



## BRIEFING PAPER

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# Improving the home buying and selling process in England

By Hannah Cromarty  
Laura Abreu

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Contributing Authors:

Sarah Harvie-Clark of the Scottish  
Parliamentary Information Centre (SPICe) -  
Section 5.1, The Scottish conveyancing system  
Cassie Barton, Social and General Statistics –  
Section 1.1

## Summary

### The home buying and selling process

The home buying and selling process in England and Wales is not mandated in detail by law; the law provides a broad framework in which the parties are free to decide how to shape their own transactions. However, in practice most transactions follow standard industry protocols and are completed through a private contract.

Conveyancing involves the legal transfer of home ownership from the seller to the buyer. The conveyancing process is complex and multi-staged. In most cases buyers and sellers rely on advice and support from a range of professionals, including estate agents, conveyancers, surveyors and mortgage lenders. Key features of the process include:

- Properties are generally marketed by estate agents.
- Sellers accept offers to purchase 'subject to contract'. Such agreements are not legally binding; either party can withdraw without penalty until the point at which contracts are exchanged.
- Once an offer is accepted, both parties will instruct a conveyancer (either a solicitor who specialises in the transfer of land or a licensed conveyancer) and begin the conveyancing process.
- The legal principle 'Caveat emptor' (buyer beware) applies - this places the onus on the buyer to find out if there are any physical defects or legal issues relating to the property. The buyer's conveyancer will gather information about the property from various public authorities and the seller's conveyancer.
- Once contracts have been signed and exchanged the parties may not withdraw from the agreement without penalty. The final stage of the process is completion - at this point the financial transaction is completed and ownership of the property changes hands.
- Many homes are bought and sold as part of a chain, and consequently there may be multiple buyers and sellers going through these processes at the same time.

The conveyancing process in Scotland differs from that in England and Wales.

### Concerns with the current process

There were over 1 million residential property transactions in England in 2018. Despite a large number of successful transactions, the consumer experience of buying and selling property in England is often criticised for not being as efficient, effective, or consumer-friendly as it could be. In fact, moving home is widely acknowledged to be among the most stressful of life experiences.

The key areas of concern to home movers and industry stakeholders have been identified as:

**The time taken to complete a transaction.** The home buying and selling process is complex and can take months to complete. The average time from offer to completion in England and Wales is thought to be between 12 to 14 weeks, whilst the time taken to complete a sale from initial listing of the property currently stands at approximately 19 weeks. Leasehold properties typically take two to three weeks longer to buy than an equivalent freehold property. Delays can lead to stress, additional costs for those involved and can increase the risk of gazumping and transactions failing.

**Transaction failures.** It is estimated that over a quarter (estimates vary from 25% to 33%) of all home buying transactions fail, and some 25% of buyers and sellers who experience a failed transaction incur costs of more than £1,000. The Government estimates that the total losses incurred by buyers and sellers through failed transactions amounts to hundreds of millions of pounds each year.

**Consumer inexperience.** Most home buyers and sellers are relatively inexperienced and unfamiliar with the conveyancing process. Whilst there is a wide range of information available in books, guides or on the internet to help consumers, it is not clear whether people know to seek it out, read it and act on it.

**Lack of transparency.** There is currently little comparative information available on the service levels provided by different conveyancers to enable consumers to make an informed choice. A further concern is the lack of transparency around the payment of 'referral fees' to estate agents for referring clients to conveyancers, surveyors and mortgage brokers.

**Weak regulation of estate agents.** Commentators have called for stronger enforcement of the existing regulatory framework for estate agents, and the introduction of minimum professional standards which would need to be met before an individual could operate as an estate agent. It is contended that this would help professionalise the industry, improve services and reassure consumers.

**Lack of digitisation.** Some parts of the home buying and selling process have been transformed by technology. However, there has been limited progress in other parts of the process, particularly in the official search and legal conveyance stages. Further technological developments could help make the process simpler and faster.

## Proposals to improve the home buying and selling process

The most recent attempt to reform the home buying and selling process was the introduction of **Home Information Packs (HIPs)** by the last Labour Government. HIPs provided property information 'upfront' and were intended to speed up the home buying process, lead to fewer sales falling through and reduce the opportunity for gazumping and gazundering. Following a phased implementation, HIPs were fully introduced by April 2009. However, they were widely criticised and suspended by the incoming Coalition Government in May 2010.

The Coalition Government supported a **voluntary, industry-led approach** to improving the home buying and selling process, believing that improvements would be driven by the market led development of innovative products. The Government also emphasised that buyers and sellers had the option to use contractual agreements to increase commitment to the transaction.

The Conservative Party Manifesto 2017 committed to "reform and modernise the home-buying process so it is more efficient and less costly". In October 2017, the Government launched a Call for Evidence seeking the views of industry and the public on how to improve the process.

The Government's [consultation response](#), published on 8 April 2018, concluded that there is **no 'silver bullet'** – no single fundamental change which will improve the process. Instead, the Government proposed **a number of smaller, incremental changes to the current system**, which when taken together are intended to make the process "quicker, cheaper and less stressful".

## 5 Improving the home buying and selling process in England

The consultation response sets out the Government's 'Plan of Action' to improve the home buying and selling process in England, including proposals to:

- **Introduce further estate agent regulation.** The Government will:
  - i) consult on creating a mandatory professional qualification for estate agents;
  - ii) strengthen enforcement of the existing regulatory framework for estate agents; and
  - iii) increase the transparency of referral fees.
- **Develop and publish 'How to Buy' and 'How to Sell' guides to ensure the public are better informed of the process.**
- **Reduce the time from offer to completion by:**
  - i) harnessing advances in technology;
  - ii) encouraging sellers to collect together relevant information in order to be 'sale ready';
  - iii) setting fixed time frames and maximum fees for the provision of leasehold information; and
  - iv) requiring local authorities to respond to search requests within 10 working days.
- **Work with industry to develop and pilot a standardised reservation agreement which can be used in any transaction.**

The Ministry of Housing, Communities and Local Government (MHCLG) plans to set up a stakeholder group to support implementation of the proposals.

Stakeholders have been broadly supportive of the Government's proposals to improve the home buying and selling process.

### Conveyancing in other countries

In many countries the home buying and selling process is quicker than in England, more property information is provided up front, buyers and sellers have greater certainty that the sale will go ahead, there are less transaction failures and chains of sales transactions are less common. However, the fees and taxes associated with buying a property in other countries may be more expensive.

The Scottish conveyancing system is different to that in England and Wales. Key differences include:

- Properties are often marketed and sold by solicitors, rather than estate agents.
- The seller must provide potential buyers with a 'Home Report' on their property, consisting of a survey/valuation, an energy report and a property questionnaire.
- Searches can be completed within as little as 24 hours as search companies operating in Scotland receive data feeds direct from the local authorities.
- Law Society of Scotland guidelines state that solicitors should not be involved in gazumping and gazundering.
- Where possible contracts (missives) are negotiated and agreed as soon as possible. Once concluded, the terms of the missives are legally binding.

Research by the Conveyancing Association, published in 2016, found that in Scotland transactions without a mortgage were capable of being completed within five working days.

# 1. The home buying and selling process - an overview

## 1.1 Number of property transactions

There were an estimated 1.01 million residential property transactions in England in 2018, based on provisional figures from HMRC.<sup>1</sup> This is slightly lower than the year before but up from a low point of 0.74 million in 2009.

According to the English Housing Survey (EHS), there were 14.8 million owner-occupying households in England in 2017-18. Of these, around 614,000 had moved within the last year. 52% of these households (around 319,000) were owner-occupiers in their previous home as well.<sup>2</sup>

The number of estimated movers in the EHS is lower than the number of transactions reported by HMRC. This is in part because HMRC's figures include second homes and buy-to-let properties. Additionally, the EHS estimate is based on a survey sample and may be an underestimate.

## 1.2 The home buying and selling process

A brief overview of the home buying and selling process in England and Wales is provided in the following sections (and illustrated in Figures 1 and 2).

The process is not mandated in detail by law; the law provides a broad framework in which the parties are free to decide how to shape their own transactions. However, in practice most transactions follow standard industry protocols and are completed through a private contract.<sup>3</sup>

The home buying and selling process is complex and multi-staged. In most cases buyers and sellers rely on advice and support from a range of professionals, including estate agents, conveyancers, surveyors, mortgage lenders and removal businesses. It should be also be borne in mind that most homes are bought and sold as part of a chain, and consequently there may be multiple buyers and sellers going through these processes at the same time.

The way in which houses are bought and sold is a devolved matter for the Scottish Parliament. The Scottish conveyancing process differs from that in England and Wales, and is outlined in section 5.1 of this paper. The regulation of estate agents is a reserved matter.

