
Losing the plot: Residential conveyancing complaints and their causes

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Introduction

Buying a house is probably the biggest financial outlay most of us will make during our lifetime; this alone makes it an anxious, often deeply emotional experience. So if we then have the added worry of a significant delay, unexpected legal cost or go on to discover that plans for a new development just behind our new house were not revealed in the searches, we could be forgiven for thinking our lawyer has failed us in some way.

Residential conveyancing accounted for around 17.5% of the 7,500 or so complaints handled by the Legal Ombudsman in 2011-2012, making it the second most complained about area of law¹. This report contains summaries of eight Legal Ombudsman investigations: four are about delays and hidden costs – resulting in some customers losing out on their home or being left with significant unexpected costs. Two relate to a failure to follow the customer's instructions or inadequate advice or background information on the part of the lawyer – leaving one customer in a caravan on Christmas day, and another some £50,000 out of pocket. The final two are examples of where we found no poor service, helping to show how customers sometimes misunderstand what their lawyer should reasonably be expected to do.

¹ This is based upon statistics from the financial year 2011-2012. This data can be found on our website – http://www.legalombudsman.org.uk/aboutus/complaints_data.html

When consumers come to the Legal Ombudsman under circumstances such as these, they are often angry and upset. And, as you will see from the case studies, in some instances this response is entirely understandable. Conversely, in some cases it transpires that the customer has unrealistic expectations – for example about what a search should reasonably reveal. Given the emotions involved, it isn't always easy to resolve these complaints, but that is our daily challenge.

The objective of this report is to cast some light on the type of complaints we typically see with reference to some statistical trends. I want to show lawyers the emotional consequences of poor service, which can sometimes be devastating, in the hope that we can reduce the amount of complaints in this area. I also hope to give consumers an indication of the key risks and what to look out for when using a conveyancing lawyer.

Finally, this report aims to strike a balance by sharing some examples of where our investigations revealed that the service provided was reasonable. Conveyancing is a specialism – which is why we pay a lawyer to undertake the process on our behalf – but this means consumers don't always understand or appreciate what their lawyer should reasonably be expected to do. We aim to show how these misunderstandings can arise. We've also produced a helpful factsheet for anyone about to embark on the roller-coaster journey that is buying a new home.

The rise of 'conveyancing factories'

The conveyancing market is currently severely depressed. To put things into perspective, when one of our predecessors, the Legal Complaints Service, was in operation, conveyancing accounted for almost twice as much of their business as it does ours. Of course, this was three or more years ago at the tail-end of the housing boom and before the property market imploded.

The Council of Mortgage Lenders estimates that gross mortgage lending in September this year was £11.6 billion: a 15% fall from £13.7 billion in September 2011². This indicates there is still a great deal of unpredictability around house buying trends.

The deflation of the market inevitably impacts on the volume of work finding its way to licensed conveyancers, solicitors and chartered legal executives. For this reason, providing a quality service and reducing the causes of complaints should be an absolute priority for lawyers. In a market where business is already on the wane, they should be doing everything they can to preserve and enhance their reputations.

But it's not just that house sales are down: consumers are also tightening their belts. In some extremes this means attempting DIY conveyancing transactions, even if it means saving a relatively modest sum of money. However, unless they have experience of the process of house buying this can be a risky route for consumers. A more widespread consumer response is to turn to cheaper conveyancing services.

² Council of Mortgage Lenders website: "Gross mortgage lending declines in September" <http://www.cml.org.uk/cml/media/press/3319>

As marketers and the more commercially-minded muscle in on these services, what we are now seeing is an increasingly commoditised, automated and competitive market to address demand. Traditional high street law firms are evolving into or being displaced by 'conveyancing factories', where services can be bought online or where prices can be fixed from the outset under

'fixed fee' or 'no move, no fee' agreements. In one sense, this is great for consumers. Conveyancers' services are now advertised for as little as £90 and you know in advance what it is going to cost ³. Better still, if the house sale doesn't go through you don't have to pay a penny. However, these sort of positive developments for consumers are not without risk.

Take **Miss B's** case for instance. Her lawyer's constant delays in making necessary payments meant she missed out on her new home. And to make matters worse the lawyer wanted to recoup costs agreed at the outset under a 'fixed fee' agreement. Unfortunately, it hadn't been explained to Miss B that she would have to pay these costs if the sale fell through.

