

# Conveyancing Review

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**Thematic review and recommendations relating to the regulation of conveyancing in England and Wales**

**December 2012**

## Contents

Executive Summary .....	1
Introduction .....	3
Discussion.....	6
Background to Conveyancing.....	6
The Oxera Framework.....	6
The regulators .....	7
Size and scope of transactions.....	8
Mortgage fraud .....	8
Negligence in conveyancing .....	10
The SRA's compensation fund .....	11
Complaints.....	14
Legal Ombudsman complaints .....	14
Consumer Risks .....	14
Market developments and regulatory activity.....	16
Conclusions .....	20
Recommendations.....	21

## Executive Summary

1. The Legal Services Board (the “**LSB**”) was created by the Legal Services Act 2007 (the “**LSA**”) and is responsible for overseeing legal regulators in England and Wales. The LSB’s mandate is to ensure that regulation in the legal services sector is carried out in the public interest and that the interests of consumers are placed at the heart of the system. The LSA gives the LSB and the ARs the same regulatory objectives – including an objective to promote competition within the provision of legal services - and a requirement to have regard to the better regulation principles and any other best regulatory practice.
2. This paper sets out the Legal Services Board’s analysis of the regulatory risks that arise in conveyancing, particularly around mortgage fraud. Although there are clear risks in conveyancing, there is evidence that the ARs and others are taking steps to reduce the risks for consumers. This draft report has been shared with the relevant regulators, the Law Society and the Legal Ombudsman before publication.
3. This review examined whether there is enough evidence to justify intervention by the LSB in the regulation of conveyancing by the regulators. In doing so it has considered what risks consumers face and what ARs are doing to manage these risks. The evidence that we have to date shows little evidence that there is widespread systemic failure. That is to say that there are issues for the regulators to manage, but the regulators are aware of the risks and are taking steps to respond.
4. The report makes recommendations that are designed to help the regulators (and future regulators) shape their regulatory approach. These are:
  - a. The costs and benefits of holding client money need to be carefully assessed. The costs should include the costs of compensation arrangements (including contributions to a fund, the cost of maintaining and administering a fund and the opportunity cost of having a fund) and compliance with regulatory arrangements;
  - b. Alternatives to legal services providers holding client money should be explored;
  - c. Regulators should consider whether their client money rules are proportionate;

- d. Regulators should develop a better understanding of the conveyancing services market(s) using the Oxera framework developed for the LSB and target their regulation accordingly;
- e. Consideration should be given to the current training requirements, particularly ongoing professional development. Regulators should consider whether each provider has an appropriately trained and skilled workforce rather than if particular individuals have done a certain number of hours of training a year;
- f. As new insurance products become available, regulators should keep under review whether the design of their professional indemnity insurance (PII) arrangements is optimal; and
- g. Regulators should track and respond to new trends in the market and monitor changing risks for consumers and wider systemic risks.

## Introduction

5. The regulation of conveyancing was identified as an area of interest for the LSB in the Board's Business Plan for 2011-12. A number of problems were being reported in the market: there was an increase in the reports of mortgage fraud and there appeared to be issues of lack of focus and communication between key players including regulators, representatives of lenders and others. The LSB decided to look at the conveyancing market from the point of view of legal regulation and consider if action by the LSB or regulators was needed.
6. In terms of volume, value and type of consumer the conveyancing market will always be an area of interest. At the time identifying the need of this review, the issue of mortgage fraud was coming to the forefront. This paper looks at the specific issues relating to mortgage fraud as it relates to consumer detriment in the legal services market.
7. This review has not looked at a number of issues including a detailed consideration of alternative methods of providing consumer redress or the risks that others may play in the conveyancing process. Some of the issues of commercial interest to the regulated community such as the functioning of conveyancing panels are also not considered.
8. The handling of client money especially through the conveyancing process will always result in risks to consumers. There may be ways of modifying the conveyancing process so that these risks are reduced. This report has not attempted to redesign the conveyancing process but finding ways to incentivise changes to the way in which money is held by lawyers appears to be a useful area of consideration by the regulators.<sup>1</sup>
9. The conveyancing market has been in the vanguard of many of the changes in regulation. It was one of the earliest areas of the legal services market where more than one regulator regulates the same activity. This means that there is more than one regulatory approach in operation in the market which may, although there is no evidence that it does, lead to differing levels of protection and differing regulatory consequences.
10. Technology and process innovation is also major factor in this market. The scale and transactional nature of conveyancing allows it to be treated as a routine process. This enables process engineering techniques to be used to reduce costs and may continue to lead to greater changes in the way services are supplied. Regulators need to keep on top of developments in the markets they oversee in order to understand and respond to the risks that emerge.