## 1.3 The role of estate agents

In England properties are generally marketed by independent estate agents at an advertised price. Prospective buyers often make an offer

There were over 1 million residential property transactions in England in 2018.

The home buying and selling process in Scotland differs from that in England and Wales.

<sup>1</sup> HMRC, [Number of property transactions completed in the UK with a value of £40,000 or above](#), January 2019

<sup>2</sup> [English Housing Survey Headline Report: 2017-18](#), January 2019

<sup>3</sup> [HC Deb \[Conveyancing\] 7 June 2016 c61W](#)

below the advertised price, sometimes significantly so in a slow market, but in a buoyant housing market prospective buyers are more likely to offer the asking price or higher.

## 1.4 Offers 'subject to contract'

Sellers accept offers 'subject to contract' and may not immediately remove properties from the market. This is particularly common where the buyers have not had a mortgage agreed or have a property to sell themselves which is not yet under offer. Agreements 'subject to contract' are not legally binding; either party can withdraw **without penalty** until the point at which contracts are exchanged. It can take quite a long time to reach this point so there is a risk of withdrawal by either party.

A legally binding agreement does not exist until contracts are signed and exchanged.

In a rising property market with high levels of demand other buyers may be tempted to make a higher offer. Where a seller accepts a higher offer the original buyer is 'gazumped' unless they can match the higher offer or better it. In some cases a buyer may lower their offer at the last minute, just before contracts are exchanged, potentially forcing a seller to accept rather than see the sale chain collapse – this practice is known as 'gazundering'.

## 1.5 Searches and preparing the contract for sale

Once an offer is accepted, the buyer may arrange a mortgage if required. Both parties will instruct a conveyancer (either a solicitor who specialises in the transfer of land or a licensed conveyancer) and begin the conveyancing process, the legal term for transfer of ownership of the home. Conveyancers play a critical role in the process. They gather and scrutinise complex information, ensuring buyers and lenders can purchase with confidence, and progress the transaction, managing the flow of information between one side and the other.

The only 'upfront' information that a seller is required to provide to a prospective buyer is an Energy Performance Certificate (EPC).

The legal basis on which the sale of a home in England and Wales takes place is '*caveat emptor*' (let the buyer beware). This means that the onus is on the buyer to make investigations about the property before exchanging contracts to purchase. Investigations normally consist of:

- **Inspection(s)** - buyers will generally inspect the property or have it inspected on their behalf.
- **A survey** - buyers will typically commission a survey of the physical condition of the property.
- **Enquiries of the seller** - the buyer's conveyancer will raise enquiries with the seller's conveyancer where necessary.

*Caveat emptor* is a Latin term that means 'let the buyer beware'. The legal principle places the onus on the buyer to find out if there are any physical defects or legal issues relating to the property.



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- **Searches** - the buyer's conveyancer will ensure the seller has the legal right to sell the property and will carry out or commission certain standard property 'searches'. These searches may include:
  - i) Local authority searches – for example, whether there are any charges or restrictions relating to the land or property and information relating to public highways, proposals for new roads, rail schemes or planning decisions that could affect the property.
  - ii) Checking the 'title register' and 'title plan' at the Land Registry.
  - iii) Environmental Search - to gather information about contaminated land at or around the property, landfill sites, former and current industry, detailed flooding predictions, radon gas hazard, ground stability issues etc.
  - iv) Optional and location specific searches – for example, mining searches.<sup>4</sup>
- **Additional checks are carried out where leasehold properties are involved**, such as ensuring that any ground rents and service charges are paid up to date.

The seller's conveyancer will obtain the deeds to the property and prepare the contract for sale.

### 1.6 Exchange and completion

Once contracts have been signed and exchanged the parties may not withdraw from the agreement without penalty. The final stage of the process is completion - at this point the financial transaction is completed and ownership of the property changes hands. In due course the new owner's details are registered with the [Land Registry](#).

The flowcharts overleaf provide an illustration of the home buying process for sellers and for buyers.

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<sup>4</sup> HomeOwners Alliance webpage: [Conveyancing process explained for buyers](#) [Accessed 19 February 2019]

Figure 1: The process for sellers<sup>5</sup>

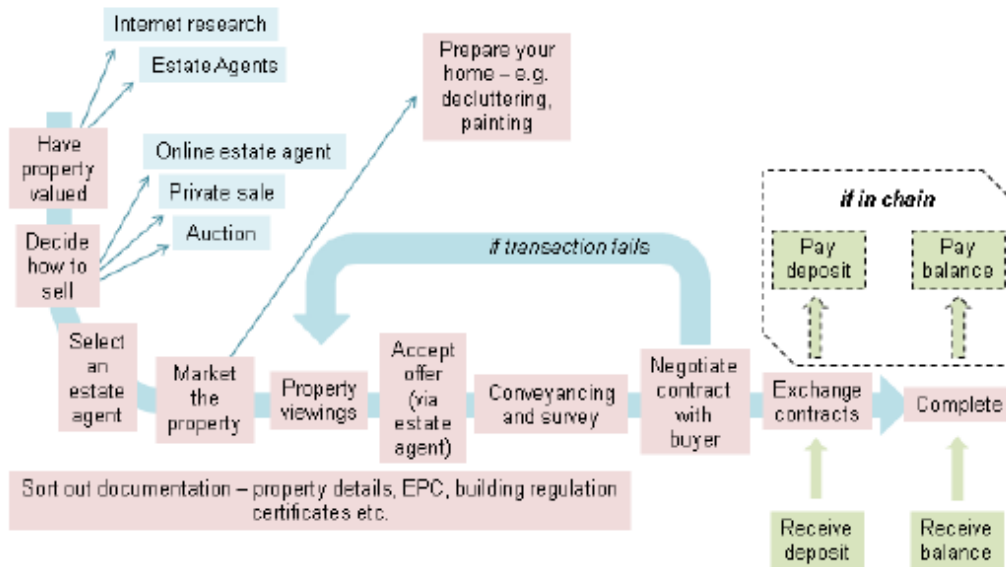
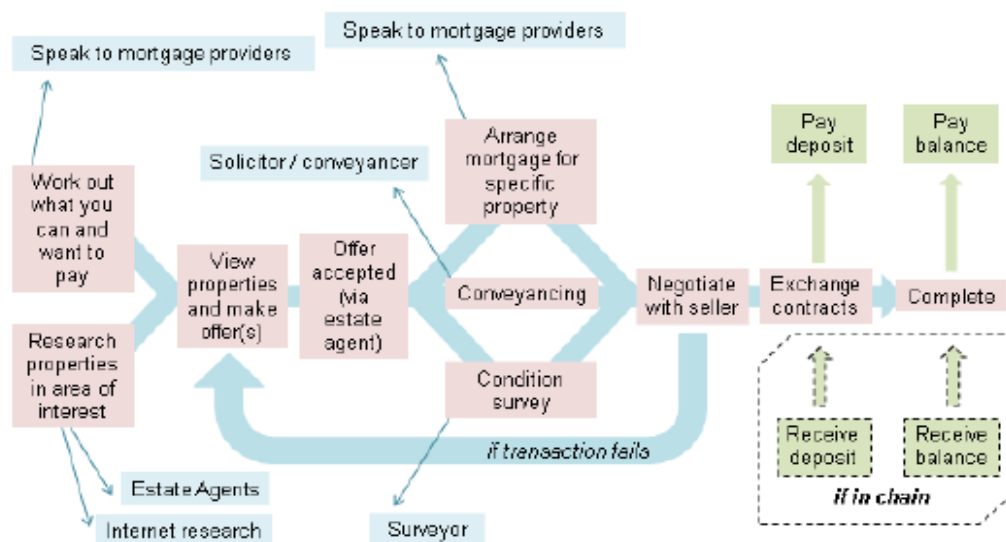


Figure 2: The process for buyers<sup>6</sup>



<sup>5</sup> DCLG, [Improving the home buying and selling process – Call for evidence](#), 22 October 2017, p17

<sup>6</sup> DCLG, [Improving the home buying and selling process – Call for evidence](#), 22 October 2017, p18

## 2. Concerns with the current process

Despite a large number of successful transactions, the consumer experience of buying and selling property in England is often criticised for not being as efficient, effective, or consumer-friendly as it could be. In fact, moving home is widely acknowledged to be among the most stressful of life experiences. A [Which?](#) survey in 2015 found that people find buying or selling a house more stressful than arranging care for an elderly relative, having a child, changing jobs and getting married.<sup>7</sup> Some of the key areas of concern identified by home movers and industry stakeholders are discussed below.

