residential conveyancing matter can be significant.

The CMA has raised concerns about a lack of costs transparency and the negative impact this has on consumer choice. The IFF also raised issues about costs. Cost was the most important factor for consumers when choosing a solicitor, but it was not the only factor.

Consumers raised concerns about:

- the explanation they were given about the costs charged, with 21% saying their solicitor did not explain this to them at the start of the process
- being unable to understand the cost information provided as it contained unfamiliar terminology
- paying more than the original fee quoted. Among the consumers that participated in the research, one in nine paid more than the fixed fee they were originally quoted at the outset.

### *What do we expect?*

Solicitors must:

- act with integrity<sup>21</sup> [note21]
- act in the best interests of each client<sup>22</sup> [note22]
- provide a proper standard of service to clients<sup>23</sup> [note23] .

The SRA Handbook states that solicitors must also make sure "clients receive the best possible information, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of their matter<sup>24</sup> [note24] ". Indicative behaviours (IB) of this include:

- clearly explaining fees and if and when they are likely to change<sup>25</sup> [note25]
- warning about any other payments for which the client may be responsible<sup>26</sup> [note26]
- providing information in a clear and accessible form which is appropriate to the needs and circumstances of the client<sup>27</sup> [note27]
- making sure that the disbursements included in a bill reflect the actual amount spent or to be spent on behalf of the client<sup>28</sup> [note28] .

### *Key findings*

- Firms provided clients with information about their charges and likely disbursements at the outset and our file reviews generally supported this. Most firms took steps to check if the client understood the client care information provided.
- We found no evidence that firms inflated their fees after the initial quote without explaining the additional costs to the client.
- 34% of firms carried out additional work that was not initially anticipated or discussed with the client. Most typically this work would include:
  - making a telegraphic transfer (TT)
  - mortgage administration
  - a gifted deposit
  - using the firm's online portal
  - an electronic ID check
  - a declaration of trust.

We consider that a significant amount of this work could have been anticipated and are concerned that by not doing so firms could potentially be providing unrealistic initial quotes in order to win business.

- Some firms were charging fees over 10 times the amount they were charged by banks to send money by TT. Some firms did not charge for this.
- Thirty of the files we saw did not provide the client with an explanation or sufficiently clear explanation about TT fees.
- Just over three quarters of firms we visited (between July and September 2018) had not taken steps to publish their prices.

### *Findings*

### *Costs information*

We were interested in the core client care information that was provided to clients. All firms provided information about:

- their charges
- likely disbursements/costs.

Encouragingly, information about costs was included in the client care letter on 97% of the files we reviewed.

77% of firms took steps to check if a client understood the client care information. This included:

- a follow up call with the client
- emailing the client
- a face-to-face meeting.

One firm placed the onus on the client to contact the firm if they had any queries or did not understand the information provided. Given the complexity and number of documents a client may be provided with, we think the onus should be on the firm to contact the client to check their understanding.

### *Fixed fees*

Each firm we visited provided most of their residential conveyancing work on a fixed fee basis. Some work fell outside of the fixed fee scales, for example if the property:

- was valued over a certain threshold
- was unregistered land
- related to part of a matter being dealt with by another area of the law firm.

The main factors firms considered when determining their fixed fee were:

- whether the property was freehold or leasehold
- the value of the property
- whether a lender was involved.

Firms also told us that other factors impacted on the fixed fee, including:

- reducing the rate for existing clients
- offering a discount to first time buyers and friends and family of the firm
- the time it will take to complete a matter
- benchmarking against other firms to help them remain competitive
- price matching quotes from other firms if a client mentions this
- where the work would be completed. One firm had an office where lower value conveyancing work was completed and reduced fees were charged.

83% of firms told us they had reviewed their fixed fee within the last 12 months, 11% have reviewed it more than a year ago and 6% had never reviewed it. Most firms had increased their fees following this review:

### *Typical charges*

All but one firm charged a higher fixed fee for leasehold purchases, which reflects the additional work that is generally required on these types of transactions:

Among the files we reviewed, the highest fee we saw was £1,294.80 for a freehold and £1,300 for a leasehold transaction. The lowest was £250 for a freehold and £350 for a leasehold transaction. The average fee charged was £762 for a freehold transaction and £749 for a leasehold transaction.

### *Matters not covered by a fixed fee*

Half of firms told us that not all work was covered by their fixed fee. The type of work not covered fell into two broad categories:

- additional work related to the client and their individual circumstances, such as:
  - cashing in a Help to Buy Individual Savings Account
  - gifted deposits
  - a declaration of trust.
  
- additional work arising from the legal process, such as:
  - obtaining an indemnity insurance policy
  - working on a lease extension
  - correcting a defect in title.