Ms C was also hit with surprise costs, despite agreeing a fixed fee when first instructing her lawyer. She had been led to believe that there would be no costs should the sale fall through but the firm landed her with a £10,000 bill in any case. And this bill was far higher than the originally agreed fee.

Mr and Mrs D ended up with a bill some 65% higher than the original quote and the lawyer failed to keep them informed of any increases throughout the transaction.

Their house sale almost fell through due to delays caused by the lawyer assigned to their case because he went on holiday without assigning someone else in his absence. In this case we had to report the firm to the Solicitors Regulation Authority (SRA) for failing to respond to our investigation.

Another customer, **Mrs E**, instructed a lawyer under a 'no move, no fee' agreement. However, it wasn't until the sale fell through and Mrs E was presented with costs of around £800 that the true picture of what it was she was being asked to pay for came to light. Our investigations revealed it was in fact an insurance policy to cover costs incurred in the event of the sale falling through. Of course, a 'no move, no fee' agreement should be just that. We convinced the firm to resolve the complaint informally and waive all of its charges.

³ DIY Conveyance website <http://www.diyconveyance.co.uk/conveyancing-fees.html>

The rise of 'conveyancing factories' - continued

In a legal services benchmarking report commissioned by the Legal Services Board (LSB), roughly 12% of those surveyed who had purchased a conveyancing service said that they were quoted a fixed fee which was different from what they actually ended up paying⁴. Surely fixed fee should mean fixed in all cases? Unless a lawyer makes it explicitly clear that the fee is subject to increases for various reasons, a consumer reading the word 'fixed' will understandably believe that the price is not going to change.

Our own figures show that between them, delays and poor cost information account for around 28% of the residential conveyancing complaints we resolved in financial year 2011-2012. And in some of those case studies I've mentioned, customers have experienced both types of service failure.

Now that Alternative Business Structures – which allow non-lawyers to manage law firms – enable estate agency groups and mortgage brokers to move into the residential conveyancing market, we are bracing ourselves for an increase in automated transactions and fixed price deals. This may mean more residential conveyancing complaints in the vein of those featured above. Price is undoubtedly a key driver in consumer buying habits when it comes to conveyancing and this plays into the hands of high street chains that benefit from economies of scale. For many traditional law firms specialising in conveyancing it may sound a death knell altogether.

Harry Hill, founder of online conveyancing business In-Deed, said as much at a Legal Futures conference I attended back in November⁵. He noted that traditional law firms would struggle to compete with 'volume conveyancers' as their margins are compressed by "unsustainable price competition". There are benefits to the consumer looking for a cheap deal, but my concern is that some firms may be too focused on the volume of work they're creating at the expense of providing a reasonable service.

Automated and fixed price services may also be too geared towards simple transactions. Where there are complexities – more detailed searches required for example – that need to be taken into account, such rigid business models may come unstuck. And it is then the consumer who often suffers as a result.

⁴ BDRC Continental, "Legal Services Benchmarking Report" June 2012 <https://research.legalservicesboard.org.uk/wp-content/media/2012-Individual-consumers-legal-needs-report.pdf>

⁵ Legal Futures article: Unsustainable pricing means most conveyancing firms are "bust", says leading entrepreneur <http://www.legalfutures.co.uk/latest-news/unsustainable-pricing-means-conveyancing-firms-bust-says-leading-entrepreneur>

House-buying horror stories

Alongside delays and poor cost information, a failure to provide adequate advice or background information and/or a failure to follow instructions are high in the pecking order of causes of conveyancing complaints, accounting for around 40% of resolved cases between them.

This tells me that often lawyers are not meeting consumer expectations, illustrating a need to work harder at listening to and understanding their requirements. In extreme cases such failures can result in horror stories: for the clients at the centre of the complaint it can mean severe emotional and financial turmoil.

Take **Mrs A's** case: she had completed everything regarding the sale of her old home and had transferred the money required to complete the purchase of her new home into her lawyer's account. All they had to do was complete the purchase on her behalf and she would have been set to move in before Christmas.