### 2.1 Time to complete

The home buying and selling process is not easy to navigate and can take months to complete. The average time from offer to completion in England and Wales is thought to be between 12 to 14 weeks,<sup>8</sup> whilst the time taken to complete a sale from initial listing of the property currently stands at approximately 19 weeks.<sup>9</sup> A study on the consumer experience of buying and selling homes in England and Wales, commissioned by the Department for Business, Energy and Industrial Strategy (BEIS) found that over half of buyers (59%) and sellers (57%) found the process of buying and selling a home took longer than they expected; around one in four found it *much* longer than expected.<sup>10</sup>

The only 'upfront' information that a seller is required to provide to a prospective buyer is an Energy Performance Certificate (EPC). As the home buying process is based on the caveat emptor principle, the buyer's conveyancer must typically raise a number of enquiries with both the seller and public authorities to gather information about the property and the surrounding area, and the buyer will usually commission a survey of the physical condition of the property. This 'due diligence' process is one of the key drivers of the length of time it takes to complete a sale.

A survey of homeowners, conducted by the Conveyancing Association, found that 95% of respondents felt that important information should be available to them prior to making an offer, such as whether the property was leasehold, whether consent was required to let or alter the property, or the amount of maintenance payable for shared facilities.<sup>11</sup>

The home buying and selling process is complex and can take months to complete; it currently takes an average of 19 weeks from listing a property to completing the sale.

The only 'upfront' information that a seller is required to provide to a prospective buyer is an Energy Performance Certificate.

<sup>7</sup> ['Moving house more stressful than having a child'](#), *Which? News*, 8 January 2016

<sup>8</sup> The Conveyancing Association, [Modernising the Home Moving Process](#), November 2016, p5

<sup>9</sup> RICS, [UK Residential Market Survey](#), November 2018

<sup>10</sup> Department for Business, Energy and Industrial Strategy, [Research on buying and selling homes – Research paper number BIS/283](#), 22 October 2017, p63

<sup>11</sup> The Conveyancing Association, [Responses to DCLG Call for Evidence](#), undated, p10 [Accessed 15 February 2019]

The [Law Society's Conveyancing Protocol](#) sets out 70 steps and procedures that should be followed to facilitate an efficient conveyancing process and completion. There are numerous points in the conveyancing process where delays can occur. For example, if a structural survey identifies problems the buyer may try to renegotiate the price to take account of the need for works, or the results of a search may give rise to the need for additional checks. Response times to search requests can vary between local authorities. Lengthy waits can add weeks to the time taken to buy and sell.

A single issue can delay the entire transaction or cause it to fall through completely. Sales chains are common in England (whereby property sellers are also buying a property from someone else at the same time). This means that difficulties and delays up or down the chain can have a knock-on effect – creating an additional layer of complexity.

Additional checks and enquiries are carried out where leasehold properties are involved, such as ensuring that any ground rent and service charges are paid up to date and confirming property management arrangements etc. Leasehold properties typically take two to three weeks longer to buy than an equivalent freehold property, and are more prone to delays, in part due to delays in receiving property information from the freeholder or managing agent.<sup>12</sup>

Delays in the home buying process can lead to stress and frustration for those involved and can increase the risk of transactions failing (discussed in section 2.2 below). BEIS research found that around one in seven of all buyers and sellers incurred additional costs because of delays in the process. Costs included paying for rented accommodation and putting possessions into storage and were estimated to be around £500-£750 on average.<sup>13</sup> Those experiencing delays tended to hold the other party's solicitor or licensed conveyancer responsible, with nearly half (47%) of buyers blaming the seller's solicitor and 58% of seller's blaming the buyer's solicitor.<sup>14</sup>

## 2.2 Transactions failures

The longer the home buying process takes between offer acceptance and completion, the more opportunity there is for buyers and sellers to change their minds or for circumstances to change, which can lead to people withdrawing from the sale. Furthermore, the fact that **no legally binding agreement exists until contracts are signed and exchanged** means that either party is free to withdraw from the sale, without a penalty, at any time before contract exchange. This means that a single buyer or seller withdrawing from a sale can result in a sales chain collapsing.

Consumer research commissioned by BEIS concluded that “the conveyancing period from offer acceptance to completion carried most

Chains of home sales and purchases are a common feature in England – creating an additional layer of complexity to the process.

Leasehold properties typically take longer to buy than equivalent freehold properties and are more prone to delays.

<sup>12</sup> MHCLG, [Improving the home buying and selling process – Summary of responses to the Call for Evidence and government response](#), 8 April 2018, para 20

<sup>13</sup> Ibid., p7

<sup>14</sup> Ibid., p8

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of the stress, frustration and uncertainty for both buyers and sellers, with low levels of trust between all parties".<sup>15</sup> The study found that 70% of buyers and 66% of sellers were concerned about whether the sale would complete following an offer being accepted.<sup>16</sup>

It is estimated that over a quarter (estimates vary from 25% to 33%) of all home buying transactions fail.<sup>17</sup>

A Which? survey of 2,000 homebuyers in February 2016 found that 28% of those surveyed had had a property purchase fall through after their offer was accepted. The reasons for these failed transactions included:

- the seller decided not to sell their home (27% of cases);
- buyers being unable to complete sales on their own homes (21%);
- buyers finding somewhere else to buy (21%); and
- people being 'gazumped' – losing the property due to the vendor accepting a higher offer from another buyer (21%).<sup>18</sup>

BEIS consumer research on failed transactions found that over half of *buyers* (56%) reported that they had incurred costs. Of those who incurred costs, the majority had to pay for a survey or valuation (74%), over half had paid a mortgage arrangement fee (57%) and a further 28% had incurred solicitors' fees.<sup>19</sup> 44% of the *sellers* who experienced transaction failure incurred wasted cost. Most commonly they had spent money on solicitors' fees or the valuation of a property they wanted to buy.<sup>20</sup> The average cost to the *buyer* for a failed transaction was estimated to be between £695 and £744, and the average cost to the *seller* was estimated to be between £582 and £740,<sup>21</sup> with approximately 25% of buyers and sellers who experienced failed transactions incurring costs of more than £1,000.<sup>22</sup> Given the total number of failed transactions, the Government estimates that this amounts to hundreds of millions of pounds spent on failed transactions each year.<sup>23</sup>

An earlier legal commitment to the transaction could increase consumer certainty in the process, and reduce the risk of gazumping, gazundering and transaction failure. There are a range of options already available to buyers and sellers to increase commitment to buying and selling (for example, lock-in/lock-out agreements, reservation contracts and cost

It is estimated that over a quarter (25%-33%) of all home buying transactions fail, and some 25% of buyers and sellers who experience a failed transaction incur costs of more than £1,000.

The Government estimates that the total losses incurred by buyers and sellers through failed transactions amounts to £100s of millions each year.

<sup>15</sup> BEIS, [Research on buying and selling homes: Research paper number BIS/283](#), 22 October 2017, p7

<sup>16</sup> Ibid., p41 & p43

<sup>17</sup> MHCLG, *Improving the homebuying and selling process*, presentation given at the Westminster Forum, London, 17 October 2018

<sup>18</sup> Which?, [Three in 10 property purchases fall through](#), 3 June 2016

<sup>19</sup> BEIS, [Research on buying and selling homes: Research paper number BIS/283](#), 22 October 2017, p72

<sup>20</sup> Ibid., p73

<sup>21</sup> DCLG, [Improving the home buying and selling process – Call for evidence](#), 22 October 2017, para 6

<sup>22</sup> BEIS, [Research on buying and selling homes: Research paper number BIS/283](#), 22 October 2017, p68

<sup>23</sup> DCLG, [Improving the home buying and selling process – Call for evidence](#), 22 October 2017, para 6

guarantee agreements). These options require the buyer and seller to make commitments to maintaining the transaction, subject to agreed conditions (e.g. a satisfactory survey or the buyer being able to secure a sufficient mortgage) and can introduce a financial penalty if either party backs out. The use of these options in England is not currently widespread. However, the [2018 Homeowners Survey](#), an annual study conducted by the HomeOwners Alliance, found that 65% of respondents supported the introduction of a reservation agreement requiring buyers and sellers to put down a non-refundable deposit to commit both sides earlier in the process.<sup>24</sup>

## 2.3 Consumer inexperience

In general, people buy and sell property infrequently. This means that most home buyers and sellers are relatively inexperienced and unfamiliar with the process. Around 25% of buyers and 20% of sellers are buying and selling homes for the first time.<sup>25</sup>

An Office of Fair Trading market study into home buying and selling found that “consumers are often ill-informed about the process of buying or selling a home and about the roles of the professionals involved”.<sup>26</sup>

Whilst there is a wide range of information available in books, guides or on the internet to help consumers, it is not clear whether people know to seek it out, read it and act on it.

Most home buyers and sellers are relatively inexperienced and unfamiliar with the conveyancing process.

## 2.4 Lack of transparency

When selecting a conveyancer, home buyers and sellers often rely on recommendations from friends and family, or from an estate agent. There is currently little comparative information available on the service levels provided by different conveyancers to enable consumers to make an informed choice.