As the first category relates specifically to the client, these additional costs should be easily anticipated and identified at the outset of a transaction. They could therefore be incorporated into the fee quoted at the start of the matter. Costs falling into the latter category may be harder to anticipate and may not be apparent until later in the process. Depending on the nature of the issue, it may not be possible to anticipate in advance what the costs might be, however examples could be provided to clients.

Most firms would set out in a letter what work was not covered in their fixed fee. However other methods were used, including:

- email
- telephone
- leaflet
- face-to-face meetings.

We saw some good examples of firms providing clear and detailed schedules of additional costs to their clients at the outset. Such cost schedules also helped to inform clients about some of the issues that could arise during the process.

During the file reviews we found that 34% of firms included an additional charge that was not included in the fixed fee. The additional fees were for:

- making a TT

- mortgage administration
- a gifted deposit
- using the firm's online portal
- an electronic ID check
- a declaration of trust.

Some of the fees were set out for the client at the outset, others arose during the course of the matter. None of the additional costs we saw were for unusual work. We consider that a significant amount of this cost could have been anticipated by the firms. Firms should take care to be clear about the amount of work and likely costs from the outset. Our new rules on price and service transparency state that firms must specify exactly what is included in the price displayed, even if a fixed fee is quoted.

### *Abortive matters*

Only three firms told us they would write off costs if a conveyance did not go ahead. In these cases, clients would still be liable to pay any disbursements, but the firms did not charge for their work. These firms felt this 'no move no fee' approach helped to distinguish them from the competition.

The remaining firms all charged a proportion of their fee. Firms dealt with this in different ways. Some firms:

- time record and use this to determine how much time and work had been done on the matter and charge a fee accordingly
- allow fee earners to use their discretion to determine what to bill. Some would take account of factors such as whether they were first time buyers or repeat clients
- have defined criteria to determine how much to charge. If it was in the early stages of a matter (for example searches were ordered but not reported on) there would be a £100 charge. If it was after reports were provided to the client, the fee charged would be £250.

One firm included their charges if a matter does not go ahead in their schedule of costs provided to clients at the outset. This is helpful to clients as they are then fully aware of what they will be charged if the conveyance does not proceed.

If a firm wishes to charge the client an abort fee, it should be transparent from the outset of the matter and take steps to make sure the client understands what this fee will be.

### *Disbursements*

Firms told us they set out typical disbursements and their costs at the start of the matter. This was reflected in all the files we reviewed.

One firm was referred to our internal disciplinary process for including a charge on the bill for 'petty disbursements' of £50 plus VAT. There was no explanation about what this included and disbursements should not attract VAT.

### *Telegraphic transfers fees*

83% of firms told us they charge clients an administration fee for the cost of making a TT. The amount firms are charged by banks to make this transfer varied considerably, as did the cost firms charged clients.

The lowest fee charged by banks was £0.35 per transfer and the highest charge reported was £20. Of the firms that charged a fee, all but two firms charged an administration fee that

covered both:

- the cost charged to the firm
- a fee charged by the firm for arranging and making the transfer.

This meant that the fee charged to the client included both a disbursement element and a profit costs element. This is also significant as profit costs attract VAT when charged to the client, whereas disbursements do not.

The remaining two firms simply passed the cost of the TT fee directly to the client without adding a profit cost element.

Administration fees charged by firms varied widely. Four firms told us they did not charge a TT fee. At the lower end, some firms charged only five pounds on top of the bank's fee. Three firms charged £35 or more in addition to the cost charged by the bank.

During our file reviews we saw that in 84% of matters, firms charged the client a TT fee.

The Solicitors Disciplinary Tribunal (SDT) has previously found that where firms are charging clients more than the bank to make the transfer, they must make this clear to clients and not imply that it is a disbursement. The Law Society's practice note about TT fees<sup>29</sup> [note29] states that:

- You must advise the client of the basis and terms of your charges.
- You should tell your client that you are charging them the fee that has been charged to the practice by the financial institution executing the telegraphic transfer, and that this fee is a disbursement....
- If you charge the client an administration fee for arranging the telegraphic transfer you must inform the client and charge it as profit cost.

Among the files we reviewed, 30 did not have evidence that the client had received an explanation, or the explanation was not sufficiently clear, that the fee charged by the firm for the transfer was more than the bank charged. Most firms did, however, appropriately signpost the distinction between the fee and the charge in the bill. Many of the fee earners we met with did not know what the firm were charged, so were not able to provide this information to their clients.

At five firms, TT fees were listed or had historically been listed on the bill as a disbursement. As detailed above this is contrary to The Law Society's practice note and a previous SDT decision.

Some firms are charging a TT fee that is more than 10 times greater than the fee charged by banks, and many firms do not appear to be explaining this clearly to their clients. Firms need to be more transparent with clients on these fees. This is particularly important given the wide variation in fees charged by firms. Failure to be clear on this issue may be regarded as a failure to meet principles 2,4 and 5 and IB 1.14, 1.15, 1.19 and 1.21.

