

mortgagestrategy

Choose wisely

2 July 2012 | By [Samuel Dale](#)

With every link in the housing chain dependant on solicitors doing their job efficiently, picking the right one can make the difference between your clients' mortgage deal going through or not

Here's a fictional story about arranging a mortgage that may ring all too true for brokers. A couple of young first-time buyers have found their dream first home and you, the broker, have found them a low rate with a good lender on decent terms.

Even the surveyors were quick and valued the property right on the estimate and the fees are reasonable. It's the perfect deal until the solicitor comes back with a snag at the last moment.

The broker does his best to resolve the issue as quickly as possible but no-one is answering the phone at the law firm. The deal is then beset by delays and eventually falls through as the seller grows impatient and the buyer gets frustrated.

More commonly the deal will go through but the delays to completion can lose clients the rate, erode any relationship and scupper repeat business.

There is a lot at stake in choosing the right solicitor and if you get it wrong it can badly affect your reputation as a broker. There is currently no breakdown of data on legal firms' complaints but this is set to change.

The Legal Ombudsman will publish its first set of data this month showing complaints for the three months starting on April 1.

It will report on individual firms and sectors in a process similar to the way the Financial Ombudsman Service does for financial services.

It will publish a quarterly table summarising ombudsman decisions and their outcomes, remedies and area of law, and like FOS should give a better idea of the state of the conveyancing market.

Clients choose solicitors from a variety of sources whether it be their own high street firm they've known for years or a fee-free legal service from a lender.

There are also recommendations from estate agents, brokers or clients choosing their firm independently.

Ray Boulger, senior technical manager at John Charcol, says brokers are well placed to judge the calibre of a solicitor.

"Joe Public picking a solicitor at random is in the lap of the gods but choosing a solicitor from an independent source such as the broker gives extra comfort," he says. "No broker will keep using a solicitor that they get complaints about."

Boulger says it is important for brokers to match up solicitors with the ethos of their firms

"A broker who is mainly online will want to deal with an online solicitor," he says. "For a broker like ourselves with a lot of high net worth clients personal service is more important."

"Brokers can have a range of solicitors they use for different purposes - one for clients who want a personal service and are prepared to pay extra for it, and one who does it more cheaply."

Some brokers have tie-ups with one solicitor while others have panels they recommend.

Dominik Lipnicki, director of Your Mortgage Decisions, says choosing the right solicitor is crucial.

"If you recommend a solicitor it has a direct reflection on you as if they mess up it is as if you have," he says. "The key is not to just look at price as there are lots of horror stories about great deals that turn out to be a lot of administrators dealing with cases and not a solicitor."

Lipnicki's approach involves building lasting relationships with lawyers over a number of years so they can trust service standards.

"We have built relationships over many years and we do it because they meet our service standards and treat our

clients well," he says. "We also receive updates on the progress of a case."

Some law firms pay brokers small commissions but Lipnicki argues it should not dissuade a broker from using a good solicitor.

Free riders

One route to go down is free legal services provided by lenders as part of the mortgage deal.

"Some fee-free legal services are good and some are poor," says Boulger. "If we are recommending a mortgage deal with free legal services and we know that the service is not likely to be good then we may still recommend it but we would warn clients not to expect too much.

"If clients are aware up front they can choose to take the free service or pay for their own."

Some lenders such as Woolwich offer a cashback feature for clients to put towards their own solicitor although it is still likely to cost more.

"We often find a lot of problems with lenders' solicitors because they do not have the service standards and act more like a factory than a personal service," says Lipnicki.

"When we recommend a solicitor we take full responsibility for the service as we have done all our due diligence to make sure their standards are up to ours.

"For free legal services we make sure clients know we have no control or access to solicitors," he adds.

There is a notable difference between the legal needs for a remortgage and those for a purchase.

Purchases require more thorough checks while remortgages are considered more straightforward.

Boulger believes a fee-free legal service for lenders is designed not to advise clients but to satisfy lenders.

"One problem for remortgages is that if clients get the offer in good time but don't want to complete for a month because of early repayment charges on their current deal then the solicitor needs to be aware of it," he says.

"There have been cases when the solicitor has completed too early and the client has incurred charges.

"If the solicitor was working for the client they would be responsible but whether they owe a duty of care to the borrower is not so clear cut if the lender is their client," he adds.

"These are the issues that brokers need to be conscious of because if you tell the solicitor when to complete on the deal it should be fine."

Lender trouble

It's not just brokers who need to choose carefully who they work with as lenders have had their fair share of upheaval in recent years as well.