In December 2016 the Competition and Markets Authority (CMA) published a report of its [market study into the supply of legal services in England and Wales](#).<sup>27</sup> The CMA concluded that, overall, competition in legal services for individual consumers and small businesses was not working well. In particular, there was not enough information available on price, quality and service to help those who need legal support choose the best option, and to ensure competition between providers.<sup>28</sup> The CMA made a number of recommendations, both to the Ministry of Justice and to the legal services regulators, to address the lack of

<sup>24</sup> [‘82% of UK adults support government plans for estate agent regulation’](#), *HomeOwners Alliance news release*, 9 April 2018

<sup>25</sup> *Ibid.*, para 22

<sup>26</sup> Office of Fair Trading, [Market Study Report: Home buying and selling](#), February 2010

<sup>27</sup> The study encompassed ‘legal services’ in a broad sense, including services that are subject to sector-specific regulation and those that are not, and services across a range of different legal areas such as conveyancing, wills and probate, immigration, family and employment law.

<sup>28</sup> Competition and Markets Authority, [Legal services market study: Final report](#), 15 December 2016

transparency and consumer understanding in the legal services sector. The [Government's response](#) welcomed the study and accepted many of the recommendations.

The lack of transparency around the payment of 'referral fees' is a further issue. In some cases, consumers may be guided by an estate agent towards using a certain conveyancer, solicitor, surveyor or mortgage broker, and the agent will receive a referral fee in exchange for making the introduction. The referral arrangement may sometimes offer genuine value to the customer.<sup>29</sup> However, there are concerns that these payments are not always disclosed to consumers, and that this practice may increase costs to consumers and hamper competition.

In December 2018 the Council for Licensed Conveyancers (CLC) (the conveyancing regulator) and the Solicitors Regulation Authority (SRA) implemented new rules to increase transparency and help home buyers make a more informed choice when buying a property:

All property lawyers will now have to display the following on their website:

- Cost information in a prominent place. Lawyers will be required to provide examples of their fees that cover a broad range of services and transaction types.
- Service information. This might include information on conveyancing timescales and links to third party feedback platforms.
- Regulatory information. You should be able to easily identify who regulates the firm you are hiring. For lawyers regulated by the CLC, this includes displaying the CLC secure badge in a prominent place.
- Complaints process. All lawyers will have to display details of their complaints process including access to the Legal Ombudsman and redress information.
- Referral details. While lawyers do not need to disclose specific details of referral arrangements on their website, they must say if they enter into such agreements and the average fee, or range of fees, they pay.<sup>30</sup>

Concerns have been raised about the lack of transparency around the payment of 'referral fees' to estate agents in return for recommending customers use a certain conveyancer, solicitor, surveyor or mortgage broker.

## 2.5 Weak regulation of estate agents

Estate agents are principally regulated by the [Estate Agents Act 1979](#) and the [Consumer Protection from Unfair Trading Regulations 2008](#). In addition, since 1 October 2008, all estate agents in the UK who engage in residential estate agency work are required to belong to an approved redress scheme dealing with complaints about the buying and selling of residential property. This is a requirement of the [Consumers, Estate Agents and Redress Act 2007](#). The National Trading Standards Estate Agency Team (NTSEAT) is responsible for enforcement, and has the

<sup>29</sup> The Conveyancing Association, [Responses to DCLG Call for Evidence](#), undated, p2 [Accessed 15 February 2019]

<sup>30</sup> 'New transparency rules arrive allowing homebuyers to compare conveyancing service and costs', *CLC News Release*, 6 December 2018. See also Solicitors Regulation Authority, [Transparency in price and service](#), updated 6 December 2018

power to issue warnings and banning orders to rogue agents, and approve and monitor customer redress schemes.

The [Commons Library briefing paper SN06900: Are estate agents regulated?](#) provides background information about the regulation of estate agents.

Many individual estate agents are professionally qualified and belong to a professional body, such as the Royal Institution of Chartered Surveyors (RICS). The National Association of Estate Agents (NAEA) also offers qualifications for members of the profession. However, estate agents are currently not required by law to be licensed or qualified.

Concerns have been raised in the past about some estate agents pursuing misleading and aggressive practices designed to close a deal.<sup>31</sup> The sector has also been criticised for the lack of transparency about estate agent fees and contracts.<sup>32</sup>

Research by the Homeowners Alliance in 2013 found only 20% of homeowners and aspiring homeowners trusted estate agents when buying or selling a home, a far lower level than for conveyancers, surveyors or mortgage lenders.<sup>33</sup> Nevertheless, BEIS consumer research found that 82% of buyers and 83% of sellers surveyed were satisfied with the service they received from estate agents.<sup>34</sup>

Commentators have expressed concern that enforcement of the existing regulatory framework for estate agents is weak. According to the Conveyancing Association:

The issue is that the redress schemes take over six months to hear a complaint and NTS [National Trading Standards] in particular are under resourced and unable to enforce the existing regulation. NTS issued just 11 prohibition notices last year and its goal is to double that this year, but without improved resourcing it cannot properly regulate the industry.<sup>35</sup>

There have also been calls to strengthen the regulation of estate agents by introducing minimum professional standards, which would need to be met before an individual could operate as an estate agent.<sup>36</sup> It is contended that this would help professionalise the industry, improve services and reassure consumers.<sup>37</sup> It would also align with Government plans to regulate letting and property management agents.<sup>38</sup>

Commentators have called for stronger enforcement of the existing regulatory framework for estate agents, and the introduction of minimum professional standards.

<sup>31</sup> BEIS, [Research on buying and selling homes: Research paper number BIS/283](#), 22 October 2017, p3

<sup>32</sup> HomeOwners Alliance, [Why the mystery?](#), 7 March 2014

<sup>33</sup> HomeOwners Alliance, [Connecting with the concerns of homeowners and aspiring homeowners](#), 2013, p22

<sup>34</sup> BEIS, [Research on buying and selling homes: Research paper number BIS/283](#), 22 October 2017, p57

<sup>35</sup> The Conveyancing Association, [Responses to DCLG Call for Evidence](#), undated, p2 [Accessed 15 February 2019]

<sup>36</sup> See for example: [‘RICS calls for compulsory qualifications for all agents’](#), *RICS press notice*, 3 May 2013

<sup>37</sup> MHCLG, [Improving the home buying and selling process – Summary of responses to the Call for Evidence and government response](#), 8 April 2018, para 9

<sup>38</sup> MHCLG, [Protecting consumers in the letting and managing agent market: government response](#), 1 April 2018



## 2.6 Lack of digitisation

Some parts of the home buying process have been transformed by technology: “Today, a prospective buyer can search through hundreds of properties for sale from the comfort of their living room, get real-time alerts when new properties come on the market direct to their mobile phone, and apply for their mortgage agreement in principle in minutes online”.<sup>39</sup>

However, there has been limited progress in other parts of the home buying process, particularly in the official search and legal conveyance stages, which can still involve receiving and reviewing paper documentation. Further technological developments, for example a digital land register, biometric ID verification and integrated case management systems based on real-time data could help make the conveyancing process simpler, faster and more transparent. Although it is also recognised that such developments may bring new risks and challenges, particularly around cybercrime and fraud.

The UK does not yet have a fully electronic land registration process. The [HM Land Registry Business Strategy 2017 to 2022](#) sets out plans to become a more digital and data-driven registration business:

We want to become the world’s leading land registry in using digital technology to make buying and selling property simpler and easier as well as providing an absolute guarantee of ownership.<sup>40</sup>

[Digital Street](#), HM Land Registry’s research and development project, is exploring how land registration might work in 2030. The project involves a number of technology strands, including one focused on improving the conveyancing process:

We will explore how a digital register might improve the conveyancing process by making transactions faster and more secure. The proof of concept digital register will link a home owner’s digital identity and the register, make identity verification more secure, improve fraud prevention and enable home owners to make simple changes to the register, such as a change of name, themselves.<sup>41</sup>

Technological developments have the potential to make the home buying and selling process simpler and faster.