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<sup>1</sup> See page 9 of the SRA's response to the LSB's consultation "Enhancing consumer protection, reducing regulatory restrictions: will-writing, probate and estate administration activities": [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/pdf/submissions\\_enhancing\\_consumer\\_protection/sra.pdf](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/pdf/submissions_enhancing_consumer_protection/sra.pdf)

11. Conveyancing is a significant part of the legal services market both in terms of volumes of transaction and value. It is also the most common type of legal service that individual consumers are likely to use. At its peak in 2007 there were over 1.4 million property transactions in England and Wales; this has reduced to around 800,000 in 2011.<sup>2</sup> There are recent signs that there may be still weakness in the property market given the total amount of money lent.<sup>3</sup>
12. While the conveyancing process is not a reserved legal service in itself, “reserved instrument activities” form the basis of the conveyancing transaction and involves the transfer or modification of legal title. A number of different regulators are able to regulate reserved instrument activities, although where these are done as part of the conveyancing process it is only the Solicitors Regulation Authority (SRA), the Council for Licensed Conveyancers (CLC) and, to a very limited extent, the Master of the Faculties (for notaries) that regulate it.
13. Much of the focus of this report is on solicitors. This is not due to specific concerns about solicitors who undertake conveyancing or the regulation of them; rather it is determined by the proportion of the transactions in which they are involved. The part of the market that is regulated by the CLC is significantly smaller than the part regulated by the SRA. Information about each of the regulators is discussed below.
14. This report identifies the areas that the LSB expects the regulators to consider when regulating conveyancing. It is not designed to be a definitive assessment of the competence of the current regulatory arrangements. It sets out some of the trends in the conveyancing market and investigates the issues of negligence and fraud in the market and describes the regulatory response.
15. In June 2011 we wrote to four regulators (the SRA, the BSB, the CLC and the Master of the Faculties)<sup>4</sup> expressing concern about the levels of mortgage fraud and the role played by those regulated to undertake reserved instrument activities and wider conveyancing activities:

“High levels of mortgage fraud have drawn attention to the regulation of reserved instrument activities and the broader conveyancing process. In addition to the significant direct impact mortgage fraud can have on consumers, it is consumers who also ultimately suffer from the consequential reduction in confidence in the legal profession by lenders, insurance providers and the general public. This may cause higher prices for conveyancing and legal services generally, and a reduction in competition amongst, and choice and

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<sup>2</sup> Number of property transactions completed in the United Kingdom with value £40,000 or above – monthly:

[http://www.hmrc.gov.uk/stats/survey\\_of\\_prop/menu.htm](http://www.hmrc.gov.uk/stats/survey_of_prop/menu.htm)

<sup>3</sup> <http://www.cml.org.uk/cml/publications/marketcommentary> see chart 3

<sup>4</sup> We received responses from the SRA, the CLC and the BSB

access to, legal service providers. Together this can result in a negative impact on public confidence in the legal system”.<sup>5</sup>

16. We identified issues we considered were posed by conveyancing to market participants (consumers, lenders, insurers, mortgage brokers etc) through our own analysis and through the information provided by the approved regulators in their response to our letter. We focused on three risks:

- a. Whether confidence in the conveyancing market is undermined by mortgage fraud committed by lawyers
- b. Whether confidence in the conveyancing market is undermined by negligence of lawyers
- c. Whether complex cost information prevents consumers from making informed decisions and causes detriment

17. In developing these risks we also used a variety of other sources including views expressed by lenders, their representatives, insurers and their representatives and other bodies including the Financial Services Authority (FSA), the National Fraud Authority and the Office of Fair Trading (OFT).

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<sup>5</sup> LSB letter 14<sup>th</sup> June 2011

## Discussion

### Background to Conveyancing

18. The process of transferring or modifying the title of a property is one of the most frequent legal transactions. LSB research<sup>6</sup> in 2009 showed that 29% of consumers that had used a legal service in the past 5 years had done so to purchase a property. A similar question was asked by the Legal Services Consumer Panel in its tracker survey in 2011<sup>7</sup> which showed 32% of those who had sought legal advice in the last 2 years had done so in relation to purchasing a property.

### The Oxera Framework

19. We often talk about the “legal services market”, yet rarely is it defined. If it is not defined then regulators cannot be sure that their regulation is targeted and proportionate and it is impossible to understand how it changes over time. If we do not understand how it changes over time we cannot impartially assess whether the regulatory objectives<sup>8</sup> are being met. So in order to develop a better understanding of what comprises the legal services market the LSB commissioned Oxera to develop a framework for market segmentation.<sup>9</sup>

20. Segmentation of the legal services market can be very useful. It allows the activity to be put into context. For conveyancing it means that suppliers and consumers can be better identified and some of the drivers of their behaviours may be identified. It also has the advantage in the case of conveyancing to help identify the area of interest not by professional title, but by activity. This is important because conveyancers who are regulated by the CLC do not compete with all solicitors regulated by the SRA, only those who provide conveyancing. The framework uses three observable characteristics to define the market in three dimensions. These are the type of consumer, the type of consumer problem and the type of legal activity. Taking the three dimensions together can result in detailed analysis of different parts of the market.

21. One reason for changes in the conveyancing market will be because current suppliers (mostly solicitors) change the mix of services they offer. The possible drivers for these changes are discussed further in this document. The cluster

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<sup>6</sup> [http://www.legalservicesboard.org.uk/what\\_we\\_do/Research/Publications/pdf/results.xls](http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/results.xls) (row 188 column B)

<sup>7</sup> <http://www.legalservicesconsumerpanel.org.uk/ourwork/CWI/documents/TrackerSurveyReport.pdf> (paragraph 2.2)

<sup>8</sup> LSA s1

<sup>9</sup>

[http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/a\\_framework\\_to\\_monitor\\_the\\_legal\\_services\\_sector.pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/a_framework_to_monitor_the_legal_services_sector.pdf)



analysis<sup>10</sup> from Oxera is helpful here as it sets out the other types of work that firms that do conveyancing also do. This analysis shows that 60% of all firms in England and Wales do residential conveyancing and, of those, 83% also do commercial property transactions and 78% do wills and probate.

