



## Improving the home buying and selling process:

## UK Finance response to the DCLG call for evidence

15 December 2017

### Introduction

UK Finance represents around 300 firms in the UK providing credit, banking, markets and payment-related services. The new organisation brings together most of the activities previously carried out by the Asset Based Finance Association, the British Bankers' Association, the Council of Mortgage Lenders, Financial Fraud Action UK, Payments UK and the UK Cards Association.

The work of the previous trade associations is being taken forward through Product & Service Boards, which broadly correspond to the predecessor organisations. This contribution from UK Finance is particularly informed by the view of the Mortgage PSB. For any queries in relation to this response, please contact [john.marr@ukfinance.org.uk](mailto:john.marr@ukfinance.org.uk)

### Scope of response and background

There are many parties in the home-buying process (including buyers, sellers, brokers, valuers, conveyancers, and estate agents). Approximately 59% of house purchase transactions (excluding buy-to-let) involved a mortgage in the twelve months to August 2017.

A holistic view of the interactions within the process, and how they might be improved, needs to be taken. In our view, there is unlikely to be one major cause of delay and fall through, nor one 'silver bullet' to improve the process.

In mortgage lenders' experience, the home buying process can be extended if parties do not provide the information required in a timely way. Perceived delays often occur because of the conveyancing process, where information about the borrower and the property must be checked and external parties involved to provide advice or information, or to verify information provided. Parts of the process still involve receiving and reviewing paper documentation; and there is not yet a fully electronic land registration process operating in the UK.

### Executive Summary

- There is already a very strong focus on customer experience and efficiency in the mortgage sector, which is driving innovation; however, all parts and players in the process need to innovate to work well together.
- There needs to be a balance maintained between efficiency and speed; and allowing enough time to carry out sufficient checks and controls, particularly from fraud prevention and regulatory perspectives. Such checks and controls are in the customers' best interests.
- There is scope for greater collaboration between parties involved in the home-buying process, including lenders, and government in relation to online ID assurance, to speed up this aspect of the process.
- Government and bodies including the Law Commission, which have already consulted extensively on the operation of land law in relation to e-conveyancing, must work with one another to identify and take forward the common issues and ideas raised by stakeholders, some of which we detail below.
- We are not aware that the mortgage process is viewed as a major cause of delay (and the government's consumer research does not appear to indicate differently).
- Ultimately, the type of property chosen is key to establishing the level to which a lender may be prepared to lend to a customer.

## Improvements led by the mortgage sector

The mortgage sector has evolved considerably over the years. It is on the cusp of another evolution, as Open Banking – which allows customers to securely share their data with financial services firms in order to more easily access the products and services right for them – is rolled out over the course of the next year.

In 1999, the Council of Mortgage Lenders introduced comprehensive instructions for conveyancers acting on behalf of lenders in residential conveyancing transactions, in what is now called the UK Finance mortgage lenders' handbook. There is a handbook for each legal jurisdiction in the UK and all have a part 1 (general instructions) and part 2 (lender specific instructions). England and Wales has a part 3 in separate representation circumstances. A review of the Handbook's operation in 2016 sought feedback from stakeholders, and industry guidance to help improve the quality and consistency of Part 2 answers was developed in response to the feedback from the legal sector and other users.

As the call for evidence notes, mortgage lenders already offer the option for a customer to get a Decision in Principle (also called agreements in principle or mortgage promises) to help the customer demonstrate their seriousness as a buyer and to give an indication of what they might be able to afford to offer on a property.

Many in the mortgage market are investing in digital technologies to further improve the customer experience, reduce the risk of fraud and create efficiencies within the mortgage process. The emergence of online application channels and robo-advice by High Street lenders; online brokers such as Habito and Trussle; and 'paperless' mortgages, such as Natwest's [offering](#) which allow customers to share information and transact completely digitally with the lender, are evidence of this.

## The mortgage process

### *The regulatory framework*

The Financial Conduct Authority (FCA)'s regulatory framework for residential mortgages is designed to ensure that mortgages are affordable and are appropriate for the needs and expectations of the consumer. The mortgage lender is therefore required to seek a range of information about the prospective borrower to establish their credit-worthiness and how much they can afford to repay. The detailed information required about income and expenditure, for example, is necessary to avoid lending inappropriately. Lenders are also required to obtain an independent valuation of any property subject to a loan, under prudential rules.