<sup>39</sup> DCLG, [Improving the home buying and selling process – Call for evidence](#), 22 October 2017, para 4

<sup>40</sup> HM Land Registry, [HM Land Registry Business Strategy 2017 to 2022](#), 29 November 2017

<sup>41</sup> HM Land Registry, [HM Land Registry Business Strategy 2017 to 2022](#), 29 November 2017

## 3. Proposals to improve the home buying and selling process

### 3.1 The Labour Government and Home Information Packs

The most recent attempt to reform the home buying and selling process was initiated by the incoming Labour Government of 1997, which carried out a review to identify problem areas and develop solutions.<sup>42</sup>

The main problem identified by the Government-sponsored research at that time was that important information needed to inform buyers' decisions (such as information on the condition of the property) only become available *after* terms (including the price) had been negotiated and agreed. The proposed solution was to introduce Home Information Packs (HIPs). The idea behind HIPs was that the provision of information 'upfront' would speed up the home buying process, lead to fewer sales falling through and reduce the opportunity for gazumping or gazundering. The option of adopting the Scottish system of conveyancing (see section 5.1 of this paper) was rejected:

The Scottish system works well in Scotland where the volume of transactions is lower than in England and Wales. It is doubtful, however, whether it would be as effective if applied to more active housing markets in England and Wales where there would be a much higher incidence of failed bids and abortive costs. Also, there is a tradition in Scotland for sellers to move into temporary accommodation to take out bridging loans so that sales are not held up. It would be difficult and probably unpopular to adopt this tradition in England and Wales where it currently does not exist.<sup>43</sup>

Originally, HIPs were to consist of a pack of documents including standard searches, evidence of title, a Home Condition Report (HCR), an Energy Performance Certificate (EPC) and a copy of the lease (where the sale involved a leasehold property). Sellers were required to prepare a HIP prior to marketing a property. The documents in the HIP would have mostly been produced at some point in the conveyancing process, so the change involved bringing forward the point at which they were produced, as well as placing the onus for production on the seller. After a long gestation period and a phased implementation, HIPs were fully introduced in April 2009, although the Home Condition Report was made a voluntary rather than mandatory component of the HIP.

HIPs were widely criticised, particularly by the Conservative Party then in opposition. In 2009 the housing market was reacting to the global financial crisis and there were fears that the additional upfront cost to sellers might deter them from marketing their properties and that delays in obtaining searches would slow down even further the rate at which

Home Information Packs (HIPs) provided property information 'upfront' and were intended to speed up the home buying process, lead to fewer sales falling through and reduce the opportunity for gazumping and gazundering.

Following a phased implementation, HIPs were fully introduced by April 2009. However, they were widely criticised and suspended by the incoming Coalition Government in May 2010.

<sup>42</sup> Lord Chancellor's Department, Department of Trade and Industry and Department of the Environment, Transport and the Regions (DETR), *The Key to Easier Home Buying and Selling*, 1998

<sup>43</sup> Ibid.

properties were coming on to the market. There were also concerns about the enforcement of the quality of HIPs. The incoming Coalition Government acted quickly to suspend the requirement to have a HIP<sup>44</sup> and subsequently repealed the legislative basis for them via the *Localism Act 2011*.

More information about the introduction of HIPs can be found in the House of Commons Library briefing paper [Home Information Packs: a short history](#) (RP10/69).

### 3.2 Office of Fair Trading (OFT) market study of home buying and selling – 2010

In 2009 the Office of Fair Trading (OFT) initiated a market study of home buying and selling services in the UK. The [OFT's study](#),<sup>45</sup> published on 18 February 2010, found that the housing market was dominated by traditional estate agents with weak competition between them on price. OFT's key recommendations included:

- Update legislation to encourage new business models and allow new entrants into the market, thereby providing greater choice for consumers and tackling the lack of price competition.
- Improve the enforcement of current regulations for a more rapid, prioritised response to complaints about estate agents which raise serious concerns.
- Consider whether the potential for conflicts of interest arising from fees received by estate agents for referring buyers to providers of ancillary services (such as mortgage advice, surveys, and conveyancing) should be removed, including a ban on such payments.
- Encourage consumers to negotiate on commission fees paid to estate agents and consider using alternatives to traditional estate agents.<sup>46</sup>

The [Government's response to the OFT study](#) addressed some of the detailed recommendations and confirmed that it had no plans to reform the home buying and selling process at that time:

Although the UK Government currently has no plans for further reform of the home buying and selling process in England and Wales, we do recognise that people will continue to have ideas as to how the process could be improved. We are supportive of a voluntary industry led approach to improving the consumer experience and believe that the key driver for this will be the market led development of innovative products, which consumers

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<sup>44</sup> HIPs were suspended on 21 May 2010.

<sup>45</sup> Office of Fair Trading, [Home buying and selling: A market study](#), OFT1186, 18 February 2010

<sup>46</sup> ['More innovation needed in home buying and selling market, OFT finds'](#) *OFT Press Release*, 18 February 2010

find useful and want to purchase. We are also keen to see the take up of e-conveyancing and the innovative use of technology.<sup>47</sup>

### 3.3 Cost guarantees and other contractual arrangements

In July 2012 the Housing Minister, then Grant Shapps, reiterated that the Government had “no plans for reform in this area at the present time” and emphasised that buyers and sellers were already able to choose from a range of options to increase commitment to buying and selling. Examples include: lock-in/lock-out agreements, reservation contracts, and cost guarantee agreements. These options require the buyer and seller to commit to maintaining the transaction, subject to agreed conditions (such as a satisfactory survey or the buyer being able to obtain a mortgage), and can introduce a financial penalty if either party backs out:

**Asked by:** Gordon Henderson

To ask the Secretary of State for Communities and Local Government whether he plans to take steps to mitigate the adverse effects of the practice of gazumping in the housing market.

**Answering member:** Grant Shapps, Department of Communities and Local Government

Homebuyers and sellers in England and Wales are free to choose from a range of options, including some which give more certainty that their transaction will be completed. These include ‘lock-out’ agreements, where the seller enters a binding agreement not to accept another offer within a certain period; ‘option to purchase’ where the seller grants the buyer a binding option to purchase the property at the agreed price within a set timescale; ‘conditional contracts’, where buyer and seller enter into a contract as soon as terms have been agreed, subject to certain conditions being satisfied; or ‘costs guarantee’, where both buyer and seller agree to pay the other side’s costs, if they withdraw from the transaction.

Given the flexibility of the present system, we have no plans for reform in this area at the present time...<sup>48</sup>

The contractual arrangements mentioned above were again referred to in response to a Parliamentary Question in July 2014:

**Asked by:** Daniel Kawczynski

To ask the Secretary of State for Business, Innovations and Skills what steps he is taking to encourage estate agents to notify buyers and sellers of the cost guarantee and other options available to them to prevent the practice of gazumping.

**Answering member:** Jo Swinson, Department for Business, Innovation and Skills

There are many different contractual arrangements buyers and sellers of property can enter to help manage risks and uncertainty in the process. They all entail different levels of risk, costs and

Contractual arrangements can be used to increase commitment between buyers and sellers in the transaction, which could reduce the risk of gazumping and gazundering and the number of transaction failures. However, the use of these agreements is not currently widespread.

<sup>47</sup> Department for Business, Innovation and Skills, [Government Response to the Office of Fair Trading’s \(OFT\) Market Study on home buying and selling](#), 15 July 2011

<sup>48</sup> HC Deb 5 July 2012 c743W

benefits to both parties. The Government supports free, independent advice and guidance for consumers, through its funding of Citizen's Advice, across a wide range of issues. However, ultimately matters such as conveyancing contracts should be discussed with a buyer or seller's solicitor who can advise on the best approach an individual could take, should they wish to do so, according to their circumstances.<sup>49</sup>

Conveyancing contracts to increase commitment between parties may be helpful in certain circumstances but they are not without their problems:

### Limitations of conveyancing contractual arrangements

- the buyer has to get the seller to agree to enter into one of these arrangements but in a rising market there will be little incentive for the seller to do so.
- the buyer may not want to commit to a specific price before having carried out a survey. In some cases a survey may identify issues resulting in lenders restricting the sum they will lend (i.e. valuing the property at less than the agreed sale price). Conditions can be added to the agreement such as subject to a 'satisfactory survey' but they can be difficult to define; 'satisfactory' would be open to interpretation by a court.
- if a contract is breached the most likely award the court is likely to make is damages for lost expenses which the other party has incurred, or as stipulated in the contract. This does not enable the buyer to buy the house at the price originally offered and accepted. In a very buoyant market it may still be advantageous for the seller to accept a higher offer and pay damages to the original buyer.
- all the options involve an additional set-up cost.

## 3.4 Conservative Government proposals

In November 2015 HM Treasury published [A better deal: boosting competition to bring down bills for families and firms](#), which set out the Government's intention to publish a call for evidence on the home buying process:

### Injecting innovation into the process of home buying

**2.18** The Government wants to inject innovation into the process of home buying, ensuring it is modernised and provides consumers with different – and potentially quicker, simpler and cheaper – ways to buy and sell a home. Encouraging new business models (for example, online-only estate agents) is key to enhancing price competition in the real estate sector, but these have yet to penetrate the market.

**2.19** In addition, emerging findings from Government research suggest that consumers incur costs of around £270 million each year when their transactions fall through and they have already spent money on legal fees and surveys, and many more sales are subject to costly delays. Similar issues can affect businesses trying to buy or sell commercial property – the UK ranks 45th for registering property in the World Bank's *Doing Business* index<sup>50</sup>, and improving performance will help unlock additional economic growth.