22. In order to assess the number of transactions we used information from the Land Registry<sup>11</sup> that shows that 920,000 transactions were lodged by those with an account to access its electronic platform. Access to the electronic platform is given to “conveyancers”, which for the Land Registry includes licensed conveyancers, solicitors, notaries and high volume businesses who undertake significant numbers of conveyancing transactions (often utility companies).

## The regulators

23. The three approved regulators who regulate conveyancing range in size from the largest (the SRA) to one of the smallest (the Master of the Faculties). The CLC says that it has between 10 – 15% share of the conveyancing market which increases to around 20% in relation to remortgaging activity.<sup>12</sup> There are over 200 CLC entities and 1000 individuals as at 2011.<sup>13</sup> Of the entities that the CLC regulates 49% are sole traders, 17% partnerships, and 32% limited companies.<sup>14</sup>

24. Data held by the LSB shows that there are nearly 900 notaries and scriveners. Of these, 74% work in legal practices with solicitors, and 2% work in house with solicitors. Where notaries work in legal practice with solicitors, it is likely that conveyancing transactions will be undertaken by them in their capacity as solicitors (the Master of the Faculties estimates that at least 80% of notaries are also regulated by the SRA).<sup>15</sup> There are only 170 non-solicitor notaries and of these only 28 hold client money and are assumed to undertake conveyancing services. The Master of the Faculties has recently modified its rules around the holding of client money after a gap was identified in its rules.<sup>16</sup> Notaries who hold client money are now required to submit an accountant’s report when renewing his or her practising certificate.

25. The SRA regulates the largest number of firms that undertake conveyancing work. Analysis done for the LSB by Oxera<sup>17</sup> shows that over 6000 firms (60% of

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[http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/a\\_framework\\_to\\_monitor\\_the\\_legal\\_services\\_sector.pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/a_framework_to_monitor_the_legal_services_sector.pdf) - figure A4.1

<sup>11</sup> <http://www.landregistry.gov.uk/professional/market-trend-data/public-data/transaction-data/transaction-data-files> - (See: Number And Types of Applications by All Account Customers)

<sup>12</sup> CLC response to the LSB

<sup>13</sup> [http://www.clc-uk.org/pdf\\_files/corporate\\_docs/CLC\\_%20Business\\_%20Plan\\_2012.pdf](http://www.clc-uk.org/pdf_files/corporate_docs/CLC_%20Business_%20Plan_2012.pdf) page7

<sup>14</sup> CLC response to the LSB

<sup>15</sup> [http://www.legalservicesboard.org.uk/what\\_we\\_do/Research/Publications/pdf/20110622\\_sar\\_report\\_final.pdf](http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/20110622_sar_report_final.pdf) page 14

<sup>16</sup> [http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/20120104\\_application.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/20120104_application.pdf)

<sup>17</sup> <http://research.legalservicesboard.org.uk/wp-content/media/A-framework-to-monitor-the-legal-services-sector.pdf> page 79

all solicitor firms) claim to provide residential conveyancing and more than 5500 firms (53%) provide commercial property services.

## Size and scope of transactions

26. Some conveyancing transactions are large,<sup>18</sup> others, particularly remortgaging, are likely to be smaller (in March 2012 the most expensive property sold for just under £55m and the cheapest property sold for £8,000). This range of size and scale of transactions may make the risks in the market harder to assess and the role of the regulator more complicated. While residential conveyancing is one of the most frequent legal services purchased by consumers, it is still likely to be an infrequent one. Property transactions are, in the majority of cases, discretionary. While this may mean that consumers are in a better position to make purchasing decisions, the timing of the transaction and the scale of the legal costs when compared to the other costs may reduce the consumer's ability to make informed decisions about the legal service. Referral arrangements may also apply, however these will not be discussed further as these are out of scope for this report. The conveyancing transaction often has multiple parties involved including the purchaser, the vendor and financial institutions. Some of the parties will be on the same side of the transaction but may have differing interests in the process. This complication may lead to additional risks in the system.

27. There remain significant numbers of property transactions each year, despite the property crash. The table below shows the number of property transactions in England and Wales between 2006 and 2011. In terms of the involvement of legal services consumers, this number may be doubled since these property transactions will usually involve both a purchaser and a seller.

	Property transactions over £40,000 (000s) (E&W) <sup>19</sup>	% of 2006/7 levels
2006	1475	100%
2007	1427	97%
2008	787	53%
2009	769	52%
2010	795	54%
2011	799	54%

## Mortgage fraud

28. One of the main areas of risk identified in the market is the risk of mortgage fraud. Mortgage fraud can occur in a number of different ways and may, or may not, involve those who are doing the conveyancing. The impact of the recession

<sup>18</sup> <http://www.landregistry.gov.uk/media/all-releases/press-releases/2012/market-trend-data-april-2012>

<sup>19</sup> [http://www.hmrc.gov.uk/stats/survey\\_of\\_prop/val-40000-or-above.pdf](http://www.hmrc.gov.uk/stats/survey_of_prop/val-40000-or-above.pdf)

and collapse of the property market have exposed the extent of mortgage fraud. The annual cost of mortgage fraud to the UK economy in 2012 was estimated to be £1bn.<sup>20</sup> There is limited information that quantifies the scale of mortgage fraud and even less that identifies the source of the problem that is publicly available. The SRA has committed to making more information available and we welcome this. In the meantime we used the information about mortgage fraud that was available in the public domain to undertake this assessment.<sup>21</sup>

29. Our letter to regulators drew attention to a report<sup>22</sup> that mortgage fraud was at a two year high and gave a specific example of two lawyers being charged with a fraud involving £50m. However it has been a challenge to find wide scale evidence of the extent to which lawyers contribute to mortgage fraud, either through their negligence or through their deliberate actions.