#### *Undertaking discrete elements of the conveyancing process*

Some clients may wish to undertake part of the legal work themselves and instruct a solicitor to only act for them in discrete areas. None of the firms we visited currently offered this 'unbundling' service and there appeared to be little appetite within firms or demand from clients to do so.

#### *Price publication*



In December 2018 we introduced the new price transparency rules which require all firms undertaking residential conveyancing to publish information about their prices and the service clients will receive. This information must be displayed prominently on their website. Rule 1 sets out in detail the requirements firms must comply with. Rule 1.5 states that:

Costs information must include:

- a. the total cost of the service or, where not practicable, the average cost or range of costs;
- b. the basis for your charges, including any hourly rates or fixed fees;
- c. the experience and qualifications of anyone carrying out the work, and of their supervisors;
- d. a description of, and the cost of, any likely disbursements, and where the actual cost of a disbursement is not known, the average cost or range of costs;
- e. whether any fees or disbursements attract VAT and if so the amount of VAT they attract;
- f. details of what services are included in the price displayed, including the key stages of the matter and likely timescales for each stage, and details of any services that might reasonably be expected to be included in the price displayed but are not; and
- g. if you use conditional fee or damages-based agreements, the circumstances in which clients may have to make any payments themselves for your services (including from any damages).

We have published guidance to firms setting out how we expect them to meet this requirement.<sup>30</sup> [#note30]

We visited firms prior to the introduction of the new price transparency rules. At that stage, just over three quarters of firms were not publishing their prices. Firms must now make sure they have taken steps to comply with these new measures. Reasons given by firms for not previously taking any steps fell into the following categories:

- the circumstances of individual clients:
  - 'we are concerned about doing it as each quote is tailored to the circumstances of the client'
  - 'the firm offers a bespoke service to each client and therefore there is no blanket price'.
- difficulties showcasing the firm's skills and expertise:
  - 'clients will judge us on a single screen. This won't allow them to judge our expertise, skills, service'.
- it has a negative impact on competition:
  - 'publishing conveyancing prices may lead to "dumbing down" of conveyancing and a race to the bottom'
  - 'the firm won't come out as the cheapest on price. We are concerned that prospective clients will just look at price and they may be put off instructing the firm'.
- challenges posed by a firm's business model:

- 'we believe it will create more difficulties. The types of staff in different locations may have different experiences and it is difficult to convey this sort of thing in an online quote'.

Not all firms, expressed concerns over the new price transparency rules. There was acknowledgment by these firms that they would have to amend their websites in due course:

- 'there is no specific reason why prices are not published at the moment'
- 'it's on the list of things to do. We are going to have a new website in six months so will roll the two pieces of work together'
- 'we just haven't had time to do this yet'.

Encouragingly, a quarter of firms that published their prices did not report that they had experienced any challenges. Firms said:

- 'we've had no difficulties. It is easy to do. The rate gives a clear indication of what work is covered and what work is not'
- 'we set out what the firm will do for the price and what work will be involved. No difficulties'
- 'we set out the end to end process. As a large firm this wasn't too challenging as we have the support to do this and sophisticated software'.

#### *Good practice*

- Clients are provided with a clear explanation of costs in plain English at the outset.
- Cost schedules are provided to clients at the start which include what the firm will charge for any additional work that arises during the transaction.
- The firm clearly explain what proportion of the TT fee is payable to the bank and what proportion is their administration fee.
- Providing information to clients at the outset about how their matter will be charged if the conveyance does not go ahead.

#### *Poor practice*

- Clients are not provided with costs information at the outset of the matter, or if it is provided, it is not in plain English.
- No information is provided to clients about the likely cost of work not covered by the fixed fee.
- Inadequate or no explanation is provided of how much the firm is charging to undertake a TT and how this differs from what the bank is charging the firm.
- TT fees are described by the firm as a disbursement despite including an element of profit cost.
- The firm do not provide clear information to clients about how they will be charged if their matter does not go ahead.
- Clients are charged more than the original fee quoted without good reason.
- The firm have given no consideration to what steps they will need take to comply with the new rules on price transparency.

#### *Innovation*

Innovation in residential conveyancing can bring benefits to consumers of legal services. We were interested in seeing how some firms were offering faster communication, better access to documentation and improved levels of service.

The IFF noted:

- most focus group<sup>31</sup> participants were open to the idea of using technology during the conveyancing legal process and proactively suggested ways that technology could be harnessed, for example a website or portal which could be used to check the progress of their transaction. While the appetite for digital transactions isn't universal, most wanted email correspondence as a minimum
- consumers identify speed of delivery as an important factor when choosing their legal provider. This includes speed of transaction, how quickly they can access information and how quickly they can contact their solicitor
- most consumers had communicated with their solicitor via email in the transaction but had not used other forms of technology such as e-signatures or portals
- there is considerable interest in harnessing technology to the consumer's advantage going forward. One popular suggestion was an online portal to check the progress of their transaction.