**2.20** The Government wants to consider and address the way the real estate and conveyancing markets have developed around the

<sup>49</sup> HC Deb 14 July 2014 c538W

<sup>50</sup> *Doing Business Economy Rankings*, World Bank Group press release, June 2015

existing regulatory frameworks, encourage greater innovation in the conveyancing sector and make the legal process more transparent and efficient. The Government will therefore publish a call for evidence in the New Year on home buying, exploring options to deliver better value and make the experience of buying a home more consumer-friendly.<sup>51</sup>

In a [Westminster Hall debate on Conveyancing on 7 June 2016](#), the Parliamentary Under-Secretary of State for Justice, then Dominic Raab, acknowledged some of the problems with the conveyancing system in England and reiterated the Government's intention to explore "options to modernise the process and provide consumers with different and potentially quicker simpler, cheaper and more effective ways to buy and sell a home".<sup>52</sup> The [Conservative Party Manifesto 2017](#) similarly committed to "reform and modernise the home-buying process so it is more efficient and less costly".<sup>53</sup>

The Conservative Party Manifesto 2017 committed to "reform and modernise the home-buying process so it is more efficient and less costly".

On 22 October 2017 the Ministry of Housing, Communities and Local Government (MHCLG) launched a [Call for Evidence](#), seeking the views of industry and the public on how the home buying and selling process could be improved.<sup>54</sup> The consultation covered the whole process, from finding a home, to purchase, to moving in. A Department for Business, Energy and Industrial Strategy (BEIS) [research report on the consumer experience of buying and selling homes](#) was published at the same time.<sup>55</sup> The Call for Evidence closed on 17 December 2017. MHCLG received 273 organisational responses and 932 responses from members of the public.<sup>56</sup>

The Government published its [consultation response](#) on 8 April 2018.<sup>57</sup> The overarching conclusion was that there is **no 'silver bullet'** – no one single change which will improve the home-buying process. Instead, the Government has proposed **a number of smaller, incremental changes**, which when taken together are intended to improve the system and make it "quicker, cheaper and less stressful".<sup>58</sup>

Following a Call for Evidence, the Government announced, in April 2018, a wide range of measures which when taken together are intended to make the home buying and selling process "quicker, cheaper and less stressful".

The Government's proposals focus on three key areas for improvement:

- **a better consumer experience;**
- **reducing time from offer to completion; and**
- **reducing failed transactions.**

<sup>51</sup> [HM Treasury, The Rt Hon George Osborne MP and Department for Business, Innovation & Skills, \*A better deal: boosting competition to bring down bills for families and firms\*, 30 November 2015](#)

<sup>52</sup> [HC Deb 7 June 2016 cc62-63WH](#)

<sup>53</sup> [Forward, Together: Our Plan for a Stronger Britain and a Prosperous Future – The Conservative and Unionist Party Manifesto](#), May 2017, p59

<sup>54</sup> DCLG, [Improving the home buying and selling process – Call for evidence](#), 22 October 2017

<sup>55</sup> BEIS, [Research on Buying and Selling Homes: Research paper number BIS/283](#), 22 October 2017

<sup>56</sup> MHCLG, [Improving the home buying and selling process: Summary of responses to the call for Evidence and government response](#), 8 April 2018, para 3

<sup>57</sup> MHCLG, [Improving the home buying and selling process: Summary of responses to the call for Evidence and government response](#), 8 April 2018

<sup>58</sup> MHCLG, [Improving the home buying and selling process: Summary of responses to the call for Evidence and government response](#), 8 April 2018, Ministerial Foreword

The proposals are summarised below, more detail is provided in the [consultation response](#) document. **The proposals relate to England only, except for those concerning estate agents, which relate to Great Britain.**

MHCLG also plans to set up a stakeholder group to support implementation of the proposals.<sup>59</sup>

The Government is concurrently consulting on and developing policy in a number of related areas including:

- [Tackling unfair practices in the leasehold market](#);<sup>60</sup>
- [Strengthening consumer redress in housing](#); and
- [Protecting consumers in the letting and managing agent market](#).

A stakeholder group will support implementation of the Government's proposals for improving the home buying and selling process.

### A better consumer experience

#### i) Further estate agent regulation

The Government proposes to:

- launch a consultation on creating **a mandatory professional qualification for estate agents**; and
- work with the National Trading Standards Estate Agency Team to **strengthen enforcement of the existing regulatory framework for estate agents**, with a focus on ensuring all agents comply with consumer protection regulations.

The regulation of estate agents is reserved and so proposals concerning estate agents relate to Great Britain. The UK Government will discuss the relevant proposals with the Scottish and Welsh Governments.

#### ii) Transparency of referral fees

Referral fees are paid by conveyancers or mortgage brokers to estate agents in exchange for recommending business to them. The Government proposes to:

- work with industry to **standardise the presentation of referral fees and ensure that customers are made aware of any potential referral fee before they make a decision whether to purchase**;
- task the National Trading Standards Estate Agency Team to **proactively monitor the disclosure of referral fees**; and
- look more closely at the **case for banning referral fees**, particularly for new build properties.

<sup>59</sup> MHCLG, [Improving the home buying and selling process: Summary of responses to the call for Evidence and government response](#), 8 April 2018, Ministerial Foreword

<sup>60</sup> The Commons Library briefing paper on [Leasehold and commonhold reform](#) (CBP08047) provides further information.

### iii) Information for customers

The Government will:

- develop and publish '**How to Buy**' and '**How to Sell**' guides to ensure customers are better informed of the process;
- **consider how the guide is distributed**, for example making it a standardised part of estate agency engagement in the same way the 'How to Rent' guide is with letting agents; and
- work with industry and consumer groups to develop **more transparent data, standard metrics, kite marks and quality standards** to help customers choose a conveyancer.

### iv) Moving day

The Government will work with removal firms, conveyancers and lenders to see how the process around the **release of funds on moving day can be improved**.

## Reducing time from offer to completion

The Government recognises that a quicker process would reduce stress for consumers and the number of failed transactions. It wants to "improve and redesign the process so it takes weeks rather than months".<sup>61</sup>

### i) Harnessing advances in technology

The Government wants the process to be enabled by a wide range of technological improvements and to this end will:

- establish a **technology working group** to engage users, industry and partners such as HM Land Registry to better understand user needs for new digital technology and stimulate innovation;
- task the group to prioritise work on **digital signatures**, improving and streamlining **ID verification** processes, and promoting the wider adoption of **e-conveyancing**; and
- work with innovators to **explore routes to market for technological solutions**.

### ii) More information up front

In the long term, the Government believes that most of the information consumers need to know about a property should be available when the property is marketed, for example through the development of a '**property passport**'.

However, in the short to medium term the Government will use its new 'How to Sell' guide to encourage sellers to collect together relevant information (e.g. planning permissions, certificates for works done, previous searches) in order to be '**sale ready**'.

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<sup>61</sup> MHCLG, [Improving the home buying and selling process: Summary of responses to the call for Evidence and government response](#), 8 April 2018, para 17



### iii) Earlier contact with freeholders

To help speed up the process for buying a leasehold property, the Government proposes to:

- **set fixed time frames and maximum fees for the provision of leasehold information**, potentially with a statutory underpinning, and **encourage managing agents to make this information available electronically to enable instant access**;
- work with industry to **standardise the leasehold information form**; and
- use the **'How to Sell' guide** to encourage sellers to have early contact with their freeholder.

In October 2018 the Government published [Implementing reforms to the leasehold system in England: A consultation](#). Amongst other things, the paper seeks views on what should be the appropriate time period and level of fees for the provision of leasehold information when homes are sold. The Government is currently analysing the consultation feedback.<sup>62</sup>

### iv) Speeding up local authority searches

To help speed up the response times to local authority search requests, the Government will:

- write to all local authorities to set an expectation that **they should respond to search requests within 10 working days** and allow timely access for external search agents; and
- take **action against authorities if they fail to meet these expected performance levels**.

The Land Registry is also working with local authorities to create a national local land charges service,<sup>63</sup> which is expected to speed up searches, reduce costs and eliminate regional variations in practice.<sup>64</sup>

### v) Getting a Decision in Principle

A Decision in Principle is a certificate from a mortgage lender setting out how much money they will lend to a buyer. The Government will make it clear in the new 'How to Buy' guide that **buyers should seek a Decision in Principle early** in the process.

## Reducing failed transactions

Reservation agreements are contracts which increase commitment between buyers and sellers earlier in the process, providing more certainty and reducing the risk of gazumping. These agreements are already used in some high value transactions but their use is not currently widespread. However, BEIS research, supported by the

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<sup>62</sup> MHCLG, [Implementing reforms to the leasehold system in England: A consultation](#), 15 October 2018

<sup>63</sup> Most local land charges are restrictions or prohibitions on the use of the property. Local land charges searches are normally required in the property-buying process.

