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Conveyancing Thematic Study

Summary Report

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Introduction

Conveyancing is the exchanging of documents that confirm the transfer of property from the seller to the buyer. In 2012 the Solicitors Regulation Authority (SRA) undertook 100 visits with firms of solicitors that provide this service. The visits looked at the ways that these services are delivered, marketed and charged for.

This report summarises the findings from these visits and highlights implications for the SRA's strategy for regulating firms engaged in conveyancing.

The visits to these firms were part of a process called a 'thematic study'. The findings in this report are not intended to be statistically representative of all legal services firms regulated by the SRA, and they are not to be presented as such. To get the most out of the findings, they should be viewed as indicating broad trends and themes.

Why select Conveyancing as a theme

The topics for thematic studies are selected on the basis of risks to the public interest. When things go wrong in the conveyancing process it can have a significant impact on the consumer. The risks range from mortgage fraud, stealing of client money and negligence matters - such as failure to properly deal with restricted covenants, ownership of land or complex lease holdings. These risks can lead to significant financial loss and/or major inconvenience to clients involved.

Conveyancing accounts for a high proportion of claims made by solicitors on Professional Indemnity Insurance (PII)¹, representing about 50% of the value of claims arising against firms. Conveyancing is also a service required by large numbers of consumers and one that leads to a high level of customer complaints².

Conveyancing is also particularly susceptible to changes in the economic climate. The economic downturn, notably in 2007/08, approximately halved residential property transaction volume in England and Wales³. This reduction has increased financial pressures within this highly competitive segment of the legal services market.

As a result of these challenges and regulatory risks, a thematic study of conveyancing practices was identified as essential to the SRA's ability to identify and manage risk. It was also a valuable opportunity to gather evidence to inform the Supervision and Enforcement Strategy for Conveyancing⁴.

¹ Review of SRA client financial protection arrangements, Charles Rivers Associates, September 2012

² Data from the Legal Ombudsman for 2011/12 showed that residential conveyancing generated the second highest number of complaints, after family law: http://www.legalombudsman.org.uk/aboutus/complaints_data.html

³ <http://www.hmrc.gov.uk/statistics/>

⁴ Which sets out a review on the risks associated with conveyancing and how the SRA manages these factors

Focus of study

The study aimed to explore, with a variety of different firms, the following factors that might lead to risks for consumers:

- Had the recent economic downturn reduced conveyancing work to levels which affected firms' financial stability?
- How prevalent are conveyancing referrals arrangements and what levels of dependency are there on such arrangements?
- How do firms present costs to their clients? Is this fair and transparent?
- How do firms identify, manage and perceive the risks which surround conveyancing work (e.g. conflicts of interest or mortgage fraud/money laundering)?
- What are the levels of 'first-tier' complaints⁵ from clients in relation to conveyancing services and how are firms dealing with these?

Our approach

This section explains the approach taken by the SRA's Supervision team to carry out this thematic study.

The Supervision function

The Supervision function performs risk-based oversight of the regulated community. The risks focused on are those associated with meeting our public interest regulatory objectives. To enable Supervision to align its resources in a targeted and proportionate way to meeting those objectives, the function seeks to engage constructively with firms in relation to:

- Individual risks, pertinent to the specific firm, and
- Thematic risks, which are risks common to a group of firms which could have a material impact on the public interest.

⁵ 'First-tier complaints' are complaints made directly to the firm and should usually be resolved before progressing to a second-tier complaint to the Legal Ombudsman or via the SRA.

Supervision visits

Between April and August 2012, SRA Supervision staff visited a range of 100 firms across England and Wales. The purpose of the visits was to explore how each firm managed risks relating to conveyancing work. The visits were pre-arranged and took the format of an interview with a senior member of staff at each firm⁶.

The meetings were guided by a formal questionnaire designed to collect information across the range of relevant topics. The same questions were posed at each of the 100 firms⁷.

Selection of firms to participate

The participants were selected at random from all firms that carry out some level of conveyancing activity. A diverse spread was achieved by selecting firms:

- from different parts of England and Wales, and
- that carry out different levels of conveyancing work.

Firms were selected at random using a process called 'stratified random sampling'. This is when sub-populations within an overall population vary and it is therefore advantageous to sample each sub-population (stratum) independently. Stratification is the process of dividing members of the population into sub-groups before sampling. Then, random sampling is applied within each stratum. This approach improves the representativeness of the sample.