The FCA also requires lenders to comply with rules on their conduct. The Mortgage Credit Directive (MCD) introduced the concept of a binding offer. It has long been the case that lenders will only withdraw offers in certain circumstances, which is important to maintain the confidence of consumers who are buying a new property. MCD also made it clear that a lender must not withdraw an offer where they have failed to complete their credit checks properly. It is therefore important that offers are not issued prematurely before checks have been completed as they cannot generally be withdrawn once issued. There are rules about what must be included in the mortgage offer document. The offer must be made in a durable medium and once made, consumers have the right to a seven-day reflection period. The purpose of the reflection period is to provide the consumer with sufficient time to compare offers, assess their implications and make an informed decision.

There is a balance to be had, in ensuring that the home buying process is as efficient as it can be, but with sufficient checks and controls. The Systems and Controls chapter of the FCA's Handbook requires firms to establish policies and procedures to ensure compliance with obligations under the regulatory system and for countering the risk of financial crime. Firms are also obliged to notify the FCA of significant fraud, errors and other irregularities. Lenders are also required to ensure the transaction meets the requirements of the Anti Money Laundering Directive. Conveyancers and others also have their own anti-money laundering checks to complete.

### *Professional advisers*

Lenders rely on conveyancers and valuers to advise on whether the property is suitable for lending. If there are any concerns about the property (issues with the title, valuation queries etc.), for example, these can take time to resolve. As noted above, the industry has provided comprehensive instructions to conveyancers for residential purchase transactions.

### *Mortgage applications and offers*

Most mortgage lenders already offer prospective customers the option to complete a Decision in Principle, which give an indication of what the customer could be loaned. The customer provides information on their income and expenditure, alongside some personal information, to enable the lender to carry out a credit file check and verify some of the information, to establish the amount that the customer could be loaned; and help demonstrate their seriousness as a buyer. Such credit checks can have an impact on the customer's credit score, so customers are advised to make sure that they understand what their credit score is and how it can be improved, to give them the best chance of accessing mortgage finance. It is important to note that decisions in principle are not a guarantee that a buyer will obtain the mortgage, as further evidence of income and expenditure and an assessment of the property's suitability for a mortgage loan also need to be undertaken.

UK Finance is not aware that waiting on the issuing of mortgage offers is a major cause of delay in the home buying process, as has been suggested anecdotally by some in the conveyancing sector. The consumer research published alongside the call for evidence shows that a clear majority of buyers are happy with the service provided by their lender and did not consider them as a source of delay in the process.

There are in-built incentives in the mortgage process to identify best practice in terms of efficiency. The mortgage market relies to a large extent on intermediaries/brokers, who have a key role in providing independent advice to consumers. Currently, two thirds of all mortgages are placed via a broker. Brokers are well placed to keep up momentum in the process, as they are paid once the new mortgage is in place. They are also able to highlight areas where lenders' processes cause delays. If an intermediary finds that a particular lender's processes are comparatively less efficient than their competitors, they may direct future business away from that lender. Lenders are incentivised to have relatively swift processes (in the context of mortgage products) as a result.

Given the regulatory framework and the involvement of other professionals, there are, however, limits to how much the mortgage application process can be truncated, within the overall home buying process. However, advances in technology and initiatives such as Open Banking look set to help continue to drive innovation and efficiency in the mortgage market.

### **Digitising home buying and selling**

We are supportive of the principle of e-conveyancing, if there are appropriate safeguards against fraud. Having access to fully-digitised information about land and greater use of electronic methods could help speed up elements of the process, however this is likely to be incremental in nature and parts of the process will still be dependent on the various parties providing information in a timely way.

The Land Registry and other government entities have explored digitisation (or e-conveyancing) of the home buying process over the years, and the mortgage industry has engaged closely with Government on these issues over that time. The latest iterations of this include the Land Registry's Digital Street project, which is exploring how the latest digital innovations can assist in the home-buying and selling process; and the Digital Mortgage Service, working alongside the Government Digital Services to enable the use of the GOV.UK Verify system. Once this is implemented, the service will allow registration of digital mortgage deeds, with borrowers signing their mortgage deed electronically.