<sup>64</sup> HM Land Registry, [Local Land Charges Programme](#), 21 December 2018

responses to the Call for Evidence, showed that buyers and sellers would be willing to use them.<sup>65</sup>

The Government wants to encourage greater use of reservation agreements and will:

- work with industry to **develop a short standardised reservation agreement which can be used in any transaction**;
- commission some **behavioural insight research** in order to consider ways to encourage consumers to adopt these agreements; and
- **pilot these agreements** with the aim of making them a standard part of the process.

### Implementation update – December 2018

In a Westminster Hall debate on [Protection for Homebuyers on 13 December 2018](#) the Parliamentary Under-Secretary of State for Housing, Communities and Local Government, Heather Wheeler, updated Members on progress with implementing the Government's proposals:

We have already started work. We have created a new working group focusing on the regulation of property agents, chaired by Lord Best. We have begun working with industry and the National Trading Standards estate agency team to develop guidance on making referral fees more transparent and to look at the case for banning them. We have also doubled the funding available to that team. We have written to all local authorities reminding them of the Government's ambition to have a property search request completed within 10 working days. We have consulted on implementing reforms to the leasehold system, seeking views on fixed timeframes and maximum fees for freeholders and managing agents to provide leasehold information.

We have held workshops with industry to develop detailed and thorough how-to-buy and how-to-sell guides to inform consumers, to be published in 2019. We have started work with industry and consumers to make conveyancing data more transparent so that buyers and sellers can make a more informed choice and we have worked with industry to develop a standardised reservation agreement. We will commission behavioural insight analysis to support its implementation; it will increase commitment between buyers and sellers much earlier in the process. Together, our reforms will create a much better process, which guides buyers and sellers and gives them the information they need at the time they need it, allowing them to make the biggest purchase of their lives with confidence.<sup>66</sup>

The Minister also confirmed that the MHCLG Secretary of State had written to the Law Society and the Solicitors Regulation Authority, in the context of leasehold reform, with regards to concerns about potential

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<sup>65</sup> MHCLG, [Improving the home buying and selling process: Summary of responses to the call for Evidence and government response](#), 8 April 2018, para 24

<sup>66</sup> [HC Deb 13 December 2018 c205WH](#)

conflicts of interest arising when developers require new home purchasers to use specific conveyancers/solicitors.<sup>67</sup>

## 4. Commentary

### 4.1 The Conveyancing Association white paper

In November 2016 the Conveyancing Association published a white paper - [Modernising the Home Moving Process](#) - following consultation with consumer groups and stakeholders across the industry. The paper considered the Association's own research of the UK's home buying process and compared this with the processes in other countries including the USA, Australia and Denmark.

The paper identified the main issues with the home buying process in England and Wales as:

- a lack of transparency;
- a lack of certainty; and
- delay due to points of constraint in the process.

The paper set out a 10 point strategic plan, and made the following recommendations to improve the home buying process, in particular by creating certainty earlier in the process:<sup>68</sup>

#### **Modernising the Home Moving Process:**

- Centralise the identity verification of the parties to reduce the risk of fraud and money laundering.
- Collate the Property Information and Title Information on the marketing of a property.
- Require a legal commitment on offer with a five working day cooling-off period, either through a reservation agreement or conditional contract.
- Require completion monies to be sent through the day before completion.
- Amend the Common hold & Leasehold Reform Act 2002 to resolve the unreasonable cost and delay now associated with the leasehold sales process.
- Reduce additional enquiries through artificial intelligence during the collection of the property information.
- Review the CON290 and R to create separate relevant searches to satisfy lender's and buyer's needs.
- Monitor and resource the performance of local authorities.
- Provide a reliable lending decision-in-principle based on a 'hard' credit report without impacting on the applicant's credit score.
- Review the Council of Mortgage Lenders' (CML) Handbook<sup>69</sup> to remove anomalies and ambiguous entries which generate post-valuation enquiries.
- Review the statements within valuation reports to anticipate and avoid post-valuation queries.

<sup>67</sup> Ibid. c202WH

<sup>68</sup> The Conveyancing Association, [Conveyancing Association offers range of house purchase process solutions in White Paper](#), 14 November 2016.

<sup>69</sup> From 1 July 2017 known as the "UK Finance Mortgage Lenders' Handbook" ('the Handbook')

- Provide a secure portal for communication to protect conveyancers, estate agents and the home mover from fraud.

## 4.2 Stakeholder responses to the Government's proposals

Stakeholders have been broadly supportive of the [Government's proposals](#), published on 8 April 2018, to improve the home buying and selling process in England.

The Conveyancing Association welcomed the Government's consultation response, but said that it would like to see more of the proposed measures made mandatory:

If we are being brutally honest then we would have preferred a larger degree of mandation particularly around, for example, providing certainty on completion with, for example, the use of our own Conveyancer's Code for Completion. That said it is very positive to see the Government referencing the need to improve completion, saying it will work with removal firms, conveyancers and lenders to see how it can improve the release of funds process. Also, in an area like cutting down on gazumping and the number of failed transactions we would very much have liked to have seen mandation on the seller to provide vital information prior to viewing the property.

'Encouraging' sellers is simply not enough. There are obvious benefits to ensuring that the information is collated prior to sale, not least because if it is all available at the point-of-sale there is very much less opportunity for the transaction to fall through. The estate agents we have asked say the biggest reason for fall-throughs is the frustration and stress caused by the delays in obtaining information and dealing with enquiries. Home movers simply give up. Our survey of home movers showed that no more than 2% believed they had received sufficient information prior to offer.<sup>70</sup>

Mark Hayward, the Chief Executive of [NAEA Propertymark](#), which represents estate agents, welcomed the commitment to further regulation:

We have been campaigning for a more professional estate agent market for years, and are really pleased the Government is committing to this. For too long, unprofessional agents with no qualifications have been able to operate in the sector, and advise homeowners as they undertake the most important purchases and sales of their lives. Our research has found that the process of buying a home is more stressful than starting a new job, undertaking home renovations or planning a wedding, so it's important that agents are well-informed and professional, to make the process as easy and stress-free as possible.

Enforcing compulsory qualifications will result in a fairer industry not only for consumers, but for the professional agents who have

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<sup>70</sup> Conveyancing Association, [Conveyancing Association welcome Government's 'Improving the home buying and selling process' Call for Evidence response](#), 10 April 2018

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undertaken qualifications in order to deliver the highest standards every day.<sup>71</sup>

The [2018 Homeowners Survey](#), an annual study conducted by the HomeOwners Alliance and BLP Insurance and polled by YouGov, to examine the concerns, views, and issues affecting British homeowners and aspiring homeowners, found broad support for some of the Government's proposals:

- 82% of respondents supported the idea of a government-backed license requiring estate agents to pass standardised tests before being able to practice;
- 80% of respondents were in favour of buyers being required to prove they have necessary funds to buy the property before putting in an offer;
- 65% of respondents supported the introduction of a reservation agreement requiring buyers and sellers to put down a non-refundable deposit to commit both sides earlier in the process.

Commenting on the findings, the Chief Executive of HomeOwners Alliance, Paula Higgins, said:

These figures mirror what we hear repeatedly from our members. Estate agents are an essential part of the home buying and selling process, but unfortunately, a number of those operating within the sector have a cavalier approach when it comes to good practice. Sellers are trusting agents with their most expensive asset, and too many are receiving shoddy service. By professionalising the industry, the government will give buyers and sellers greater peace of mind, and better practice.