Since the crunch lenders have gone on nothing short of a purge of solicitors with huge reductions in their solicitor panels.

Virtually all the major lenders were involved in cleansing their panels from fraud risks and poor practices.

HSBC was in the spotlight earlier this year when it butchered its panel from hundreds of solicitors to just 43.

Under intense criticism from the Law Society and reports of customer complaints it expanded its panel last month.

HSBC was not alone and for years there were murmurings about the Law Society's failure to create a kitemark for industry standards.

Last year it responded by bringing in the Conveyancing Quality Scheme which requires firms to undergo strict assessments, compulsory training, self-reporting, random audits and annual reviews to maintain their status.

The scheme is only open to members of the Law Society that meet the demanding standards it sets and it has the support of the Council of Mortgage Lenders, the Building Societies Association, the Legal Ombudsman and the Association of British Insurers.

It has had a big impact on the market, with 1,500 firms now signed up. Following HSBC's U-turn they will automatically qualify to be on its panel from August.

Clydesdale and Yorkshire Banks are doing the same, while Santander requires all new panel members to have completed the CQS.

Nationwide's legal panel is closed but it has also signalled that if and when it re-opens it will require new members to have the CQS qualification.

"It is a crowded market and it's not just solicitors who provide conveyancing work, so we wanted to give them recognition for high standards and help them stand out," says a Law Society spokesman.

"Many lenders want quality conveyancing services and it provides them with something they can identify.

"It also helps to tackle the general issue of mortgage fraud across the sector."

The Law Society says firms that do not have CQS are not bad but they may struggle to get access to lenders in future.

Fraud

One of the reasons lenders went through this process was the risk of fraud and it is something brokers must beware of too.

John Malone, executive chairman of PMS, has warned in these pages that brokers must also perform due diligence on solicitors.

In June 2011 the Financial Services Authority published a major thematic review of lenders' systems and controls.

Lenders began to reduce their panels well before the FSA expressed concerns as the post-crash wasteland exposed fraud risks that went unchecked in the boom.

"All lenders have reduced their solicitor panels because of financial crime," says Alan Cleary, managing director of Precise Mortgages.

"Around January 2010 Abbey was already chopping back dramatically. A lot happened before the FSA's comments so it is purely lenders reacting to where the fraud is happening. Plenty of fraud was attributable in part to solicitors so it is a natural stemming of financial crime.

At Precise borrowers have the choice to use a solicitor from its small panel or their own. If borrowers use their own solicitor they have to pay for both.

David Gilman, owner of Black's Solicitors, believes one consequence of shrinking lender panels is that banks and building societies are pushing out smaller firms.

Such was the concern among lenders there was even discussion of separate representation becoming common practice. It would be a move to protect lenders against fraud by using their own solicitor to check over the borrowers' solicitor.

But the backlash from the Solicitors Regulatory Authority and Law Society saw widespread separate representation put on the back burner.

"In the mainstream market, joint representation is the absolute norm and there is limited single representation," says Cleary. "In the bridging market it is all joint representation with just us offering single representation."

Brokers using smaller lenders may be able to use their own solicitors if it is right for the client. But in the mainstream they are likely to have to choose from lenders' panels, which should be big enough for large lenders even if greatly reduced from the boom.

The bridging market is a different area altogether as the speed of underwriting means lenders want to protect themselves by having a solicitor work solely for them.

Legal Services Act

The property market is a more disciplined beast since the crash as fraud crackdowns mean lenders and brokers are more discriminating.

Simultaneously, the legal market is going through another shake-up in the form of the Legal Services Act 2007.

Although it was passed five years ago the law came into force only at the end of last year.

The most important section of the legislation is the move to allow alternative business structures, meaning non-lawyers, to run law firms. The intention is to allow more commercial rivals into the sector to drive competition. It was dubbed the Tesco law as it was widely believed the supermarket would buy or set up a law firm.

The only major player to enter so far is the Co-operative Group, which was awarded its ABS licence in March and has been trading for three months.

Conveyancing is one of many legal services the Co-op supplies but it is a key feature of its proposition. As a membership organisation the mutual took advantage of a loophole before the Legal Services Act to provide legal services to its members.

It meant applying for an ABS licence was natural step to supplement its other professional services in banking and insurance. It has a panel including brokers and estate agents that it uses to distribute its services.

“We have done lots of research into legal services and we find consumers are put off approaching legal firms because there is no brand recognition,” says a spokesman for the Co-op. “The only alternative is your high street solicitor and if you don’t know anyone then they are not the most consumer-friendly. We believe there is an opportunity for the Co-op and its brand to make a real difference.”