⁶ Although 100 firms were visited, only 98 responses were used in the analysis as two meetings were carried out by a supervisor who subsequently left the SRA. This meant that we could not complete sufficient quality assurance of the responses collected.

⁷ In addition to the interview, the Supervision staff also looked at firms' accounts, which is standard practice on visits

Summary of findings

This section provides an overview of key findings. It should be noted that regulated firms have a duty to co-operate openly with the SRA and participants in this study were encouraged to be transparent and honest with the supervisor. However, we must also remain conscious that this information was collected through a formal supervision visit and as a result of this context, some issues might be under or over reported.

Context

The following points summarise key features of the firms included in the study. This profile gives some context for the rest of the findings:

- The study included a wide range of firms with varying levels of turnover generated from conveyancing. Percentage of total fees earned through conveyancing ranged from 100% to less than 5%, with a sliding scale in between
- Conveyancing clients were, in most cases, no less financially valuable to firms than other clients. This goes against a common preconception of conveyancing work being 'low value, high volume'. However, some firms will be paying referral fees out of this income
- Most firms did more residential than commercial conveyancing
- Most firms used fixed fees for conveyancing, rather than billing by the hour
- Two firms in five were also members of either Lexcel⁸ or the Law Society's Conveyancing Quality Scheme
- Most firms were members of at least one lender panel
- Firms saw removal from lender panels as the biggest risk to the conveyancing activities of their firm. The economic downturn was seen as the greatest risk to the firm as a whole
- When asked to choose which of the risks in the Draft Supervision and Enforcement Strategy was the biggest for their firm, more than half of firms said property-related fraud and money laundering.

⁸ Lexcel is the Law Society's Practice Management Standard

Conflicts of interest

Firms were asked questions around conflicts of interest in conveyancing work, to see how they identified and managed these:

- Conflicts between clients appear to be relatively rare, more than 90% of firms reported either 'not at all' or 'not very often' when asked about encountering conflicts between clients. Two thirds of firms reported that they had not experienced any personal interest conflicts.
- The most frequent area for conveyancing conflicts were stated as 'acting for both the buyer and seller' followed by the potential conflict between duty of confidentiality to the borrower and duty of disclosure to the lender. The rarest area of conflict was acting for two buyers in a contract race.
- Firms explained that they managed risks relating to conflicts of interest by a variety of methods, ranging from specific software and ICT solutions to case management and knowledge of their client base.
- A range of formal and informal measures were reported for avoiding risk associated with conflicts of interest. These included: robustness of office procedures and client care letters, never representing buyer and seller, common sense, early identification, use of separate branches and having a small client base.
- Half of the firms felt that most cases of improper management of conflicts of interest in conveyancing occur because of a 'lack of understanding and/or failure to recognise a conflict or a significant risk of a conflict'. Other reasons given included 'firms do not have appropriate systems in place to manage conflicts of interest' and 'firms intentionally fail to comply with the outcomes for monetary gain'.

The discussions with firms indicated that firms had a good awareness of the need to manage risks associated with conflicts of interest and adopted processes and practices appropriate for identifying and managing these risks. Importantly, firms were able to explain how they tailored the approaches they took rather than simply offering 'one size fits all' solutions.

Where conflicts did arise firms believed that it was not because of inadequate systems, but due to a lack of either understanding or failure to recognise the risks resulting from a conflict. This may indicate an opportunity to improve management of this risk via targeted information or training.

Referral arrangements

Questions also covered referral arrangements for conveyancing work to find out how these were viewed and managed:

- Around one in three firms reported that they had some form of referral arrangement in place.
- Estate agents were the most frequently stated recipient of referral fees.
- More than half of firms with referral arrangements stated that they had a written agreement in place.
- Very few firms reported relying on a single referrer, client or development for more than 10% of their instructions. Overall, this is encouraging as over-reliance on a single source of work may be associated with higher risks of financial instability or conflicts of interest.
- Around a third of respondents believed that other firms were not disclosing full information about the existence of referral fees to their clients.

Referral fees are prevalent in this area of work and for many firms are vital sources of business. Given the business risks associated with relying on one referrer it was encouraging to see that few firms were in this position.

It was concerning however, that around a third of firms felt that others were not being sufficiently transparent with their clients about the existence of referral fees. It is an area which requires careful consideration by firms with regard to the guidance on referral arrangements and referral fees in Chapters 6 and 9 of the Solicitors Code of Conduct.