It's no surprise that the public support the idea of a reservation agreement – something we have been campaigning for tirelessly. An agreement between both parties should help to eliminate time wasters and prevent the heartache – and cost – caused by gazumping and gazundering. The government's willingness to trial this idea shows that they are listening to the consumer and not the vested interests of the property industry who seem to think the current system is working just fine.<sup>72</sup>

[The Law Society](#), the independent professional body for solicitors, agrees that improvements could be made to the home buying process and considers that the focus of these should be "to reduce wasted costs and delay, to promote trust between buyers and sellers and to reduce the failure rate of transactions".<sup>73</sup>

[UK Finance](#) (formerly the Council of Mortgage Lenders) emphasised the need to take a holistic view of the process and made the following key points:

- There is already a very strong focus on customer experience and efficiency in the mortgage sector, which is driving

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<sup>71</sup> ['A higher professional standard'](#), NAEA Propertymark news release, 8 April 2018

<sup>72</sup> ['82% of UK adults support government plans for estate agent regulation'](#), HomeOwners Alliance news release, 9 April 2018

<sup>73</sup> The Law Society, [Improving the home buying and selling process - Law Society response](#), 20 December 2017

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...
- 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.<sup>74</sup>

The [Institute of Residential Property Management \(IRPM\)](#) – has emphasised the importance of better enforcement of existing regulations and legislation in the sector, and the provision of information (in particular key data for leasehold properties) earlier in the process to consumers.<sup>75</sup>

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<sup>74</sup> UK Finance, [Improving the home buying and selling process](#), 15 December 2017, p1

<sup>75</sup> Institute of Residential Property Management (IRPM), [Improving the home buying and selling process - Call for Evidence](#), December 2017

## 5. Conveyancing in other countries

In many countries the home buying and selling process is quicker than in England, more property information is provided up front, buyers and sellers have greater certainty that the sale will go ahead, there are less transaction failures and chains of sales transactions are less common. However, the fees and taxes associated with buying a property in other countries may be more expensive.<sup>76</sup>

The Conveyancing Association white paper - [Modernising the Home Moving Process](#) (November 2016) - compared the home buying process in England with the processes in **Scotland, the USA, Australia and Denmark**. The research found that average transaction times in the USA were four to six weeks, compared to 12 to 14 weeks in England. In Scotland transactions without a mortgage were routinely capable of being completed within five working days. In caveat emptor States in Australia only 12% of sales fell through compared to around 30% in England.<sup>77,78</sup>

### 5.1 Scotland

The Scottish conveyancing system is different to that in England and Wales. Key differences include:

- Properties are often marketed and sold by solicitors, rather than estate agents.
- The seller must provide potential buyers with a 'Home Report' on their property, consisting of a survey/valuation, an energy report and a property questionnaire.
- Searches can be completed within as little as 24 hours as the search companies operating in Scotland receive data feeds direct from the local authorities.<sup>79</sup>
- Law Society of Scotland guidelines state that solicitors should not be involved in gazumping and gazundering.
- Where possible contracts (missives) are negotiated and agreed as soon as possible. Once concluded, the terms of the missives are legally binding.

The home buying and selling process in Scotland is explained in more detail below.

#### The role of solicitors

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<sup>76</sup> DCLG, [Improving the home buying and selling process – Call for evidence](#), 22 October 2017, p20, para 43

<sup>77</sup> The Conveyancing Association, [Modernising the Home Moving Process](#), November 2016

<sup>78</sup> In some countries conveyancing transactions are underpinned by the principle of 'caveat venditor' – where the onus is on the seller to disclose any defects or legal issues relating to the property.

<sup>79</sup> Ibid., p6, point 3

Most residential conveyancing firms of solicitors in Scotland have an estate agency department. Consequently, a key feature of the Scottish system is that often it is solicitors' firms, not independent estate agents, who market properties.<sup>80</sup>

## Home Report requirement

With a few exceptions (including new builds) residential properties in Scotland must be marketed with a 'Home Report' provided by the seller. This comprises:

- a survey of the property, which is more than a mere valuation of the property but which falls far short of a full structural survey;
- an energy report completed by the surveyor relating to the energy efficiency of the property; and
- a property questionnaire completed by the seller, which contains additional information about the property.

Additional information about the Home Report can be found on the [Scottish Government's website](#).<sup>81</sup>

## Searches

At the start of the sale process, typically the selling firm will also order two searches on behalf of their client.

The first is a legal report disclosing, among other things: 1) who owns property; and 2) whether there are any legal proceedings against the seller relating to unpaid debts. This report will either be ordered from [Registers of Scotland](#), which maintains many of Scotland's public registers relating to property and individuals, or a private search company.

The second report is a Property Enquiry Certificate (PEC) which provides information on matters which are within the control of local authorities (e.g. planning, building control, roads and statutory notices). This report can either be prepared by the local authority or a private search company. As noted above, short turnaround times for PECs are the norm.

Both these reports are used to negotiate the contract (a process described in more detail below) and then are updated at a later stage of the sale transaction. This update means final versions can be passed to the purchaser, as is usually required under the terms of the contract.

## Marketing of properties: the 'offers over' and 'fixed priced' system

Properties are either marketed according to the 'offers over' system or at 'fixed price'. In good market conditions, the 'offers over' system predominates; if market conditions are less favourable marketing at

<sup>80</sup> An exception to the general rule is that high-value properties (typically defined as £1m + in the Scottish market) are usually marketed through non-solicitor estate agency firms such as Savills, Retties etc. Independent estate agents also appear to have made some inroads into the Scottish property market in general in recent years.

<sup>81</sup> <https://www.mygov.scot/buying-a-home/home-report/> [Accessed on 13 Feb 2019]



'fixed price' is much more common. 'Fixed price' is also used in good market conditions where the seller is particularly keen for a quick sale.

#### **The 'offers over' system**

As its name suggests, with the 'offers over' system the property is marketed at offers over a specified price. In good market conditions properties can go for 20-30% above the specified price, particularly in relatively affluent areas.

Potential bidders are asked to 'note interest', simply by way of a phone call, via their solicitors (or estate agents). This means that a 'closing date' will not be set without those bidders being notified. When the seller (on the advice of his or her solicitor or estate agent) thinks the property has attracted sufficient interest a 'closing date' is set and bidders have until a specified time on that day to submit a blind bid for the property via the firm acting for them.

Assuming there is at least one bidder, the property is withdrawn from the market on the closing date. This is not a legal requirement but a very strong convention adhered to by the residential conveyancing firms in Scotland.<sup>82</sup>

Once the closing date has passed negotiations begin to conclude the contract for the sale of the property with the successful bidder (see below).

#### **The 'fixed price' system**

With the fixed price system the property is marketed at a stated price and the first person to offer that price in the course of the marketing process becomes the successful party with whom contract negotiations will begin.

Again, as a matter of good practice amongst residential conveyancing firms, the property is typically withdrawn from the market on the day an offer is received for the property at the price stated in the marketing material.

### **Negotiating the contract**

The legally binding contract for the sale of property in Scotland takes the form of a series of letters known as 'missives'. The letters are submitted and signed by the seller's and purchaser's solicitors, acting as agents for the respective parties.

An offer is submitted at the time of the bid for the property. If the seller decides to accept the offer their solicitor will send a letter called a 'qualified acceptance', which means the offer is accepted depending on certain conditions. The seller's and buyer's solicitors will then send each other letters negotiating these conditions.

Unless and until the missives are concluded (see below) sellers are legally free to accept another offer, including one that comes in after the

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<sup>82</sup> Note that in market conditions favourable to the buyer it might be possible to avoid a property marketed at 'offers over' going to a closing date by making an offer during the marketing period which is good enough to entice the seller to remove the property from the market place and begin contract negotiations with that buyer.

closing date under the 'offers over' system. Sellers may also (in theory) accept an increased offer from one of the unsuccessful bidders.

However, in practice there is a significant restriction on 'gazumping' in Scotland which takes the form of the [Law Society of Scotland guidelines](#) (operating in conjunction with solicitors' relative dominance of the estate agency market). These guidelines provide that a later offer, from a professional standpoint, is acceptable if negotiations on the original successful offer have fallen through. Otherwise, the solicitor should decline to act for the client in concluding the contract with a different party.<sup>83</sup> A seller wishing to go down this route would have to instruct a new firm of solicitors (with the associated legal costs).

Although a more minor factor, the practice of gazumping is also restricted through the convention of withdrawing property from the market once contract negotiations begin, giving the impression to the layperson of a concluded deal, although a legally binding contract may not be in place for several weeks or even months.

Once the missives are concluded the purchaser is not guaranteed to become owner of the property in question. However, under the terms of the missives, the seller is legally obliged to convey good legal title of the property to the purchaser. If the seller fails to do this within a specified period the purchaser will have a right to be released from the contract (to 'rescind' it) and to claim damages against the seller for losses incurred. Similarly, the seller is not guaranteed to receive the money for the property at issue but the buyer is legally obliged to pay the purchase price; if he or she does not do this within a specified period the seller has a right to be released from the contract and claim damages for losses incurred.

After the missives have been sent and agreed, the buyer's solicitor will start the 'conveyancing' process.

## Settlement

At the 'date of settlement' the buyer gives the seller the money and, in exchange, receives at least the following from the seller:

- vacant possession (unless the purchaser is to be a landlord to an existing tenant) and the keys to the property;
- the 'disposition', i.e. the deed conveying legal title to the property from the seller to the buyer, signed by the seller;<sup>84</sup>
- the title deeds to the property; and
- an updated legal report and updated PEC.

It is not until registration of the property that it legally changes hands. As a matter of good practice, on the day of settlement (or at the latest the day after) the buyer's solicitor will send the disposition to the [Registers of Scotland](#) to be registered in the Land Register.

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<sup>83</sup> The Law Society of Scotland, [Guidelines on Gazumping, Gazundering and Closing Dates](#), 2005

<sup>84</sup> The deed is a unilateral deed signed only by the seller.

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