30. The SRA's response to us describes the "considerable success in recent years" in identifying potential and actual frauds, and ensuring action is taken. These comments are borne out of a report by the National Fraud Authority in 2010<sup>23</sup> on the impact of SRA activity. In 2009 the SRA completed 109 investigations into mortgage fraud which saved lenders between £15m and £20m.<sup>24</sup> It would be helpful if the SRA were to publish more information about the extent and value (i.e. money saved either to lenders, insurers or the compensation fund) of their regulatory activity around mortgage fraud because this would help to put the numbers of claims on the compensation fund and on insurance into context.

31. The CLC recognises that mortgage fraud is a problem but that there "appears to have been comparatively little incidence of mortgage fraud within [its] regulated community".<sup>25</sup> The CLC believes that the main cause of the problem in relation to fraud comes from the fragmented nature of the home buying and selling market. The market has a range of participants who are subject to different regulatory standards and reward mechanisms. This was the main finding of a Call for Evidence that it undertook with its regulated community. Respondents also said that lenders do not ask for the right information, do not take steps to verify information and do not monitor their intermediaries who try and circumvent the information requirements.

32. The CLC's corporate strategy<sup>26</sup> for 2011–13 says that deepening its understanding of the market with "systematic monitoring" and a

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<sup>20</sup> <http://www.homeoffice.gov.uk/publications/agencies-public-bodies/nfa/annual-fraud-indicator/annual-fraud-indicator-2012?view=Binary> page 37

<sup>21</sup> <http://www.homeoffice.gov.uk/publications/agencies-public-bodies/nfa/annual-fraud-indicator/annual-fraud-indicator-2012?view=Binary> page 37

<sup>22</sup> <http://www.independent.co.uk/money/mortgages/mortgage-fraud-cases-soar-to-a-22year-high-2047169.html>

<sup>23</sup> [www.homeoffice.gov.uk/publications/agencies-public-bodies/nfa/our-work/mortgage-fraud-report2010?view=Binary](http://www.homeoffice.gov.uk/publications/agencies-public-bodies/nfa/our-work/mortgage-fraud-report2010?view=Binary) page 10

<sup>24</sup> <http://sra.org.uk/news/mortgage-fraud/>

<sup>25</sup> CLC response to the LSB

<sup>26</sup> [http://www.conveyancer.org.uk/pdf\\_files/corporate\\_docs/2011\\_to\\_2013\\_corporate\\_strategy.pdf](http://www.conveyancer.org.uk/pdf_files/corporate_docs/2011_to_2013_corporate_strategy.pdf)

“comprehensive research programme” is one of its strategic priorities. The CLC said that it visited 122 entities out of 218 in 2010. This led to 13 cases where risks were identified and remedial, regulatory or enforcement action was needed.

33. The CLC did not provide the LSB with information or analysis about the categorisation of monitoring visits. It would be useful for the CLC to publish information about the themes that are emerging from the compliance visits. For instance, whether or not weakness in systems or processes were undermining compliance and if that is changing over time. The CLC said that its monitoring activity is often targeted at firms which appear more susceptible “due to a lack of robust governance arrangements”. The CLC makes the effort to meet with applicants as part of the authorisation process and to ensure that key personnel take part in important training before authorisation proceeds. This has been restructured to give greater prominence to mortgage fraud.
34. Regulators have taken steps to ensure that there are adequate consumer protections in place for consumers of conveyancing services. These include compensation arrangements and PII.

### **Negligence in conveyancing**

35. Confidence in the conveyancing market can be impacted by negligence which can take different forms. It may be that failure by the lawyer means that the transaction causes financial detriment to the consumer. For example, the lawyer fails to adequately check the covenants that exist on a property and the client finds their ability to improve the property or to sell it at a later date is limited and leads to a property value lower than might be anticipated by the owner. Negligence may also contribute to mortgage fraud taking place.
36. Other examples of negligence may be in the way that the conveyancing transaction has been managed by the lawyer. For example, consumers may complain about the way in which a lawyer has kept them informed about their transaction or the price that they have been charged. They may say that delay by the lawyer has led to them losing a property or having a buyer drop out. These complaints are dealt with by the firm first and then can be referred to the Legal Ombudsman for examination and determination.
37. The SRA suggested to us that there were cases it was dealing with that were being treated as cases of negligence by the lawyer, but where the mistakes that had been made were not necessarily the direct cause of loss to lenders: “The real cause of loss is default on the mortgage and the property no longer providing sufficient security but, faced with this, lenders will always review transactions to identify where there has been some failing in the conveyancing process that could lead to a successful insurance or compensation claim”.