Instead, she and her family spent Christmas day and the following days and weeks firstly in a caravan and then in a rented cottage. What was worse, the law firm's accounts had been frozen by its regulating body as a result of numerous service failings, meaning Mrs A had to wait some considerable time before she got her money back.

Though unique in the severity of its consequences – both in terms of the trauma and financial worry this case caused – it goes to show the importance of meeting customer expectations, avoiding delays, and following instructions. As I said at the start of this report, buying a house is the biggest financial transaction most of us will make. Getting it wrong can have significant consequences.

Another worrying case saw a client lose £25,000 off the value of her property because her lawyer failed to provide adequate advice regarding details on the leasehold.

House-buying horror stories - continued

Miss F discovered sometime after buying her apartment that the leasehold did not include a converted attic room. Her lawyer had failed to tell Miss F that the lease was at odds with the sales particulars. On top of her loss in property value, Miss F also had to pay legal fees for her 'unauthorised' use of the attic as well as further expenses to convert it back to its former state before she could sell the associated property.

In all, Miss F was £50,000 out of pocket. Interestingly, and rather unfortunately for Miss F, our Scheme Rules dictated at the time that we could only make the firm give back £30,000 – which is what she ended up with.

Cases like this one have inspired one of the key amendments to our scheme rules. We hope to be able to award a maximum of £50,000 as a financial award where appropriate early in 2013. Our proposals are currently working their way through the Ministry of Justice's procedures.

This change will obviously improve the level of redress we can offer where required, and it should certainly be noted by lawyers. In future, the consequences of poor service could result in significant financial repercussions.

Customer confusion

When something goes wrong with a house purchase, there is a temptation on the part of customers to blame the lawyer. However, that is sometimes unfair.

In around 30% of the residential conveyancing cases we resolved in the first six months of this year (April-September), for instance, no remedy was provided to the complainant. This tells me that we found no evidence of poor service.

More anecdotally, I know that sometimes complaints are based on unrealistic expectations, which could explain why we found no poor service. As much as lawyers are the ones with the expertise, customers need to ensure that any concerns or aspirations they have regarding a prospective property are made clear.

If something is worrying the customer then the lawyer needs to be made aware of this concern. They won't know unless their customer tells them. And if they don't know, they won't be able to make enquiries about it.

Take these examples: **Ms G** was distressed to find that the school behind her newly acquired home had planning permission to build an extension, which would restrict the view from her garden. She complained that the lawyer should have told her about this before she bought the property.

However, when we looked at the complaint it became apparent that the firm had told Ms G their searches only related to her immediate property and not the surrounding area. Nevertheless, she had asked the firm to proceed.

In another similar case, **Mr H** discovered, when he came to sell his property, that a third of the garden wasn't registered to him; meaning he'd lost around £10,000 on the sale price. He complained to us but our investigations found that the law firm had sent Mr H a Land Registry plan with a clearly defined boundary, which he had checked and signed off.

Customer confusion - continued

In both cases there has obviously been a lack of clarity on the part of the buyer. And all too often buyers mistakenly think a piece of land is theirs by virtue of its proximity to their property, only to find that the legal title doesn't include this land and they don't own what they thought they did.

It is perhaps fortunate that lawyers aren't mind readers, but this means customers must set out their expectations from the start and ensure they're diligent in checking paperwork, search criteria and, as in Mr H's case, Land Registry plans.

An 'accredited' conveyancing market

So long as the market remains deflated and the majority of house buyers operate within the confines of a recession, price will remain a key factor. This means practitioners are in the fight of their lives to remain competitive and continue winning business. However, is there anything else they can do? Perhaps: the LSB's benchmarking report I referred to earlier reveals that reputation is also important when deciding on a conveyancing firm. In fact, 63% of respondents said a firm's reputation was a factor influencing choice⁶.

⁶BDRC Continental, "Legal Services Benchmarking Report" June 2012 <https://research.legalservicesboard.org.uk/wp-content/media/2012-Individual-consumers-legal-needs-report.pdf>

This obviously hasn't been lost on trade bodies like the Law Society and the Society of Licensed Conveyancers (SLC). In an effort to boost members' credentials and stem the tide, we are seeing various quality schemes or kite marks being introduced. In theory at least these demonstrate that a firm meets industry standards – giving them some market differentiation and consumers a marker besides price to inform their choice. In principle a great idea: any initiative that drives up standards and improves the quality of service being provided must be a positive step.

