



**SCSI**

Chartered property,  
land and construction  
surveyors

# **SCSI SUBMISSION ON PROFESSIONAL CONVEYANCER**

Legal Services Regulatory Authority Consultation



**RICS<sup>®</sup>**

## SCSI Submission on Professional Conveyancer

### Legal Services Regulatory Authority Consultation

#### 1. Do you have views on the creation of a new profession of conveyancer?

The Society of Chartered Surveyors Ireland (SCSI) is the largest professional body representing professionals working with the property, land and construction sectors. There are twelve professional disciplines within the SCSI some of which are active in the sale, letting and management of property. With 5,000 members nationwide, the SCSI, in conjunction with RICS, awards the chartered surveyor professional qualification which is the internationally recognised mark of excellence in the construction, land and property sectors.

Our members operate within small and large property firms across the country. They provide an important service to clients seeking advice on all property matters including valuation, transactions, and management. For most buyers and sellers of property, the sale of property can be the most significant financial decision they will ever make in their lives, and many will have had little experience when it comes to transacting property. The role of the agent is central to ensure a property sale is transacted in the smoothest way possible. For agents, the work involved in selling property spans beyond the sales negotiations phase. Agents are generally the only professional that guides their client seller through the entire sale process, acting as the intermediary between other professionals such as solicitors and construction professionals to conclude the transaction.

The SCSI understands the purpose of this consultation invitation is to consider the implementation of a new profession such as a Professional Conveyancer to increase competition in the market, reduce costs associated with conveyancing and introduce more efficiency within the process.

The Competition Authority Report<sup>1</sup> published in 2006, stated that *“The Competition Authority strongly recommends the introduction of a similar profession of conveyancers in Ireland. This would lead to downward pressure on conveyancing fees and more consumer-focused and innovative ways of providing these services, such as use of the internet and offering services outside normal business hours without any reduction in the level of consumer protection. The UK’s Department for Constitutional Affairs says that, while conveyancers have secured only 5% by value of the market for conveyancing, the average cost of conveyancing a £65,000 house fell by 25% between 1989 and 1998.<sup>2</sup> Licensed conveyancers in England have comprehensive websites, give on-line quotes and operate outside normal business hours”*

The SCSI is of the view that there is no single solution to reducing the costs and time of conveyancing and while the introduction of a new profession may increase efficiency, as a standalone measure it may not achieve the objectives of the LSRA.

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<sup>1</sup> Competition in Professional Services, Solicitors and Barristers, 2006

## **2. What impact do you consider the establishment of a new profession of conveyancer could have in Ireland in terms of competition in the provision of legal services?**

Conveyance delays add considerable cost to conveyancing which needs an urgent examination. The sale of property in Ireland can take many forms such as auction, private treaty and tender. Private treaty is the most common sale method, and it involves many parties to progress the sale. Owners and buyers rely on advice from many professionals such as surveyors, agents, solicitors, mortgage brokers etc. The process tends to mirror the following pathway;

- Estate agent appraises the property and if terms of business are agreed, the property is marketed for sale
- Sellers and buyers agree the sale price, subject to contract and based on Caveat Emptor
- Both seller and buyer solicitors appointed to convey sale
- Gathering of information commences regarding the property such as planning compliance, building regulation compliance, boundaries, deeds etc
- The above information gathering exercise can result in a number of queries or additional information sought between parties, which can be time consuming
- Contracts agreed and signed
- Property sale closed

The SCSi conducts frequent surveys amongst our agency members and publishes many reports on the property market. The delays associated with conveyancing are a recurring challenge reported by our members with the time to sell a property averaging 5.5 months<sup>2</sup>. Any efforts on behalf of government to improve efficiency within the conveyance process is to be welcomed.

During a housing supply crisis, the delays associated with closing sales is compounding the wider supply concern. Second-hand home sales are particularly exposed to conveyancing delays because there can be a multitude of matters to be addressed during conveyance that are not necessarily associated with new properties such as building defect issues, maintenance issues associated with older properties, boundary concerns etc.

The SCSi believes that the overriding objective of government should be to establish a more efficient conveyance process. We believe that this cannot be achieved solely by the creation of a new profession such as a Professional Conveyancer and therefore SCSi's position is that priority should be afforded to introduce e-Conveyancing in full ahead of a new Profession of Conveyancer.

There are approximately 6000 licensed agents in Ireland, many of whom provide property sales service to clients with approximately double the number of solicitors in Ireland. Whilst SCSi cannot comment on the level of competition in the marketplace for conveyancing services or the adequacy of same, we are providing much of our feedback and views based on experiences of agents interacting with buyers and sellers.

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<sup>2</sup> SCSi Annual Property Review and Outlook Report 2020

### **3. Are there specific implications, positive or negative, for the legal services sector and the solicitors' profession that in your view would arise from introducing a new profession of conveyancer?**

The SCSi view is that the process of conveyancing requires an overhaul to improve consumer protection and improve standards of delivery and that this should be of priority. The introduction of a new profession of conveyancer is not addressing the conveyance process, which is the main concern of our members. In an effort to address process issues of conveyance, the SCSi published guidance for consumers<sup>3</sup> with the sole purpose of aiding agents in their discussions with potential clients to seek as much information as possible ahead of a property being marketed for sale. This guidance helps sellers prepare for documentation when a sale is agreed and when pre-Contract enquiry information will be sought from solicitors.