The IFF recommended that firms should continue to identify ways in which technology can improve their processes and consumer experiences.

Focus group participants in the IFF were asked about the types of digital technology they had used in their recent conveyancing transaction. Most participants had used email to communicate with their solicitor but had not used other forms of technology. Nobody had used digital signatures or portals, though a few had heard of a portal where it was possible to check on progress.

Focus group participants were also asked to consider what forms of technology they would like to see in future transactions. Most wanted email correspondence as a minimum and there was considerable interest in online portals, but the appetite for digital transactions was not universal. Some consumers said they would still telephone their solicitor, even if they received an online update. The IFF showed that consumers place importance on being able to develop trust and build rapport with their conveyancing solicitor. This is harder to achieve via online communication methods.

The government has also consulted on the process for buying and selling homes due to general public dis-satisfaction. Its aim is to make conveyancing faster, cheaper and less stressful. One way of achieving this is by the government working with consumers and the legal profession to deliver digital technologies that will make the conveyancing process quicker and more cost effective. This has led to legislative moves to accelerate the provision of e-conveyancing.<sup>32</sup> The Law Society also anticipates that over the next decade there will be a considerable increase in the application of technology in legal services.<sup>33</sup>

### *Key findings*

- 63% of firms were preparing for the move to e-conveyancing.
- The use of texts and online portals by firms shows they are using different methods to communicate with clients other than by email.
- There is no one size fits all method of communicating with clients and firms need flexibility to cater for as many different clients as possible. Firms appreciated the need to provide a personal service even where digital technology is used.
- All the firms we saw had a website with 78% additionally using Twitter and 75% using

Facebook. The perceived benefits of using these different methods of communication varied between firms.

- There was very limited use of AI in residential conveyancing transactions at the firms we visited.
- Innovation at firms was not limited to technological advances and included practical changes about how advice was delivered.

## *Findings*

### *The move to e-conveyancing*

63% of the firms we visited said they were taking steps to prepare for HM Land Registry's move to e-conveyancing. This included:

- having a dedicated IT team preparing for e-conveyancing
- reviewing and purchasing new conveyancing software
- updating case management and IT systems
- meeting with HM Land Registry and/or being part of HM Land Registry pilot schemes.

37% of firms were not taking any steps to prepare for e-conveyancing. Explanations included:

- waiting for further details to be released before taking any implementation measures
- an unwillingness to incur any expense yet
- not having enough time to start taking any steps
- being unaware of any plans to move to e-conveyancing.

One of HM Land Registry's objectives is to drive innovation and continue its digital transformation programme. It is important that firms are prepared for any changes and take steps to move to e-conveyancing as these changes unfold.

### *Using technology*

We asked firms about the technology they used to improve efficiency, consumer communication and access to information in residential conveyancing transactions. The firms we visited used the following types of technology:

Other methods included an online conveyancing quoting system, Skype and WhatsApp.

The use of texts and online portals shows that firms are using different methods to communicate with clients other than by email.

### *Texts*

Some firms sent texts when key stages of the transaction were complete. There was consensus among firms that sent texts that although they were useful in providing updates, they were not sending them as much as they anticipated. This was because a text did not always provide the client with a sufficiently detailed update.

One of the perceived benefits to firms of sending a text was that it would potentially reduce the number of calls received from clients. However, this was not always the case. As texts provided limited information, they often prompted clients to call for a more detailed update. Firms did recognise that they were helpful for clients who worked unusual hours, for example nurses who didn't have time during the day to call but could see progress on their conveyance.

## *Portals*

43% of firms used an online portal. Portals were either:

- fully integrated with the firm's case management system and allowed clients to communicate with the firm and access all documents relevant to their conveyance
- simple in nature and showed the status of the transaction only. This type of client portal did not allow the client to see specific documentation but did inform the client of the stage the transaction had reached.

We found firms were positive about the use of portals but they stressed it was only useful if time and effort was put into providing and maintaining accurate and prompt information. Firms made the following points:

- portals were a useful tool but most clients still wanted to speak to someone at the firm
- a portal is an effective way of communicating with clients and is helpful to show up to date progress about a conveyance at a convenient time for the client
- portals generated more phone calls from clients
- while portals were helpful, they did not replace personal contact.

The views of firms generally reflect the views of consumers in the IFF Report. Firms also acknowledged the importance of building a rapport with their client using traditional methods of communication. There is no one size fits all method of communicating and firms needed to cater for as many different clients as possible.

## *Benefits of technology*

Firms said that portals, texts and chatbots offered benefits. This included:

- helping to communicate with clients who worked unusual hours or who were regularly away from home, for example nurses or members of the armed forces
- avoiding the need to send hard copy documents. One firm said there was "no point posting a hard copy letter for it to lie on the mat at home" when clients could see it online
- making contact easier and quicker
- being a useful supplement to real contact (although not replacing it)
- speeding up some parts of the process and saving costs
- giving clients the ability to access all documents on their conveyance in one place, at a time convenient to them.