Information about costs

The visits also covered the topic of information firms provided to their clients about costs:

- Three quarters of firms viewed their client care letter as the main way to give their clients good information about costs.
- Firms stated that they did not provide costs information 'up front' in advertising, preferring to wait until asked for a quote.
- More than half of the respondents felt that other firms' publicity was unclear about costs.
- Two thirds of firms felt that when a consumer feels unhappy with the cost of conveyancing, it is usually because the firm they have used has quoted a cheap headline figure that does not accurately reflect the final bill.

- When asked what they would do if a client questioned the bill, more than half of firms said they would try to resolve it by discussing it with the client.
- All firms stated that they made their clients aware, in writing, of their right to query the bill.

The majority of firms questioned use the client care letter and quotations as the main methods of communication of cost information. However, this appeared to conflict with the view that advertising and quote accuracy was the reason for consumers' dissatisfaction with their final bill. It should be noted that Chapter 8 of the code titled Publicity gives guidance regarding the regulatory requirements around advertising.

Financial stability

Firms were asked questions about the links between conveyancing and financial stability at firms, and how they managed financial risks:

- 80% of firms reported that they have seen less conveyancing clients as a result of the recession.
- Seven in ten firms stated that they actively monitor the property market.
- Two in five firms reported experiencing a reduction in income from conveyancing and, as a result, have had to cut costs or make redundancies.
- Falling numbers of conveyancing clients was seen as a risk to financial stability by half of firms.

The thematic study confirmed the scale of the impact of the recession on this market segment. In September 2012, the SRA identified a number of firms, not just those undertaking conveyancing work, that were potentially facing financial difficulties. They were invited to contact the SRA for advice if they experienced problems rather than waiting until issues became unmanageable. This is part of the SRA's new approach under outcomes-focused regulation.

Financial stability is one of the key risk areas identified by the SRA as presenting potentially serious implications for clients if firms eventually fail. Work in relation to the issue of financial stability in firms is ongoing.

Fraud and money laundering

Questions were also asked about the type of fraud and money laundering that might occur during conveyancing transactions, including the systems firms have in place to prevent them:

- A quarter of firms reported that, at some point, they have experienced a client attempting to use a conveyancing transaction as an opportunity to commit property-related fraud or money laundering.

- When asked to choose which of the risks in the draft supervision and enforcement strategy was the biggest for their firm, more than half of firms said property related fraud and money laundering.
- Three quarters of firms felt that it was unlikely that they would experience property-related fraud or money laundering. However, having experienced it did not make firms any more likely to feel it would happen again.
- When firms were asked what warning signs they looked for, the most common themes were: identity issues, international connections, unusual financial arrangements, client behaviour and having no local connections.
- If suspicions are raised, around a quarter of firms reported that they refuse to represent the client. Similar numbers report to the Serious Organised Crime Agency (SOCA), the police, or would consult their Money Laundering Reporting Officer (MLRO).
- A third of firms admitted that they did not know how they would decide whether to report a suspicion to SOCA, with a further 15% going only on 'gut instinct'.
- Three quarters of firms said that it would be useful to have more training on property-related fraud and money laundering.

Based on the proportion of firms stating that they have directly experienced property related fraud or money laundering, this suggests that this type of criminal activity does occur regularly. However, the responses also suggest that many firms might be over optimistic about the likelihood of them encountering this situation in the future.

With evidence to suggest one third of firms felt unsure on what was reportable and three quarters wanting training this is potentially an area where firms may want to consider investing in training.

Complaints and professional negligence claims

Firms were asked about the volume and type of complaints that firms had received in relation to their conveyancing work and further information about their complaints procedures:

- Less than half of firms had reported that they had received service complaints from clients about their conveyancing work in the last two years.
- A quarter of firms stated that they had professional negligence claims relating to conveyancing work in the last two years.
- Two thirds of firms asserted that they pass on lessons learned from complaints and negligence claims to the rest of the firm.

Costs, including the expense of lost time associated with dealing with complaints, are a good reason to invest in resolving root causes of complaints, setting up systems for continuous improvement and sharing good professional practice.