## The SRA's compensation fund

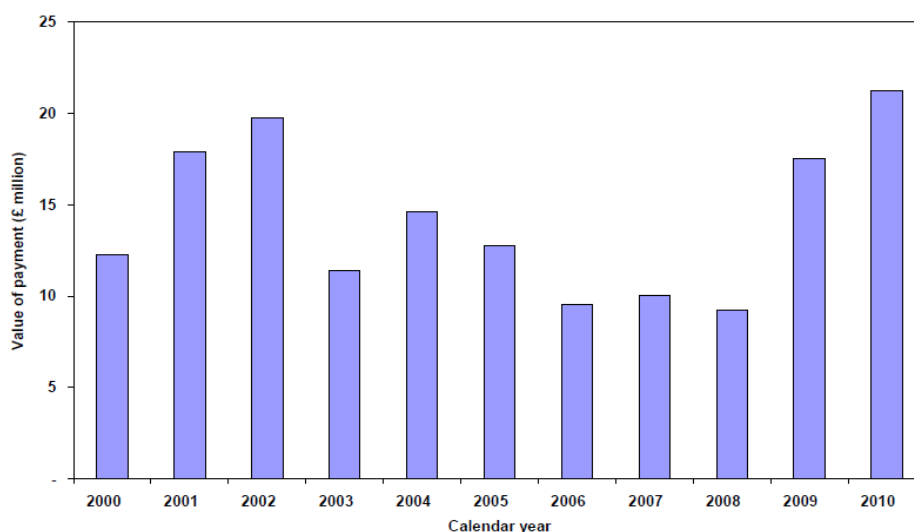
38. The SRA manages a compensation fund that was first established in 1942 by legislation and further developed in the Solicitors Act 1974. Over the years the coverage of the compensation fund has been increased as new types of solicitor practices have arisen. The most recent change has been to include Alternative Business Structures (ABS) in the scope of the compensation fund.
39. The compensation fund works in conjunction with professional indemnity insurance (PII) to provide consumers an avenue of redress where the insurance will not cover the solicitor's actions. Although the coverage of PII for solicitors is wide and allows for few limitations of coverage, one of the important limitations is that it will not cover fraud which the solicitor was party to. This may occur where all the principals in a firm are engaged in the fraud. In these circumstances the PII will not cover the consumer's loss, but the compensation fund may make a grant. However, the payment of an award may indicate a loss but does not necessarily provide any evidence that the provider involved gained any benefit. The compensation fund is a discretionary scheme from which a grant may be made to an applicant who has suffered a loss due to a solicitor's dishonesty or to due to a solicitor's failure to account for monies held. Grants related to a solicitor's failure to account for monies held can only be made in cases of hardship.
40. In order to assess the indicators of mortgage fraud we looked at the management information published by the SRA.<sup>27</sup> While some of the information about allegations and interventions may be able to provide evidence of the rates of fraud, the publically available data lacked sufficient granularity to draw robust conclusions. The information about claims on the compensation fund appeared to provide more robust information so we examined more closely the number of new claims made to the compensation fund for mortgage fraud. We also wanted to look at the extent of payments from PII for mortgage fraud (and negligence). However, there was limited information available and we have relied on information published by the SRA in a report that it commissioned from Charles Rivers and Associates (CRA).
41. There has been a significant increase in the amount of money paid from the compensation fund over the years since the property crash as is illustrated by this graph from CRA. CRA goes on to say that "it is worth noting that in as far as the value of payments from the Fund represent payments related to fraud in connection with conveyancing activities, this gives further support for the need to investigate the conveyancing process".<sup>28</sup>

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<sup>27</sup><http://www.sra.org.uk/documents/SRA/performance/regulatory-outcomes-q2-2012.pdf>

<sup>28</sup> <http://www.sra.org.uk/documents/sra/cra-report-on-sra-financial-protection-arrangements.pdf> pg 159

Figure 31: Value of payments by the Compensation Fund over time



Source: Data provided by the SRA.

42. There has been an increase in the proportion of new claims to the compensation fund for mortgage fraud since 2009. As the table below demonstrates although in 2012 mortgage fraud amounts for a larger proportion of new claims.

	2009 <sup>29</sup>	2010 <sup>30</sup>	2011 <sup>31</sup>	2012 (Q1 and Q2) <sup>32</sup>
New mortgage fraud claims	227	183	179	113
Total new claims	2690	4590	2016	730
%	8.4%	4.0%	8.9%	15.5%

43. Conveyancing generates large numbers of claims to PII both in terms of number and value. CRA<sup>33</sup> examined indemnity claims for 2007/8 which were the most recently available figures. Conveyancing accounted for 50% of claims on PII and around half of the conveyancing claims come from lenders. CRA

<sup>29</sup> <http://www.sra.org.uk/documents/sra/performance/compliance-record-sra-march-2010.pdf> (see page 14 numbers of claims are summed across reports for the calendar year, SRA's reporting of the claims numbers vary across reports)

<sup>30</sup> <http://www.sra.org.uk/documents/SRA/performance/compliance-record-sra-quarter1-2011.pdf>

<sup>31</sup> <http://www.sra.org.uk/documents/SRA/performance/regulatory-outcomes-q1-2012.pdf>

<sup>32</sup> <http://www.sra.org.uk/documents/SRA/performance/regulatory-outcomes-q2-2012.pdf>

<sup>33</sup> CRA Review of SRA client financial protection arrangements <http://www.sra.org.uk/documents/SRA/cra-report-on-sra-financial-protection-arrangements.pdf>

also identify that 63% of property claims to PII come from practices with 4 or less partners which in total account for around 14% of solicitor firms.