Some lenders remain concerned over the robustness of digital signature technology, so it will be crucial that engagement continues with stakeholders so that these concerns can be overcome. The current proposal for Land Registry to be a trust services provider, with extended liability in relation to digital signature technology for mortgage deeds, is welcome, as it should help reassure lenders that if things do go wrong during the registration process, there will be protection against any losses suffered as a result.

As we previously stated in our response to the Law Commission's consultation on the Land Registration Act 2002, we support amendments to the LRA to introduce better flexibility for the introduction of e-conveyancing, including clarity on:

- The position of trustees who rely on a single practitioner to sign electronic transfers on their behalf;
- How the beneficiaries' interest can be overreached where the trustees grant a single conveyancer the power to sign e-conveyances and give receipt for capital monies.

It is important that government and bodies like the Law Commission, which have already consulted extensively on the operation of land law in relation to e-conveyancing, work with one another to identify and take forward the common issues and ideas raised by stakeholders, rather than working in isolation. This should help drive cohesive change stakeholders can embrace.

## Response to consultation questions

### Estate agents

*Q1. Should the industry do more to make customers aware of how to complain? a. If so, how?*

Others are better placed to answer this.

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

Others are better placed to answer this.

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

Others are better placed to answer this.

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

Others are better placed to answer this.

### Conveyancing

*Q5. What should industry do to help consumers make more informed decisions when selecting a conveyancer?*

*a. How could government help facilitate this?*

As the overarching legal services regulator, the Legal Services Board has a key role to play in monitoring the ability of consumers to make informed decisions about their conveyancer. There are roles for accreditation schemes such as the Law Society's Conveyancing Quality Scheme, however such schemes must have suitable oversight of the firms accredited.

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

We support the principle of a central repository of information about a property, which could include information which is currently available through various property searches. We have supported the Land Registry's Local Land Charges project, which aims to host all local land charge information within the Land registry rather than within local authorities as is the case currently.

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

It is not clear what the perceived advantages are to using the same provider. Assuming this is linked to quicker transmission of information between sellers and buyers, this may be outweighed by the potential for property frauds to be more easily facilitated, if the conveyancer and/or firm is negligent or fraudulent. Our members have numerous examples of property frauds where a solicitor / conveyancer has been the professional enabler for the transaction. The UK Finance Lenders' Handbook requires the legal advisor acting for the lender (and borrower) to check the credentials of the seller's solicitor, as a fraud prevention measure.

## **Harnessing digital technology**

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

There would be scope for significant efficiency gains, and potentially greater transparency and oversight of individual transactions. However, there is a risk of greater opportunity for wide-scale fraud, so it is important that digital systems are secure.

*Q9. What should the government do to accelerate the development of e-conveyancing?*

We have noted above, the recent consultations by the Law Commission on the Land Registration Act 2002; and land law more generally in their programme of reform, and the on-going work of the Land Registry. It is important that there is suitable pan-government oversight to ensure that appropriate resource and priority is given to areas which stakeholders have identified as most in need of change.

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

Lenders have noted that although the Land Registry database is readily available, it can be out of date due to the time delay between sale and completion. This is often supplemented by valuers' own comparable databases of recent valuations they have completed to provide a more comprehensive valuation.

More information provided on a nations and regions basis would also be welcome. For example, a comparison between transaction fall through rates in England and Scotland could further inform discussions around improving the home buying and selling process.

*Q11. How could other parts of the home buying and selling process be improved through better use of digital technology?*

We expect that mortgage lending like other financial services, will increasingly be done via digital channels, using AI and other technologies such as blockchain. It is possible that the property transaction could be done via blockchain technology in the future, if all parties are comfortable transacting in this way; and provided the appropriate safeguards against fraud are in place.

## **Mortgages and the requirements of lenders**

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

We believe the majority of prospective borrowers already seek Decisions in Principle from their lenders; and many lenders' systems drive automated DIPs to be completed prior to a full mortgage application being submitted.

Mortgage brokers (who currently place just over two thirds of mortgage business) are an important first source of information for a borrower and therefore are well-placed to provide such encouragement; as are estate agents. We are aware that estate agents will often not accept offers from prospective purchasers without a DIP.

Any government guidance to buyers could also include reference to the ability to seek Decisions in Principle from lenders.

