

## Approaches to Quality

### Response by the Council of Mortgage Lenders to the Legal Services Board consultation paper

#### Introduction

1. The CML is the representative trade body for the first charge residential mortgage lending industry, which includes banks, building societies and specialist lenders. Our 111 members currently hold around 95% of the assets of the UK mortgage market. In addition to lending for home-ownership, the CML's members also lend to support the social housing and private rental markets.

2. The CML welcomes the opportunity to provide views on the Legal Services Board consultation on approaches to quality. We are responding on behalf of our members who, as repeat consumers of conveyancing services, take an interest in the quality of services provided.

#### Background

3. In recent years, as a result of significant fraud, professional negligence and poor professional practice, predominantly within the solicitor's profession in England and Wales, lenders no longer feel able to rely on the fact that a solicitor is authorised to practise by their regulator as a suitable assurance of trust and competence. Overall, confidence in the legal profession has been severely damaged in the last few years. Recent moves to introduce quality accreditation schemes such as the Law Society of England and Wales' Conveyancing Quality scheme (CQS) were in part a response to lenders' concerns and we welcome such developments as ways of helping to improve competency.

#### Response to consultation questions

4. Our response to the consultation questions are set out below, using the numbering in the consultation document.

**Question 1:** In your experience, when consumers do not receive quality legal services, what has usually gone wrong? Where problems exist, are these largely to do with technical incompetence, poor client care, the service proving to be less useful than expected by the client – or something else?

5. Lenders' experience suggest a combination of these three issues. Lenders commonly report that problems arise where the conveyancer, either through technical incompetence, ignorance or otherwise, fails to follow the instructions set out in the CML Lender's Handbook. Naturally, the outcome is poor client care (in failing to adhere to the agreed instructions) and a less useful service than otherwise expected by the client. Recent judgements have recognised that a failure on the part of the conveyancer to follow these instructions can give rise to an actionable claim.<sup>1</sup>

6. Lenders also report that conveyancers acting for them on a jointly-represented conveyancing transaction often do not fully appreciate that lenders are as much a client as the borrower and are owed a distinct duty of care.

**Question 2:** Would it be helpful if the regulators approached issues of quality by looking separately at different segments of the legal services market? Which segments do you perceive as being greatest risk to consumers?

7. We believe it is beneficial to take a targeted approach. In the lenders experience, conveyancing is an example of a sector which has suffered from particular problems of professional negligence and misconduct such as involvement in fraud. The SRA's review of client financial protection arrangements highlighted the disproportionate amount of professional indemnity insurance

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<sup>1</sup> See, for example Nationwide Building Society v Davisons [2012]

claims made against conveyancers. As mentioned above, the CQS was designed to tackle some of the concerns arising from lender clients in this sector about the quality of the service.

**Question 3:** How can regulators ensure that regulatory action to promote quality outcomes does not hinder (and where possible encourages) innovation?

8. Regulatory action to promote quality need not stifle innovation. It does require a flexible regulator who has a good knowledge of the regulatory cohort and is able, through this knowledge and input from key stakeholders, to readily identify areas of risk associated with innovation and seek to mitigate them. Sound entry criteria, continuous monitoring, and targeted intervention will help ensure the cohort is made up of suitably competent and 'fit to practise' professionals, whatever the innovations.

**Question 4:** What balance between entry controls, on-going risk assessment and targeted supervision is likely to be most effective in tackling the risks to quality that are identified?

9. These three aspects need to be finely balanced to ensure risks to quality are identified. Based on lenders' experience, ongoing monitoring and risk assessment is crucial to maintaining the quality within the profession, particularly where the sector may be under external pressure, leading to particular challenges around supply and demand.

**Question 5:** Quality can also be affected by external incentives and drivers. Some examples include voluntary schemes (for example the Association of Personal Injury lawyers (APIIL) Accreditation), consumer education and competition in the market place. How far do you think these external factors can be effective in tackling the risks to quality that exist? Which external factors do you think are most powerful?

10. The CQS was developed partly in response to lender challenges about the standard of service in the conveyancing market. We welcome such schemes, although with the caveat that such schemes must do more than just pay lip service to increasing standards amongst the profession. The accreditation schemes should be able to demonstrate that they have had a positive impact on the quality of the service, and it should seek to promote competency beyond the basic level needed for regulatory purposes, otherwise it does not provide a suitable differentiation for the consumer in terms of quality. For example, lenders will keep a close eye on the number of those accredited under the CQS, as accrediting large numbers of firms in the market suggests that the bar is not set high enough.

11. Lenders, as bulk users of legal services, are in a position to influence quality by what they demand as a client. It is more difficult for a typical consumer who rarely uses legal services to judge quality and have relevant expectations. Lots of competition in the legal market could help to improve quality but it is more likely to result in pricing impacts as this is an easy differentiator for the consumer. This in itself may not be a mark of quality.

**Question 6:** Another possible tool for improving quality is giving consumers access to information about the performance of different legal services providers. How far do you think this could help to ensure quality services? How far is this happening already?

12. Performance measures could potentially be valuable in tackling the well-established problem of information asymmetry in the legal services market, where often the provider is far better able to judge quality of the service provided than the client.

**Question 7:** What do you believe are the greatest benefits of such transparency? What are the downsides and how can these be minimised?

13. The primary benefits would be to redress the information asymmetry for the consumer. A potential downside may be a tendency to over-rely on performance data to the exception of other measures to rate quality. However, to the extent that the information on utility of advice is independent and trusted, then the benefits may outweigh this downside.

**Question 8:** The table below (Figure 3) gives some examples of how risks to quality can be mitigated and actions that can be taken by regulators to ensure this happens. Can you suggest any other actions that can be taken?

14. We have no comments to add here.

**Question 9:** Which of the possible interventions by regulators do you think likely to have a significant impact upon quality outcomes?

15. A focus on the early intelligence-led interventions related to competency and removing substandard competency (this includes misconduct) would have the most significant impact in our view, as our members suggest that most of the problems they encounter relate back to competency.

**Question 10:** To what extent should the LSB prescribe regulatory action by approved regulators to address quality risks?

16. CML would support the LSB prescribing regulatory action by approved regulators to tackle quality risks where they perceive the regulator was not taking the appropriate action. We have, as the result of lenders' experience of conveyancing services, highlighted concerns with the SRA's regulatory approach to tackle risks around the quality of service, with varying degrees of success in recent times. It could be argued that the LSB should have a role to play in assessing and challenging the approved regulators from its position as oversight regulator.

17. This response has been prepared in consultation with members. For more information, please contact Jennifer Bourne, [Jennifer.bourne@cml.org.uk](mailto:Jennifer.bourne@cml.org.uk), Tel 0207 4388929.