44. Claims about unredeemed mortgages may also be an indicator of negligence (perhaps the solicitor held on to monies from a property sale for so long there was insufficient left to pay off the mortgage amount). The SRA's management reports give no information about the details of the scope of the categories used, however, the SRA is undertaking further work on the characterisation of claims. Again no analysis is provided to explain the profile of the numbers and any issues that they might raise.
45. As noted above, claims on the compensation fund are by no means perfect proxies for judging the extent of negligence in the conveyancing market. However they do provide some indication that the scale of such problems is very small in comparison to the number of transactions that take place in the home buying and selling market even after the property crash.
46. There were limited claims to the CLC compensation fund in 2010 with less than £14000 being paid out to 10 claimants.<sup>34</sup> This suggests limited consumer detriment. However there is no information available to assess consumer satisfaction with the compensation process. For example over 50% of claims were rejected but no explanation is provided about why.<sup>35</sup> The CLC refers<sup>36</sup> to the number of claims that have been made for compensation in 2011 which have risen in comparison to 2010 (21 applications in 2010 compared to 19 applications in the first six months of 2011).<sup>37</sup> It says that the increase in claims is as a consequence of interventions in two firms and that none of the claims appear to relate to mortgage fraud. No further detail has been provided to the LSB about these cases.
47. The Master of the Faculty's new rules for notaries who hold client money amend the 1989 rules which did not require an independent third party to scrutinise a notary's accounts.<sup>38</sup> It is not known whether the lack of third party scrutiny of notaries' accounts resulted in any actual consumer detriment and no complaints have been received about client money during the period. The Master of the Faculties will now also require information from notaries when renewing their practising certificates to identify those who are undertaking conveyancing or hold client money.

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<sup>34</sup> CLC response to the LSB

<sup>35</sup> CLC response to the LSB

<sup>36</sup> CLC response to the LSB

<sup>37</sup> CLC response to the LSB

<sup>38</sup> [http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/20120104\\_application.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/20120104_application.pdf)



## Complaints

48. We also looked at the level of complaints as an indicator of problems in the market. This was a difficult task in that there has been substantial change in the way in which complaints are dealt with in the legal services market over the last four years. This means that there are gaps in the data, some data is not in the public domain and different complaint categories and definitions have been used. Given the number of conveyancing transactions it is not surprising that conveyancing features as a significant source of complaints. Although given the volume of conveyancing transactions this may not be disproportionately high compared to other types of law.

### Legal Ombudsman complaints

49. The Legal Ombudsman has only been operational for just over two years and therefore there is only limited data available to allow us to examine the trend in conveyancing complaints. Data for 2011/2012 published by the Legal Ombudsman suggests that conveyancing complaints currently make up around 15% of its workload.<sup>39</sup> The actual volume of complaints handled by the Legal Ombudsman appears to be very different and substantially lower than those dealt with by Legal Complaints Service (LCS) which used to consider complaints about solicitors. The main issues reported by the Legal Ombudsman as being raised by complainants are “failure to advise” and “failure to follow instructions” followed by “delay” and then “issues of cost”.<sup>40</sup>

50. There is no evidence to suggest that the number of complaints made by consumers is at levels disproportionate to the number of property transactions in which consumers are involved. To the extent that it is possible to make a comparison between LCS and the Legal Ombudsman data, it may even be the case that conveyancing complaints are now proportionately lower than they were. However, there are too many inconsistencies between the data to make this a firm supposition.

## Consumer Risks

51. Given the financial protections provided by PII and compensation funds we have no evidence to suggest that the arrangements in place are not sufficient to ensure that victims of fraud or negligence could be compensated financially. However we do have some questions about whether the experience that consumers face when getting into the compensation process ensures that the distress and detriment that they have suffered at the hands of negligent or

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<sup>39</sup>[http://www.legalombudsman.org.uk/downloads/documents/publications/Annual\\_report\\_2011\\_2012\\_Final\\_v1.pdf](http://www.legalombudsman.org.uk/downloads/documents/publications/Annual_report_2011_2012_Final_v1.pdf) pg 11

<sup>40</sup> As reported by the Legal Ombudsman at the Law Society Conveyancing Forum



criminal lawyers is not exacerbated. For example it would be interesting for the SRA to publish its rolling results of customer satisfaction research of those consumers that have been through the compensation claim process. It is important to know that the means by which consumers enter the compensation process and their experiences of it are of the highest quality so that both financial and psychological detriment is not exacerbated. Regulators may want to consider how these issues may be explored. The SRA's forthcoming compensation review provides one possible vehicle for this.

52. The SRA in its draft conveyancing compliance and enforcement strategy<sup>41</sup> identified that conveyancing is a potential area of considerable consumer detriment "if consumers are not able to make informed choices about the particular conveyancing services they need and how much they will cost". Its concern appears to be based on the fact that conveyancing is very competitive and a highly commoditised area of practice "which can lead to firms advertising headline figures to consumers that do not represent the actual cost of the transaction".

53. To see whether there is any evidence of this risk in terms of consumer experience of the market we looked at the consumer research from the Legal Services Consumer Panel.<sup>42</sup> As we have said previously, consumers have more experience of conveyancing activity than other areas of law. The table below takes relevant elements from the Panel's tracker survey<sup>43</sup> to construct an indicator of consumer experience of conveyancing, particularly in relation to cost information.

	POSITIVE		NEUTRAL		NEGATIVE	
	All	Conveyancing	All	Conveyancing	All	Conveyancing
<b>Choice</b>	65%	77%	20%	17%	16%	7%
<b>Ability to make comparisons</b>	51%	63%	20%	17%	29%	18%
<b>Clarity on costs charged</b>	70%	80%	13%	9%	10%	8%
<b>Value for Money</b>	56%	49%	27%	36%	11%	13%

54. The tracker survey shows that against other areas of legal services consumers have a relatively positive experience of conveyancing. Consumers may feel more able to make comparisons and make choices about the services. However, the absolute levels of experience from consumers still have significant room for improvement.