The SRA's strategy

Firms were asked about their awareness of SRA strategy around conveyancing:

- More than 80% stated that they were aware of the SRA strategy for supervision and enforcement on conveyancing.
- Firms had less awareness of mystery shopping as a regulatory tool to address conveyancing risk, compared to other traditional SRA tools such as visits and formal investigative powers.
- Direct emails and the SRA website were the ways most firms preferred to receive SRA information.

There appears to be a high awareness of the SRA strategy although it must be noted that the data will be skewed as the firms in question were part of the review hence highly likely to review the strategy prior to engagement with the SRA. It appears that indirect communication is preferred with the SRA in terms of receiving information, although more direct contact with firms will occur as outcomes-focused regulation is refined and the SRA constructively engages with more firms through supervision.

Protection of client money

Firms were asked about the practices of other bodies, and the connection between this and the protection of client money:

- Half of firms believed that lender and Land Registry practices increased the risk of negligence claims.
- Half of firms felt that lender and Land Registry practices increased the risk of fraud.
- Firms reported that they were less concerned that HM Revenue and Customs (HMRC) practices had an impact on either risk.
- There is no common way that firms manage risks relating to the giving of undertakings, accuracy of redemption statements, stamp duty and applications for registration.

Conclusions

Referring back to the original focus of the study the following general conclusions can be drawn.

■ **Had the recent economic downturn reduced conveyancing work to levels which affected firms' financial stability?**

In summary, yes. Eight in ten firms reported that the recession has reduced the number of clients for conveyancing work. 40% of firms stated that they have had to make redundancies or implement cost cutting measures as a direct result of reduced conveyancing work. However, despite these affects, firms saw removal from lender panels as a more significant financial risk to the conveyancing activities of their business⁹.

■ **How prevalent are conveyancing referrals arrangements and what levels of dependency were there on such arrangements?**

Conveyancing referrals are common with a third of firms having referral arrangements in place, mostly with estate agents. Based on the responses provided, these arrangements appear to be managed well, in business terms, often with formal written agreements in place with very few firms being reliant on such arrangements for large percentages of their incoming work. However, this is an issue that will require continued monitoring.

■ **How do firms present costs to their clients? Is this fair and transparent?**

Most firms reported that they used fixed fees for conveyancing, rather than billing by the hour, which if presented correctly in their cited preferred methods of communication with the client, quotes and client care letters, would indeed be transparent.

However, more than half of firms had negative views about competitors' pricing publicity which is concerning for the lay person whom may not be viewing such publicity from the same position of knowledge.

■ **How do firms manage and feel about the risks which surround conveyancing work? For example:**

- Conflicts of interest – Conflicts of interest appear to be rare with most firms having robust systems in place to identify them. This is a risk firms stated that they were comfortable dealing with and can manage accordingly. Encouragingly many firms could point to tailored approaches that they take to managing these risks rather than relying on generic 'one size fits all' responses. Essentially it is a risk they can take control of and the study findings support this.
- Mortgage fraud/money laundering – More than half of firms feel this is a risk and responses indicate that there is an appetite for more

⁹ Although the economic climate was recognised as the greatest risk to the firm as a whole

information and training related to this subject area. This is a risk firms can take measures to identify but unlike conflicts of interest they cannot fully control as by the nature of the risk they are being deceived. This has affected a quarter of the firms in this study, but worryingly around three quarters still feel this is an unlikely event.

■ **What are the levels of complaints from clients in relation to conveyancing services and how are firms dealing with these?**

Approximately half of firms had service complaints from clients about their conveyancing work in the last two years and a quarter had professional negligence claims relating to conveyancing work over this period. This is an area where the general consumer has concerns. These figures suggest service levels could be improved and lessons learnt. Two thirds of firms stated that they pass on lessons learned from complaints and negligence claims to the rest of the firm. Ideally, this should be standard practise across all firms.

What will be done as a result of these findings?

The general themes emerging from these visits have helped the SRA in a number of ways. As a risk based regulator it is imperative that the SRA aligns its resources to risk and is fair and proportionate in the way this is done. The specific steps that will be taken include:

- Development of case studies to assist firms in managing the identified risks.
- Ensuring that the Ethics Guidance Helpline remains well briefed on the issues facing firms offering conveyancing services in this challenging economic climate. This allows firms to access key information directly from the SRA when matters of concern arise.
- Taking forward a review of the SRA's policies in relation to the holding and protection of client money.
- Development of the Draft Supervision and Enforcement Strategy for Conveyancing.

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