## *Communication methods used by firms*

We asked firms how they communicated with clients:

Other methods including using LinkedIn or Trust Pilot<sup>34</sup> [note34]. Firms said the following about the communication methods they used:

## *Positive*

- different methods of communication opened up more avenues for clients to contact the firm
- Facebook has led to more work
- clients feel empowered using different forms of social media and are encouraged to leave a review of the firm using these platforms

- having a website provides clients with re-assurance about who they are dealing with. It also provides the firm with an opportunity to showcase their expertise, for example by uploading blogs to show their residential conveyancing expertise
- Twitter and YouTube do not generate leads but do lead to greater visibility
- having a social media presence helps push them up the 'Google rankings' and clients like an online presence.

#### *Negative*

- client contact through Facebook is minimal
- messages by clients via Facebook and Twitter were discouraged by one firm due to security concerns about posting on social media. Some firms said that it can be difficult to control posts left on Facebook and Twitter and it can generate negative comments from members of the public rather than the client. Where firms received negative comments from a client by Facebook or Twitter, they contacted the client to offer them an opportunity to make a formal complaint although many did not take up the offer
- more methods of communication increase the pressure on fee earners who now had to respond to clients on a range of platforms
- there is a limit on the amount of information that can be provided to clients on social media platforms.

#### *Neutral*

- social media sites are mainly used for marketing and promoting the firm rather than as a platform to provide updates to clients
- for one firm, being on Trustpilot has led to fluctuations in workloads depending on the reviews received. As a result, the firm employs someone to look at reviews that have been left and respond to them
- more needs to be made of these tools. One firm is consulting with a marketing company about how they can be better used to generate work and communicate with clients.

#### *Artificial Intelligence*

The Law Society has produced a report on AI and the legal profession<sup>35</sup> [note35]. Over the next few years, AI will start to have a noticeable impact on the legal sector. The report explores the use of AI in legal practice in areas such as document analysis and delivery, legal adviser support and case outcome prediction.

We asked firms whether they were using AI in residential conveyancing transactions. One firm told us they used AI to prevent emails being sent to the wrong recipients and avoid data protection breaches and potentially fraud.

We were surprised that there is very limited use of AI by firms at present. This may, however, change as technology advances and new software becomes available.

#### *Innovation*

We also visited five firms that were specifically selected to show us more about innovative steps taken to:

- communicate with clients
- provide a better service to consumers.

#### *Case study 1 – small residential conveyancing firms*

They have been innovative in their approach to win work and achieve greater levels of consumer satisfaction. They have done this by:

- having a dedicated non-legal "welcome team" who communicate with clients at the start of a transaction through a portal on the firm's website. The team also use a chat function to answer any queries from clients at the initial referral or quotation stage
- setting up a simple online portal linked to the firm's case management system. This allows clients to see the status of their conveyance. The portal has been particularly useful for clients who work unusual hours
- opening each day from 7am until 8pm and on Saturdays. This allows the firm to see clients at a convenient time.

#### *Case study 2 – a large firm*

It has developed non-technological innovation by delivering background efficiencies for fee earners and allowing them to concentrate on servicing the client. The firm do not consider technological innovation to be a complete solution because it has a fragmented client base with varying degrees of knowledge about technology and social media.

The firm has been particularly innovative about the way it structures teams and employees. This has allowed it to focus on appropriate work, to a high standard and at the right price, in an already squeezed market. The firm has employed a dedicated business analyst who has spent a considerable amount of time organising and streamlining the residential conveyancing casework process.

The case management system is based on task flow which has helped fee earners. The firm has created detailed task lists for each stage of the residential conveyancing process and the system automatically generates attendance notes, for example to make sure fee earners get authority to exchange contracts. The system blocks progress until this is done. As fee earners cannot deviate from the task lists and each stage must be signed off by a supervisor before the matter can physically proceed, the system also provides an extra level of supervision.

The case management system is also linked to the accounts system. This allows any residual balances<sup>36</sup> to be sent back to the client as soon as the matter is concluded and allows fee earners to concentrate on completing registration of the conveyance.

By having a regimented system that automatically generates forms and creates checklists, fee earners can focus on the client and the conveyancing transaction. The system is also automated so once a form is completed, it pre-populates other forms saving fee earners time and reducing the opportunity for mistakes to occur.

The business analyst also helps to identify peaks in work, capacity and generates reports. This allows the firm to direct resource to where it is needed and make sure clients continue to receive the best levels of service during their transaction.

The leadership team has also moved away from fee earning and concentrates on developing processes, procedures and customer service. This has allowed implementation of different fee earner models for:

- residential work
- volume residential work
- new builds
- business to business work.