From a consumer perspective however, these accreditations may confuse matters slightly. Back in May, HSBC confirmed it would be opening its panel to Conveyancing Quality Scheme (CQS) accredited members. However, this scheme is only open to solicitors (since it's a Law Society approved accreditation), meaning – as the SLC rightly pointed out – that licensed conveyancers are excluded from membership to the panel. In response to the accreditation the SLC is now close to launching its own 'SLC Quality Assured' accreditation for its members.

As I said above, I am broadly in favour of schemes like these, but there is an argument that in terms of achieving market differentiation and demonstrating quality to consumers, lenders and insurers, a more universal scheme might be something to aspire to in the future. From a consumer perspective, it really isn't clear what advantage there is to using a CQS accredited solicitor over an SLC Quality Assured licensed conveyancer and vice versa.

In the meantime, comparison sites will help consumers to benchmark and there is always word of mouth. Using complaint data as an indication might also help, perhaps by using our published ombudsman decisions. However, it will take some months – maybe even years – before this information builds into anything particularly meaningful or representative.

More usefully, what we can do at the Legal Ombudsman is publish details of any firms that pose a significant consumer risk through our publication scheme. Our Board will be reviewing any trends or concerns regarding firms for this very purpose on an ongoing basis.

Conclusion

Here's an interesting statistic: last year, 46% of residential conveyancing complaints were resolved informally, which is slightly higher than the average across all complaints. So although residential conveyancing complaints are responsible for a high proportion of our business, at least many of the issues behind these complaints can be put right quite quickly; if the investigator can explain the conveyancing process in a little more detail for instance, or if the lawyer waives costs over and above those agreed at the outset or speeds up the process and cuts out unnecessary delays.

At the end of the day, people just want their house purchase or sale to go through with the minimum of fuss – a reasonable expectation when you're a paying customer.

'Fixed fee' and 'no move, no fee' agreements are fundamentally great innovations in a legal industry that has been hit hard by economic austerity. It is an increasingly consumer led market in which people want to know where they stand and then budget accordingly. I anticipate it will be those lawyers and non-lawyers behind many of these innovations who can also commit to greater levels of customer care that ultimately prosper. This means keeping to agreements over cost, ensuring delays are kept to a minimum, and maintaining good lines of communication. If lawyers stick to these simple principles I predict they won't go far wrong.

As for house buyers, ultimately they are the ones who will lose out if something does go wrong. They should be mindful to give their lawyer as much information as possible from the outset and to check paperwork before signing anything off. If they do these things and the lawyer still gets it wrong, then they have the right to complain – first to their lawyer and then to us if it can't be resolved internally.

Case studies - Delays and hidden costs

1. The nightmare before Christmas

Mrs A's dream of Christmas in a new family nest seemed to be coming true after she instructed her lawyer to go ahead and finalise the purchase of a house. However, her dream soon turned into a horrible nightmare, which would see her family end up in a caravan on Christmas day.

After completing the sale of her former home and handing the keys over to its new owners, Mrs A transferred funds required to complete the purchase of her new home into her lawyer's account and gave them the thumbs up to finalise the purchase.

She then excitedly booked a removal van and had all of her family's belongings loaded up ready to be taken to the new address. They packed up everything and set off for what should've been the next happy chapter in their lives.

Unfortunately – and unknown to Mrs A – her lawyer hadn't completed the house purchase and the people she was buying the house from hadn't received any money. So, unsurprisingly, they weren't prepared to hand over the keys.

After desperately chasing the firm, Mrs A eventually discovered that its accounts had been frozen since it was being investigated for a number of major service failures. It was Christmas Eve, Mrs A's money was stuck in limbo and she and her three children, one of whom was disabled, had nowhere to live.

Thinking on her feet Mrs A drove the family to a local caravan site and checked them in as a last act of desperation. They spent Christmas Day in a caravan – a far cry from the dream surroundings she'd envisaged for her family only days before. The incident ended up costing Mrs A even more money over subsequent days and weeks as she moved her family into a cottage until the house purchase had completed.