Gilman suggests that new entrants may focus on remortgage conveyancing as it can be a streamlined process, unlike legal services for purchases.

“Remortgaging can be a process of tick box conveyancing whereas purchase conveyancing is a hand held operation,” he says.

“The important issue for purchases is when am I moving, whereas for remortgaging it is where is my money? It requires a different mindset and skills. It is difficult to process purchase conveyancing as you need human beings at the end of the phone to advise clients what is going on with their transaction.”

Gilman expects more third party firms to enter the market either by buying existing conveyancers or by starting their own firms. The moves could drive competition and choice for brokers.

It is clear that brokers need to keep a close eye on which firms they recommend to clients, as it is a direct reflection on them.

Keeping abreast of developments in the conveyancing world could be useful to keep improving client service. Price versus service is the main issue and both can be enhanced through a long relationship.

There are also fraud concerns to consider if using a solicitor you are not familiar with. It is tough to make the right choice but appropriate due diligence and a trusting relationship between broker and solicitor are essential.

Moves to clear out fraudulent solicitors have boosted relationships

John Malone

Executive chairman

PMS

The Mortgage Fraud Forum has clearly been beneficial in creating a platform for information to be shared

“Many in the mortgage industry saw that some of the lending done between 2000 and 2008 was irresponsible. The type of things that went on gave professional fraudsters a major opportunity to create relationships with the professionals that lenders rely on to ensure they have a proper title and their loans are secure.

Throughout these years, the ‘pass the parcel’ remortgage market fuelled by ever increasing funding and property appreciation, created a market that was difficult for some lenders to keep pace with.

This situation was highlighted by the Financial Services Authority’s thematic review of lenders’ systems and controls in 2010 and 2011.

The June 2011 report demonstrated the seriousness of just how bad some lenders’ systems and checking procedures were. They were unfit for purpose to the extent that a number of lenders reported solicitors as their number one source of mortgage fraud risk.

This risk was a combination of solicitors failing to register charges, absconding with lender funds, misappropriating funds, failure to complete transactions properly, failure to properly identify customers and failure to inform the true nature of the transactions - i.e. multiple charges on the same property.

There were also the more serious issues of falsifying certificates of title and forging bank account details so funds were not transferred to client accounts. There is also the solicitor practice takeover when a genuine solicitor is impersonated or the solicitor details are changed on the account and the funds are dispersed through a fraudulent solicitor.

Finally, there were cases of fictitious solicitors such as one that submitted 33 fraudulent applications costing a variety of lenders £8m.

Lenders, the Law Society and the Solicitors Regulatory Authority had to do something to prevent fraudulent solicitors from operating.

The formation of the Mortgage Fraud Forum has clearly been beneficial in creating a platform for information to be shared. Solicitors have worked with the FSA and created three key measures.

The Law Society has introduced the Conveyancing Quality Scheme, there is individual registration and, just as

important, Xit2 has created the lender conveyancing exchange.

These three things have now helped lenders identify mortgage fraud far more easily. There has also been a reduction in the number of solicitors and new panels created.

In some instances individual firms and their partners have been filmed and recorded in a database to ensure lenders understand who the legal firms acting for them and their clients are.

With all this now in place I would say there is optimism that some of the fraudulent behaviour linked to legal firms has been sorted out and lenders have better relationships with solicitors they now work with.

How does your firm choose a solicitor?

IAN GRAY

SENIOR MORTGAGE MANAGER

LARGEMORTGAGELOANS.COM

We have a panel of three solicitor firms. Rather than just recommend one we give clients a choice. Our first consideration is the quality of service because of how it reflects on us.

We test firms by referring clients to them and if there is good feedback they might make the panel next time we make an adjustment. Thesecond issue is our pricing as we have cheap firm, a mid-range and a top range company. It depends on the client and what they need.

We also have another firm for offshore arrangements and dealing with company and trusts structures.

AARON STRUTT COMMUNICATION MANAGER TRINITY FINANCIAL GROUP

We use a couple of firms of solicitors that have sensible fees and good service. It is an ongoing relationship that has kept us with them. We use one firm in particular, BBH Legal, as it is competitively priced and we have worked with it for years. It pays a commission, which is a minimal amount of no more than £100, but that is not why we use it.

There are lots of firms in the market but we need decent solicitors to complete a mortgage. If they are not up to scratch then you can have an offer but they can throw the whole deal into the air.

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