Personal service is fundamental. For residential matters, each file has a dedicated, qualified fee earner and assistant who handle the entire matter. No one else at the firm speaks to the client and one of these individuals is always available to communicate with the client. Feedback from clients has been extremely positive.

A new build team concentrates on volume conveyancing and the firm are panel solicitors for developers. The firm use a site model approach, so fee earners are allocated to a building site which allows them to get familiar with the site, plans, developer and plots. This speeds up completion of the conveyance. Each legal unit is supported by front line supervisors and a technical team of supervisors.

The firm has also been innovative about how it handles AML compliance. The firm estimated that this takes up about 20% of fee earners' time on each conveyance. It now carries out electronic checks to supplement the procedures and this allows fee earners to



concentrate on speaking to clients and focus on the service they need to provide.

The firm is also innovative about how it provides client service. Having listened to client feedback, the firm realised that property reports generated by many firms were limited in scope to standard responses on title and searches. The firm's property report to clients includes images, diagrams and the results of more extensive searches such as crime rates in the area or schooling. These are practical things that clients appreciate, and it helps to add value. The reports are written in plain English and this is considered to be the most important piece of advice the client will receive. The firm also highlight the experience of the client care teams to share feedback and complaints.

#### *Case study 3 – a medium-sized firm*

The firm has developed an application (app) which has significantly improved communication with clients. Clients who download the app get:

- access to real-time information about their residential conveyancing transaction
- updates and access to key documents
- an explanation about each key document
- an estimated time for completion of the next stage
- alerts when an update or a milestone has been reached.

The app is available at any time and has reduced the number of calls made. It also provides clients with reassurance about the status of their transaction and progress.

The app is optional for clients and they are also able to communicate by traditional methods. It also features the direct contact details of the fee earner handling the transaction to make communication easier.

The app shows all the open matters for each client and key milestones achieved, for example pre-completion, exchange, searches and completion. Clients can also see all relevant documents on the app, for example searches and report on title. Physical copies of these documents are also sent to the client.

A key feature of the app is that each time an update is provided it is accompanied with a summary explaining:

- the update/document
- the next step
- the estimated time for completion of the next step.

This helps the firm manage client expectations.

#### *Case study 4 – a medium sized firm*

The firm has created a bespoke client onboarding portal. This is separate from the case management system, although the two are linked.

Once a quote is accepted, the client is "on boarded". The client creates an account and is provided with a copy of the terms of business. These are accepted online. A physical copy is also sent. The client then provides information about the property. The process is streamlined and automated. The client doesn't have to fill in many pages and once details are provided the system can pre-populate other fields.

The portal includes all key milestones. There is a document centre where a client can upload documents, for example a redemption certificate, tenancy agreement or buildings insurance certificate. This makes the process quicker and reduces delay.

There is a message centre set up on the portal if the client has a query. When there is an update on a client's matter, the message centre will alert the client. The client is able to see documents which are uploaded to the portal.

The case management system also generates a risk score, for example if the transaction involves property abroad or is complex. The score helps the firm manage risk and allocate the matter to the right fee earner with an appropriate level of supervision. The firm are also aiming to integrate its case management system with Zoopla so it can see the average value of houses on a street and compare it to the value of the proposed property. If there is a significant discrepancy in value, the system will alert the fee earner and change the risk score.

The portal is regularly updated so the client has an accurate understanding about their transaction. The firm still value each client's personal experience regardless of whether they choose to use the portal. All clients will receive a welcome call and an opportunity to

ask questions to a fee earner at the start of the process. This is a crucial part of the client journey and experience.

### *Good practices*

- Proactive steps are taken to prepare for e-conveyancing.
- Different methods to communicate with clients are used.
- Use of AI is being considered to speed up the residential conveyancing process.
- An online portal is created to provide clients with up to date details of their residential conveyancing transaction and the milestones reached. The client can access this portal at any time and from anywhere.
- The needs of the client are identified and communication takes place using the client's preferred method. This may be electronically, personally or a combination of both.

### *Poor practices*

- No steps have been taken to prepare for e-conveyancing.
- Only one method of communication is used to contact clients and no steps are taken to develop ways to communicate with clients by any other means.
- No thought is given to the service provided to clients and how quickly clients can access information, contact their solicitor and be kept updated on progress.

### *Conclusion*

Buying or selling a home is a significant life event for most individuals. At this crucial time, people should have confidence that their solicitor will provide them with a proper standard of service and sound legal advice.

Most people have a good experience of the service from their solicitor. However, as the recent controversy over leaseholders being subject to unexpectedly rising ground rents proves, the quality or thoroughness of service consumers receive is not always up to the standard they should expect.

LeO, HM Land Registry and the government have all raised concerns about various aspects of the residential conveyancing market, while our own research has suggested that while the majority of the public are happy with the service they receive in this area, this is by no means the case for everyone.

This review clearly found that in the majority of cases conveyancing firms do actively engage with their clients and have processes in place designed to fulfil their obligations. For the majority of transactions this approach successfully supports a client in completing their purchase in a timely and effective manner.