After complaining to the law firm and getting an unsatisfactory response, Mrs A brought her complaint to the Legal Ombudsman. We investigated and awarded Mrs A around £14,000 to cover losses and for the distress and inconvenience she had experienced.

Case studies - Delays and hidden costs

2. Disastrous delays

Miss B had instructed a lawyer to undertake a part-exchange on her property. She was purchasing a new build house and exchanging her old flat as part of the deal.

After receiving instruction, the lawyer promptly sent Miss B a client care pack which said the transaction would take just six weeks to complete. However, when Miss B emailed the firm some weeks later to arrange payment of her deposit to the construction company she received no response, and the phone simply rang out.

This went on for some time. Even the construction firm couldn't get hold of the lawyer. Eventually, some months later, the construction firm finally lost patience and pulled out of the deal.

Miss B lost out on her new home because of the lawyer's constant delays in making payments on her behalf.

To make things worse, when the lawyer did finally get in touch it was to chase costs from Miss B. She had instructed the firm under a 'fixed fee' agreement but wasn't made aware by the lawyer that she would have to pay if the transaction failed. Miss B had also lost money in survey fees and her deposit.

She couldn't resolve her dispute with the firm directly and was left with no option but to bring her complaint to us.

We ordered the firm to reduce their bill from £600 to £300.

3. Surprise fees

Ms C instructed a firm to oversee the sale of her home under a 'fixed fee' agreement. It was important for Ms C to establish costs up front as she had a very tight budget.

Unfortunately, the sale of her house didn't happen. However, the firm pursued Ms C for costs of almost £10,000. This was a complete surprise to Ms C since the lawyer hadn't explained she would be liable for any costs if the sale didn't go through. Ms C also felt that the costs were in excess of what she had originally been quoted.

Ms C offered to pay some of the costs, based on her estimation of the work they had actually carried out, but was simply told to pay the full £10,000 or risk being pursued by the same firm's litigation department. The firm refused to meet with Ms C to consider her complaint.

Ms C finally came to the Legal Ombudsman. We investigated and found that the firm had been misleading about its costs – particularly about how the fixed fee model worked in the event of the house sale not going through. Our investigator was able to arrange an informal resolution between Ms C and the firm, where they agreed to reduce the costs to around £4,000.

Case studies - Delays and hidden costs

4. Calamitous costs

Mr and Mrs D were looking for someone to handle the sale and purchase of their property. They went online to obtain quotes for the work and then appointed the firm. They signed the firm's client care letter and returned it but then nothing happened for three weeks.

It turned out that their lawyer had left the firm and a new one had taken over the case. Then when this lawyer went on holiday, no one was assigned the case in their absence. This almost caused the sale of the property to fall through. Fortunately, the sale progressed to completion, although it took two weeks for the firm to forward the money due to Mr and Mrs D.

The firm initially quoted £200 for dealing with the sale and £300 for the purchase. When the final invoice arrived, Mr and Mrs D were shocked to find the firm had charged them a total of £1,400. There were additional items that had been added to the invoice that the couple were never made aware of.

The firm had assured them that they would be made aware of any increase in fees when they originally signed the client care letter, however, they were not made aware of any increases until the final invoice. Mr and Mrs D wanted the firm to restrict the fees to the amount they had originally quoted and to pay compensation for the emotional impact and disruption they had caused.

We found that the firm provided poor service by not providing Mr and Mrs D with proper costs information and by not assigning a new lawyer to the case. The firm didn't respond to the complaint or to our investigation and so we referred them to the Solicitors Regulation Authority (SRA). The ombudsman decided that the firm should refund £900 and pay an additional £100 for the emotional impact on Mr and Mrs D. Mr and Mrs D accepted the decision.

5. Mystery charges

Mrs E instructed a lawyer to help purchase her new home but things didn't work out – the seller pulled out at the last minute and to make things worse she had issues with the law firm.

At the outset of the instruction, they sent her a breakdown of costs, estimating that it would cost £700. However, she'd used the firm's 'no move, no fee' deal, which would ensure she didn't have to pay for her legal fees if the sale fell through.

Despite this agreement Mrs E was charged £800 and within that fee they had charged her £450 for a mysterious undisclosed 'product'.