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

Members advise that improving financial services' firms access to government ID assurance sources to assist in identity verification, would help reduce time taken to carry out identity verification, obviously within the bounds of data protection law. The Law Commission explored reducing the duplication in the process of identity verification and we support the development of a central, preferably government-backed system, such as Gov UK Verify, which can be relied on by a range of sectors to aid in identity verification.

## **Informing consumers**

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

As the call for evidence notes there are plenty of existing resources available, however consumers may not be aware of them. Government may wish to consider requiring initial contact points such as estate agents to sign-post to these resources early in the home-buying and selling process; and hosting relevant information centrally on government websites.

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

*a. If so, what information should be provided?*

We support fuller information being made available about the property, earlier in the process. Information about the tenure type (including any charges which relate to the tenure type such as leasehold ground rent details); construction material; supporting documents for any building alterations which have been made; where available; Energy Performance Certificates; environmental and local land charges information, if readily available upfront, should help to avoid delays later on in the process.

*Q16. Should sellers of leasehold homes be encouraged to engage with their freeholder before marketing their home for sale?*

*a. If so, in what ways should they engage?*

We support measures to encourage key leasehold information being made available at the point of marketing a leasehold property. This information should include the length of the lease, the ground rent level and review methodology, and other charges, to be provided to prospective buyers up front and in simple terms.

### **Sharing information about each other and increasing commitment**

*Q17. How can government increase commitment to a sale between buyers and sellers?*

*a. Would development of standard agreements help?*

In other countries and jurisdictions, such as Denmark and New Zealand, this is achieved by earlier contractual commitments (and/or penalties) for the buyer, and the government may wish to explore this with the legal sector.

*Q18. How should we best tackle gazumping?*

We note that other countries, such as New Zealand, have tackled this issue through the use of time limits on conditional offers and acceptance in the sale and purchase contracts.

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

In our view, earlier commitment of parties to the sale and purchase of a home would be the best way to increase confidence. However, caution must be exercised when considering proposals for change. For example, some other countries' approaches incur greater costs for sellers, which could deter them from moving, with a resultant impact on the wider housing chain.

### **Buying a leasehold property**

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

*a. If so, how could this be done?*

While we do not have a strong view on this, requirements for parties to respond in a timely way are likely to have a positive impact on speeding up the process. Having standardised enquiry forms, which already exist, should assist in enabling a timely response.

*Q21. Should maximum fees be set for the services and information provided by managing agents / freeholder to home buyers and sellers?*

*a. If so, how could this be done?*

Anecdotal evidence from our members suggests that fees charged by managing agents/freeholders for supplying administrative information can be excessively high, and can, in a worst-case scenario, result in a lender having to pay the fees to avoid forfeiture of the lease. We therefore support measures to set maximum fee levels. We do not have a particular view as to how this should be done.

*Q22. Should the government introduce standard mandatory forms for collecting information about leasehold?*

We would support this, alongside exploring how the government might better hold leasehold property information in a central repository (such as on the Land Registry) which can be easily accessed by the various parties who require it, as we have already argued for in our response the DCLG's leasehold consultation. The legal sector will need to be involved in the creation of mandatory forms.

## **Buying a new build property**

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

Our members have raised concerns about some practices within the new build sector in relation to leasehold and build quality and finish; short timeframes in which to exchange; and the encouragement to use solicitors who have existing relationships with the developer.

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

The new build mortgage market is a sub-set of the wider mortgage market, and dominated by specialist new-build brokers who are familiar with both the developer and lender requirements, which should ensure that the mortgage application process is efficient. Mortgages for new builds are subject to the same regulatory requirements, however.

The valuation of a new build property is often not as straightforward as for the second-hand market, especially if there is a lack of comparable sales in the local area. If the developer/seller can provide evidence to justify the sales price; and is transparent about any incentives provided, then this should allow the mortgage valuer to more readily reach a view on the appropriate property value and advise the mortgage lender in a timely way. The UK Finance Disclosure of Incentives form is currently being updated to encompass additional information such as key leasehold information and construction materials, This form is designed to ensure greater transparency of transactions in the new build market; and support the valuation process for new build properties.

### **Any additional points**

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

We have nothing to add beyond our comments above.