But wider evidence suggests there are some cases where the public feel let down by their solicitor or lack the information they need to make informed decisions. This cannot be ignored, and our review points to particular areas where more could be done to avoid this.

### *Quality*

All the solicitors we visited were in regular contact with their clients and appeared to be fulfilling their obligations to provide them with all the required information to support them in completing their transactions. This would seem to suggest that for some clients there is a disconnect between the information firms are providing them and their ability to understand and act upon it.

Fulfilling your duty to a client is not simply about sending them information and leaving it to them to work out what it means. Most clients rely on their solicitor to do this for them. We were pleased to find that some of the firms we visited also took steps to check whether the client understood the information sent to them. The findings of our IFF suggest that more need to do this.

While all firms said they provide clients with advice on leasehold transactions, we were concerned to hear that nearly a quarter did not explain the difference between leasehold and freehold transactions. Where appropriate, we believe all firms must advise clients about these differences. In addition, firms must take the time to review and properly advise clients on all aspects of a leasehold transaction including the long-term implications of any charge related clauses.

Equally concerning was that most firms acknowledged they had received requisitions from HM Land Registry that were avoidable, potentially causing delays or worse, potentially putting legal ownership at risk.

Firms should collect data about requisitions and cancellations so they can use it to monitor trends, make necessary changes, take steps to increase supervision and improve their processes. This will ultimately benefit the client, HM Land Registry and the firm. Avoidable requisitions cause unnecessary delay and duplication of work for both HM Land Registry and the solicitor. This is costly for both parties and has repercussions for the client even though they are not charged additional costs.

### *Costs*

We were pleased to hear that all firms in our thematic review said they provided information about their charges and likely disbursements to a client before work began. However, we were concerned at how often a consumer's final bill came in higher than this original quote due to extra work which was ultimately required.

While some of this extra work was genuinely unforeseeable, there is a large amount of it which we consider firms should have reasonably known would have been required even before work began. By omitting such elements from the initial quote, it could be argued some firms are potentially putting their clients in a difficult position, or at worst misleading them in order to win business.

Our new price transparency rules, introduced since the review took place, should provide firms with clarity on expectations in this area and make it clear what information on likely prices we would expect them to make available to all potential clients.

Another area of concern was over the mark up or 'administration fees' some firms added to a relatively cheap disbursement cost, especially where in reality processing the disbursement involves little actual work for the firm. Several firms were charging a TT fee up to ten times the actual charge banks were charging them to make the payment.

While firms can charge such fees, they must clearly present a client with transparent information on the actual cost of the disbursement to the firm and if required, any element of profit cost.

### *Competency*

Firms generally had a structure and process in place to help fee earners maintain competency including training and supervision.

Firms should take steps to record supervision as it is good file management, provides evidence that it has taken place and any issues can be recorded and followed up later.

## *Innovation*

The IFF noted that one popular suggestion made by consumers was access to an online portal to check the progress of their transaction. It was pleasing that 43% of firms we visited used online portals.

The IFF also found that consumers found it helpful to build a rapport with their solicitor. We found that firms also benefitted from this relationship. They highlighted the need for flexibility to cater for as many different clients as possible including the need to provide a personal service even where digital technology is available.

It was also encouraging to see a broad approach to innovation by firms. This included having extended opening hours throughout the course of the week and opening on a Saturday.

## *Next steps*

The findings of this report will be used to help inform our ongoing work to review how the legal conveyancing market operates.

Some of the concerns raised in the report relate specifically to areas our new transparency rules seek to address, and the findings will help inform our ongoing work to review and enforce compliance with these rules.

We have shared details of the good practice and poor practice that we found and we urge firms to look at these areas in their own firms and make any necessary changes.

On the specific subject of ensuring solicitors explain contractual details to clients, especially in relation to leaseholds, firms should do everything they can to make sure that clients understand their obligations. If we find evidence that people are not made aware of onerous clauses in their leasehold, such as the regular doubling of ground rents, we will take robust action. We will continue to highlight this issue to the profession.

## *Appendix 1 - The conveyancing process*

There are five key stages in a typical conveyancing process and solicitors play a critical role at each point:

### *Stage 1: Pre-contract*

- The client instructs a solicitor after receiving information about their costs and disbursements and a client care letter.
- The solicitor checks and verifies the identity of their client, requests information about any mortgages or other funds being used to finance the transaction.
- The buyer's solicitor contacts the seller's solicitor to request a draft contract and key documents such as the property's title, property information form and fixtures and fitting forms.
- The buyer's solicitor will examine these documents and raise any enquiries that might arise.
- Legal searches will be undertaken by the buyer's solicitor, such as environmental and Local Authority searches to see if there are any potential issues with the property.
- The solicitor should advise their client on any issues that arise from the searches, title and other documents.