Mrs E complained to the firm but got nowhere; then she brought her complaint to the Legal Ombudsman.

During our investigation we discovered that the undisclosed product was in fact legal insurance. This contradicted the 'no move, no fee' deal. If the firm had made these charges clear at the instruction stage Mrs E may well have chosen not to use them.

We agreed that the firm had charged excessive and unnecessary fees. Mrs E was happy to resolve the issue informally if the firm were willing to waive their outstanding bill, which they duly did.

Case studies - Significant financial loss

6. No cash in the attic

Miss F instructed a firm to help her purchase the leasehold on a converted apartment building.

Sometime later Miss F decided to sell the property, only to uncover some serious issues. Miss F discovered that the lease did not include a converted 'attic room' at the top of the property. So, in effect, she was trying to sell an apartment containing a room over which she had no ownership.

Miss F realised this meant she had also grossly overpaid for the property in the first place and would need to reduce the sale price, meaning further loss. A retrospective valuation confirmed she had in fact lost £25,000.

In addition, she had to pay the freeholder £10,000 plus legal fees for her unauthorised use of the attic space while also incurring further expenses including the cost of converting the attic back to its former state and her own legal fees.

Miss F complained to the law firm to no avail, so she brought the complaint to us.

An ombudsman decided that the firm had failed to advise Miss F that the lease was clearly at odds with the sales particulars when she bought the property. We therefore ordered the firm to pay compensation for Miss F's losses.

In this case, we were unable to make the firm compensate the total amount of money she lost – namely £50,000. This is because our scheme rules currently only allow us to compensate up to a maximum of £30,000 – which is what Miss F was awarded.

We are currently revising our Scheme Rules and – pending Parliamentary approval – from early in 2013 we'll be able to grant a new maximum financial award of £50,000 where appropriate.

Case studies - No poor service

7. An extensive education

Ms G bought a new home in a fairly busy street. When she bought the property she knew that there was a primary school next door but it was quite small and she thought she would be able to cope with it.

After several months Ms G had settled into the property and her new area. She was then distressed to receive a letter from the construction company just before the school holidays with details of a large extension that was due to be built over the summer. Ms G was upset because it would mean that her view at the back of the property would be restricted, but more importantly she thought it might affect the value of the property and her ability to sell it in the future.

She complained to the firm that they should have told her about the work that was going to happen at the school, but she wasn't happy with the response.

However, we looked at the case and agreed that the service from the firm had been reasonable. They told Ms G that the searches they'd undertaken only related to her property and not the surrounding area and she had not made them aware of any concerns about living next to a school; therefore, they didn't investigate further.

This case helps to show that sometimes customers have expectations over and above what they have actually instructed the lawyer to do. This may be because they misunderstand the conveyancing process and/or what they need to tell the lawyer.

Case studies - No poor service

8. Fault of the earth

Mr H had always wanted a property with a large garden so when he moved to the countryside it was top of his wish list.

He found the property and garden that he wanted and bought the property straightaway. A few years later when Mr H went to sell the property he discovered that there were problems with the land and he had not actually bought all the land he thought he had. In fact, about a third of the garden was not registered to him. This meant that when he sold the property he lost about £10,000 on the sale price.

Mr H was understandably upset. He complained to the firm as he felt they hadn't taken him through all the documents in enough detail to ensure he understood what he was buying.

When the complaint came to LeO we decided that the firm had acted reasonably. The firm had sent Mr H the Land Registry plan with a clearly defined boundary and asked him to check that it was an accurate representation of the property he had seen. The firm had also met with Mr H a few days later to go through everything. They told Mr H that as this was a repossessed property it was being sold by the bank who would only have limited knowledge of the property. They asked Mr H if he wanted to proceed and he said yes, and confirmed the plans by signing them.

How to contact us

We are open Monday to Friday between 9am and 4pm

If you are calling from overseas, please call +44 121 245 3050.

For our minicom call 0300 555 1777.

You can call us on **0300 555 0333**

(Calls to the Legal Ombudsman cost the same as a normal 01 or 02 landline number, even from a mobile phone, and are recorded for training and monitoring purposes).

You can also email us at

enquiries@legalombudsman.org.uk

If you want to find out more about us and what we do, please visit

www.legalombudsman.org.uk

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