<sup>41</sup> <http://www.sra.org.uk/conveyancing/>

<sup>42</sup> Including:

[http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/documents/VanillaResearch\\_ConsumerResearch\\_QualityinLegalServices.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/VanillaResearch_ConsumerResearch_QualityinLegalServices.pdf);

[http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/documents/Part1natrep.xlsx](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Part1natrep.xlsx) (see row 326)

<sup>43</sup> <http://www.legalservicesconsumerpanel.org.uk/ourwork/CWI/documents/TrackerSurveyReport.pdf>

## Market developments and regulatory activity

55. There has been activity among stakeholders to address issues around conveyancing. We have described some of the initiatives here.

### The SRA's compliance and enforcement strategy for conveyancing

56. In April 2011, the SRA published a draft Compliance and Enforcement Strategy for Conveyancing which it said would describe how it would engage with firms who undertake conveyancing work.<sup>44</sup> The SRA said that the work built on its effective regulatory work undertaken over the previous two years. Others such as the National Fraud Authority have been very supportive of the work that SRA has been undertaking. The SRA announced<sup>45</sup> in September 2012 that it was revisiting its draft Conveyancing Strategy to “help firms address any lack of robust risk management systems within firms carrying out conveyancing work”.

57. The strategy makes a link between the scale of payments made from PII and the compensation fund, activities undertaken by the regulatory community and risks to regulatory objectives. There is also an intention to ensure that lessons from current work being undertaken to its approach to supervision will inform the way in which it regulates conveyancing and the holding of client money. The strategy describes the way in which the SRA will engage with its regulatory community in terms of identifying and dealing with conveyancing risks. The strategy also describes the regulatory tools it will use to address the risks identified.

58. The SRA describes five particular risks which it says arise from conveyancing. These are:

- a. Conflicts of interest
- b. Referral arrangements
- c. Cost information
- d. Financial stability
- e. Property related fraud and money laundering

59. Information about cost has been an area of complaint to the Legal Ombudsman and will require consideration by the frontline regulators. However, we are less convinced that this list represents a full description of the risks facing consumers and regulators. We were somewhat concerned that other risks identified by CRA in relation to nature of firms most likely to have claims in PII or the compensation fund are not as explicitly reflected as they might be. It seems to us that the principal focus for the SRA should be on individual consumers of legal services and ensuring that they are not at risk of suffering

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<sup>44</sup> <http://www.sra.org.uk/conveyancing/>

<sup>45</sup> <http://www.sra.org.uk/sra/news/press/conveyancing-strategy-guards-against-mortgage-fraud.page>

detriment. The SRA's approach to look at the headline risks has the potential to address the issues of consumer detriment. However, developing an understanding of how these risks work in practice will be vital to the success of this approach.

60. We welcome the fact that the SRA has acknowledged here and elsewhere that there needs to be better information and analysis for it to properly target its regulatory activities at individual practices. It points to the fact that it will have better information because of its new approach to authorisation and supervision which will feed into the risk assessment of firms. We look forward to the SRA making use of the additional information it is gathering and sharing the outcome of its analysis with other regulators. The SRA is preparing to publish data from its thematic review of 100 firms where it sought evidence on rates of compliance. The SRA confirmed<sup>46</sup> that it would be working with other organisations discussed in this paper to develop a more through view on risk.
61. There have been many issues relating to conveyancing and it is important to ensure that there is no danger that policies are implemented which have unintended consequences. We therefore welcome SRA's decision to undertake a fundamental review of its compensation arrangements in order to provide, in October 2014, comprehensive and evidence based proposals for how these arrangements should be structured. The review will be from first principles, based on the requirements of the LSA 2007, and without any preconceptions. We particularly welcome the fact that the SRA is taking a root and branch approach to this area of work and is considering whether some fundamental changes may be made to the conveyancing process. For example it has said it will consider whether it is still relevant for lawyers to hold client money during the property transaction. The SRA has acknowledged that this work will need to be "highly collaborative". We agree that this is important and we will support SRA in gaining the co-operation it needs from different stakeholders.
62. The SRA has also reviewed the structure of the PII arrangements and role of the compensation fund.<sup>47</sup> This led to changes in the way that parts of the PII cover worked. The changes were largely technical and did not change the scope of cover for consumers. Some recent developments indicate that there is scope for insurance products that do not insure the provider, but insure the consumer against the provider's negligence. As new insurance options enter the market, the SRA should consider if the design of the current PII arrangements is optimal.
63. The SRA is in the planning stages of a project to look into holding client money which will report and feed into the Conveyancing Review. Both of these

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<sup>46</sup> <http://www.sra.org.uk/sra/news/press/conveyancing-strategy-guards-against-mortgage-fraud.page>

<sup>47</sup> <http://www.sra.org.uk/sra/news/press/financial-protection-policy-changes-2012.page>

projects will in turn feed into the Compensation Arrangements Review because the findings in relation to holding client money and conveyancing may have a significant impact on the policy recommendations emerging from Compensation Arrangements Review. The scope and approach of the Compensation Arrangements Review has been finalised and it is expected to report in October 2014.