### *Stage 2: Exchange of contracts*

- The buyer and seller's solicitors exchange contracts. This typically occurs over the phone, with the content of the contract being read out to make sure they have matching copies. Hard copies are then exchanged and the transaction is legally binding.

- The buyer's solicitor will submit an official search of the HM Land Registry register and complete a bankruptcy search.
- If applicable, they will send the certificate of title and/or requisition for funds to the mortgage lender.

### *Step 3: Post exchange*

- The buyer must transfer all funds to their solicitor before the day of completion.

### *Step 4: Completion*

- The funds are transferred by the bank and/or the buyer's solicitor. The seller's solicitor confirms receipt of the completion monies.
- If applicable, the buyer's solicitor completes the mortgage document.
- If applicable, the seller's solicitor will advise the estate agents to release the keys to the buyer and pay the estate agent's fees. They will date and complete the transfer and send the completion documents.

### *Step 5: Post completion*

- The buyer's solicitor applies to HM Land Registry to transfer the deeds, checks the title document and sends a copy of the title deeds to the lender (if applicable). They then pay any remaining costs to third parties, such as Stamp Duty Land Tax.

While these stages are common to all residential conveyancing transactions, the amount of work required by a solicitor at each stage will vary for each transaction. No two matters will be the same. A variety of factors will impact on what is required, including whether the property is being bought with a mortgage, whether it is leasehold or freehold and any issues arising from the searches.

Given the significance of the transaction for the client, it is vital that their solicitor is competent, produces high quality work and is aware what the costs to them will be.

## *Appendix 2 - Sample data*

The firms we visited had a diverse profile in terms of size and structure.

### Notes

1. Regular payments made by the holder of a leasehold property
2. A charge made for maintenance of a leased property
3. Where we talk about the relationship between an individual and a firm, we use the term client. Outside of this context, we use the term consumer
4. Principle 4 of the SRA Handbook
5. Principle 5 of the SRA Handbook
6. Principle 5 of the SRA Handbook
7. Principle 4 of the SRA Handbook
8. Outcome 1.2 of the SRA Handbook
9. Outcome 1.5 of the SRA Handbook
10. Outcome 1.9 of the SRA Handbook

11. Outcome 1.10 of the SRA Handbook
12. The 35 firms were sorted into three groups depending on their volume of files
13. Commonhold properties are where a building has individual properties but shared services and common areas, for example lifts and entrances. While individuals own their specific property, areas of the building are owned and maintained by a commonhold association. The individual will be liable to contribute towards the costs of the commonhold association
14. Leasehold enfranchisement is a process which allows the leaseholder to either extend their lease or purchase a share of the freehold
15. A right to cross or otherwise use someone else's land for a specified purpose
16. A legal right to pass along a specific route through grounds or property belonging to another
17. Conditions which determine what a homeowner can or cannot do with their house or land in particular circumstances
18. An indemnity policy is an insurance policy that protects the buyer against future losses that may be incurred because of specific defects in the property title
19. <https://www.gov.uk/guidance/hm-land-registry-requisitions>  
[<https://www.gov.uk/guidance/hm-land-registry-requisitions>]
20. Principle 5 of the SRA Handbook
21. Principle 2 of the SRA Handbook
22. Principle 4 of the SRA Handbook
23. Principle 5 of the SRA Handbook
24. Outcome 1.3 of the SRA Handbook
25. IB 1.14
26. IB 1.15
27. IB 1.19
28. IB 1.21
29. <https://www.lawsociety.org.uk/support-services/advice/practice-notes/telegraphic-transfer-fees/> [<https://www.lawsociety.org.uk/support-services/advice/practice-notes/telegraphic-transfer-fees/>]
30. <http://www.sra.org.uk/solicitors/guidance/ethics-guidance/price-transparency.page> [<http://www.sra.org.uk/solicitors/guidance/ethics-guidance/price-transparency>]
31. Findings from the survey were further explored through four targeted focus groups with first time buyers, people who had bought and/or sold a leasehold property and people with previous experience of the process
32. The Land Registration (Amendment) Rules 2018 which came into force on 6 April 2018 amend the Land Registration Rules 2003 to allow for the continued development of e-conveyancing
33. <https://www.lawsociety.org.uk/news/documents/horizon-scanning-artificial->

intelligence-and-the-legal-profession/

[<https://www.lawsociety.org.uk/news/documents/horizon-scanning-artificial-intelligence-and-the-legal-profession/>]

34. Trustpilot.com is a website which publishes reviews about online businesses
35. Artificial Intelligence (AI) and the Legal Profession - Horizon scanning report (PDF 789KB) [<https://www.lawsociety.org.uk/news/documents/horizon-scanning-artificial-intelligence-and-the-legal-profession/>]
36. Residual balances are client money that a solicitor holds at the conclusion of a matter. Solicitors must return this money to the client as soon as there is no longer a proper reason for holding it