The SCSi, through its building and geomatics surveyors, developed a checklist of questions that buyers should ask in relation to boundaries<sup>4</sup>. Many professionals involved in selling property are all too aware of the impact that boundary delays can have. The SCSi, in a move to help educate sellers and buyers, produced boundary guidance (which is often used by agents) to ensure they have sufficient information ahead of contract stage to identify and address boundary issues in a time efficient manner.

#### **Pre-Contract Enquiries**

Recent changes to conveyancing whereby precontract enquiries were brought forward ahead of the contract preparation stage has brought some efficiencies to the process. However, this is not a panacea to solve current challenges within conveyancing such as costs and delays. Further supporting measures will be needed such as a full introduction of eConveyancing.

#### **Gazumping, Failed Transaction & Reservation Agreements**

Renegotiations are a regular feature of the property sales market for many reasons and in some instances, negotiations could impact as many as 20% of sales. Renegotiations can often happen following building condition advice from construction professionals, boundary irregularities, similar properties coming on to the market before contracts are signed or a change in financial circumstances (mainly the purchaser). Conveyance delays is viewed as one of the main reasons for failed transaction and because of that, to cut the time it takes to buy a home, authorities could consider the introduction of a 'reservation agreement' system which would be similar to a proposed Home Owner Alliance scheme within the UK. The proposal sets out that it would require both the buyer and seller to put down a lump sum (perhaps of €500 or €1,000) when the offer is accepted. If the buyer or seller then pulls out without a good reason, the money will be released to mitigate the losses faced by the other party.

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<sup>3</sup> A Pre-Sale Checklist for Residential Property

<sup>4</sup> SCSi Property and Land Boundaries: Checklist for Purchasers

This new system could reduce the number of Gazumping within the market.

**4. What are the potential benefits and risks to consumers of legal services (including businesses) that can be reasonably expected from enabling them to access the services of a conveyancer, specifically in terms of legal costs, access to legal services and consumer protections?**

No comment

**5. What are the potential benefits and challenges to enterprise and national competitiveness with the introduction of a new profession of conveyancer?**

No comment

**6. Are there specific issues related to digital technology and how digitalisation that should inform a decision to establish a conveyancer profession?**

With the onset of COVID in 2020, many professionals have adapted their practice to utilise technology and take advantage of its solutions to drive efficiencies. E-Conveyancing, in our view, is a solution to address significant delays with closing sales. Delays with closing sales can include the following;

- Planning irregularities
- Non-compliance with building regulations
- Boundary challenges
- Delays accessing property deeds
- Delays associated with regularising property taxation liabilities
- Slow lending decisions from the banking sector
- Delays with various offices such as probate office and Land Registry

The items listed above are important features to progress conveyancing. However, much of these are paper-based certificates/applications/procedures and therefore it is not uncommon for a request to comply with any of the above to take several weeks to conclude. The combined delay of each of these can equate to significant overall delays.

Fortunately, these challenges can be addressed so that property can be brought to the market with much of this information and compliance documentation in place. The evolution of online bidding platforms has tightened the sales process somewhat. The use of digital signatures and other digital features speeds up the process and removes the need for physical attendance at various offices to seek / approve documents.

In relation to current market demand for residential property in particular, sales can be agreed in a matter of days however the remainder of the time is spent closing the sale. Our agents

guide sellers on the benefits of securing necessary paper- work such as certificates of compliance, property tax receipts, property deeds from banks, building condition reports etc ahead of marketing the property for sale. Our members inform us that it is common practice for sellers not to seek this information until a genuine buyer is found. This is due to the fact they may not be in a financial position to commit money on reports or instruct their solicitor to prepare contract of sale up front and therefore many delay the process until some assurances are there that a genuine buyer is in place and a booking deposit is secured. This doesn't necessarily mean that the buyer is contractually committed to the purchase as in the case of private treaty, many agreed sales remain 'subject to contract'.

**7. Do you consider that there are any particular barriers to the establishment of new providers for conveyancing services?**

No comment

**8. Are there any specific considerations for the training and models for regulation of a new profession of conveyancer in line with the Authority's statutory objectives that should be taken into account?**

When considering the view that regulation is in the public interest, then it would be necessary for "licensed conveyancers" to afford members of the public similar regulatory protections as if the client was currently using a solicitor. This would presumably involve incorporating the new profession into the current Legal Services Regulatory Authority complaints system, but having to create rules in relation to accounts and also create a system for auditing same. (*not just a financial audit but also compliance with various anti-money laundering legislation/ compliance with returns for stamp duty etc*). Insurance regulations would also be required and, presumably, a compensation fund.

In terms of education matters, at the moment Land Law is taught as part of most of the University Law Degrees. This however generally relates to the principles of the law and not the "practical" elements of doing a conveyance. If the profession of "Licensed Conveyancer" was to be established it would be easy enough to envisage Universities/other third level educators designing such limited courses, as has happened in England. [https://www.cilex.org.uk/study/legal\\_practice\\_areas/conveyancing](https://www.cilex.org.uk/study/legal_practice_areas/conveyancing)

**9. Are there any further considerations that in your view should be taken into account, including in respect to Ireland's domestic economy and the wider legal services sector?**

In other jurisdictions such as the United States, Title Insurance is available to the market to allow for a quicker conveyance process.

Title insurance protects lenders and buyers from financial loss due to defects in a title to a property. Any real estate transactions must have a clear title to ensure the property is free from burdens and liens. A title insurance policy will cover numerous risks like flawed records, incorrect ownership, and falsified documents. Therefore, the policy could allow for more speedier transactions as the risks to the lender/purchaser is lessened with the existence of the title insurance.

The proposal for title insurance could be considered by the relevant authorities as part of this consultation.



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