### Initiatives by other stakeholders

64. Lenders who are members of the Council of Mortgage Lenders may require firms that they work with to meet the requirements contained within the Council of Mortgage Lenders Handbook. Part 1 of this handbook contains provisions which apply to all lenders and part 2 contains requirements specific to individual lenders. The CLC has built compliance with the Handbook into its regulatory arrangements.
65. In September 2011 HM Revenue & Customs (HMRC), the Council of Mortgage Lenders and the Building Societies Association launched the Mortgage Verification Scheme<sup>48</sup>. Use of the scheme will be limited to cases where lenders reasonably suspect, following checks, that mortgage fraud may be taking place. Using a secure electronic platform, mortgage lenders will send relevant details of mortgage applications where they have inadequate evidence of declared income and suspect fraud to HMRC, which will check income details declared to lenders against information provided in income tax and employment returns. HMRC will then advise lenders whether or not the details correspond, which will inform lending decisions.
66. In October 2010 the Law Society launched an accreditation scheme for solicitors undertaking conveyancing. The aim of the Conveyancing Quality Scheme (CQS) is to provide “assurance to consumers and clients that members meet CQS standards and increase quality standards”. Entry is restricted to solicitors and the scheme currently has in the region of 1500 members.<sup>49</sup> The Council of Mortgage Lenders has indicated that its members may require their panel members to also be members of the scheme. As an initiative by the representative body of solicitors, regulators should take care to ensure that the scheme is not developed as a measure that protects the solicitor’s profession at the expense of increased competition in the wider market.
67. The Legal Services Consumer Panel has raised some concern about this in its recent report<sup>50</sup> on Quality Schemes saying “whilst the Panel supports efforts to

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<sup>48</sup> <http://www.cml.org.uk/cml/policy/issues/6365>

<sup>49</sup> <http://www.lawsocietymedia.org.uk/Press.aspx?ID=1645>

<sup>50</sup> [http://www.legalservicesconsumerpanel.org.uk/ourwork/quality\\_assurance/documents/FinalReport\\_VQS.pdf](http://www.legalservicesconsumerpanel.org.uk/ourwork/quality_assurance/documents/FinalReport_VQS.pdf)

raise standards, this risks market players and not the regulators being guardians of entry standards. This goes against independent regulation principles and may unduly restrict competition if the requirements set by large purchasers are too high". We understand that the CLC has expressed similar concerns. The LSB does not have evidence that the scheme is leading to restriction of competition in the market.

68. In June 2011 the FSA published its own thematic review into mortgage fraud against lenders. In this report<sup>51</sup> the FSA acknowledges that there has been "substantial improvement in lenders' oversight of some relationships, particularly those with solicitors" and identifies that lenders now need to focus on improving information sharing with mortgage brokers.

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<sup>51</sup> FSA Mortgage Fraud against Lenders: a thematic review of lenders systems and controls to detect and prevent mortgage fraud ([http://www.fsa.gov.uk/pubs/other/mortgage\\_fraud.pdf](http://www.fsa.gov.uk/pubs/other/mortgage_fraud.pdf))

## Conclusions

69. The conveyancing market is an important part of the wider legal services market. However, due to the amount of money being handled there are risks of fraud, including mortgage fraud. The scale of the problem is difficult to quantify as there is a lack of information. However, there appear to be relatively few claims on compensation funds in relation to mortgage fraud. The information available about claims on PII is unable to distinguish between mortgage fraud and other conveyancing related issues. Nevertheless regulators and the market in general have taken this issue very seriously and have already made significant investment in taking action against fraud, thereby improving confidence in the conveyancing process.
70. The market is also responding to the issues raised by conveyancing. The Law Society has introduced the CQS. The response of some lenders, to only want firms on their panel that are members of CQS, can be seen as the market reacting to innovation. However, for the scheme to have real value it should be measured by the reassurance that it gives to consumers.
71. We do not consider that there is sufficient evidence to suggest that conveyancing consumers are more at risk than any others from detriment caused by not being able to compare or understand the cost of the transaction they are entering into. In fact the evidence suggests that conveyancing consumers are more likely to score positively understanding prices and being able to make comparison.
72. Any proposal for LSB intervention needs to be measured against the risks that are evident in the market and in areas where it appears that the regulators are not taking available steps to improve the situation. The conveyancing process does provide scope for consumer detriment. However, on current evidence, the combination of insurance and compensation arrangements and the actions underway by the regulators and other stakeholders in the market mean that there is no justification for further action by the LSB.

## Recommendations

73. The following recommendations are designed to help the regulators (and future regulators) shape their regulatory approach:

- a. The costs and benefits of holding client money need to be carefully assessed. The costs should include the costs of compensation arrangements (including contributions to a fund, the cost of maintaining and administering a fund and the opportunity cost of having a fund) and compliance with regulatory arrangements;
- b. Alternatives to legal services providers holding client money should be explored;
- c. Regulators should consider whether their client money rules are proportionate;
- d. Regulators should develop a better understanding of the conveyancing services market(s) using the Oxera framework developed for the LSB and target their regulation accordingly;
- e. Consideration should be given to the current training requirements, particularly ongoing professional development. Regulators should consider whether each provider has an appropriately trained and skilled workforce rather than if particular individuals have done a certain number of hours of training a year;
- f. As new insurance products become available, regulators should keep under review whether the design of their PII arrangements is optimal; and
- g. Regulators should track and respond to new trends in the market and monitor changing risks for consumers and wider systemic risks.