



Redemption of Charges and Early Completion

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Introduction

1. Discussions have taken place between Land Registry, the Law Society, the Council for Licensed Conveyancers, the Council of Mortgage Lenders and other representatives of lenders and conveyancers about the process for discharging charges of registered land. This paper summarises the background to those discussions and progress to date, describes the positions of the parties and suggests the next steps.

Background

2. On 18 December 2007 Land Registry wrote to a range of stakeholders setting out a proposed change of policy in relation to discharges. Stated briefly the proposal was that applications for discharge would be rejected unless accompanied or preceded by evidence of satisfaction of the charge (usually, a DS1 or an END). Any other applications made at the same time (for example, for registration of a transfer and/or a new charge of the title) would so far as possible be completed. The existing charge would be left on the register until proof of its satisfaction could be provided and an application for its removal made. Since this policy would result in registration applications being completed at the earliest possible time, it is referred to in this paper as “early completion”.
3. The Law Society, Council of Mortgage Lenders and other stakeholders responded to this proposal. Many respondents put forward concerns about the consequences and, although some acknowledged that early completion may bring some benefits, most expressed opposition to the change, raising a number of specific issues.
4. Having considered the responses, Land Registry prepared a paper, circulated on 30 June 2008, which addressed all the specific issues raised by respondents. As was apparent from that paper, Land Registry remained of the view that early completion was justifiable both legally and operationally and that it could be absorbed into the day to day practice of conveyancing without the significant consequences foreseen by some respondents. However, having regard to the concerns that were expressed, Land Registry invited key stakeholders to a meeting at its Head Office on 16 July with the aim of identifying an alternative way forward that would resolve the difficulties presented by the current redemptions process.



5. A list of those who attended the 16 July meeting is set out at Annex A to this paper. The Land Registry, the Law Society and the Council of Mortgage Lenders each made a presentation to the meeting and all attendees took part in a discussion of the issues raised. The positions set out in the presentations and in the discussion may be summarised as follows.

Land Registry's position

6. This is not a new issue. The redemption process, which results in delays to discharges, has caused difficulties for many years, notwithstanding efforts at improvement by all parties.
7. In 2006/07 Land Registry received nearly 2.3m discharge applications. Evidence of discharge was lodged either with or in advance of 67.17% of them. No evidence was produced with the other 782,544 applications and Land Registry was obliged to send a requisition to the applicant or their conveyancer.
8. Land Registry's estimate of the additional cost arising from discharge requisitions in 2006/07 is £3,536,219. All of that cost was eventually passed on, through registration fees higher than they would otherwise need to be, to all applicants for registration. It is highly likely that costs of at least the same order are incurred annually by conveyancers and lenders and also passed on in increased fees and charges to the ultimate customers, borrowers and house buyers and sellers.
9. This is not only an issue of wasted costs. The current process also causes risks for buyers and lenders. In one typical week in June 2008, Land Registry cancelled 357 registration applications because evidence of discharge had not been lodged, even after a requisition had been sent and the application had been stood over to await a reply for at least one month. In almost all of these cases associated applications to register transfers and/or new charges would also have been cancelled, even though otherwise in order, leaving the transferees and chargees with no protection on the register. Early completion would avoid this outcome.

Law Society's position

10. The conveyancing system currently operated in England and Wales is effective only because of the reliance that is placed on conveyancers' undertakings to redeem mortgages. This enables purchase monies to pass down a chain of



transactions on completion day without the need for bridging finance, which would be required if sellers were routinely expected to redeem any charges before completion. A recent EU study had found the English system of chain conveyancing to be the cheapest in Europe and had recommended its adoption to other EU countries.

11. Currently, when acting on a sale, the best practice is for the seller's conveyancer to obtain an indicative redemption statement from the lender before exchange of contracts – for assurance that the proceeds of sale, and of any new borrowing on an associated purchase, should be sufficient to meet the client's liabilities – and a final statement in the period immediately before completion.
12. On completion the seller's conveyancer will undertake to pay to the lender the money required to redeem the charge and to provide or procure the appropriate form or method of discharge (DS1, END or Electronic Discharge). The conveyancer is here undertaking a personal liability, which may be enforced by the relevant regulatory authorities as well as in the courts. It is essential therefore that the conveyancer can rely on the accuracy of the redemption statement and that the lender, having received the redemption money in accordance with the statement, should proceed to deliver the DS1, END or ED with all reasonable speed.
13. The system relies, in particular, on guidance for lenders agreed with the Law Society and issued by the Council of Mortgage Lenders in 1992. This makes it clear that it is unreasonable for a conveyancer to be put in breach of his or her undertaking by an error or lack of clarity in the redemption statement. Where the conveyancer is acting in good faith, the discharge should be effected on receipt of the amount calculated in accordance with the statement, even though there may be a shortfall resulting, for example, from an unanticipated and premature cancellation of the borrower's direct debit or standing order. The guidance also suggests that lenders should aim to provide the evidence of discharge within seven days.
14. The Society believes mortgage lenders are increasingly refusing to discharge mortgages, leaving sellers' conveyancers to meet the shortfall and pursue their client themselves. Final redemption statements are often quite different from earlier indicative statements. Lenders are marking their statements "for guidance only" or inserting other disclaimers so that they cannot be relied on as definitive. This is leaving solicitors at financial risk, and they may become reluctant to provide undertakings. They must also have regard to the requirements of their regulator that they should give undertakings only when it is responsible and reasonable



to do so. The Law Society has said that it may be forced to advise solicitors to cease providing undertakings in circumstances where the lender is not providing a definitive redemption figure that can be relied upon. This would be disastrous, badly affecting consumers by increasing costs and making conveyancing more difficult.

15. Solutions that are currently available, to allow the DS1 or other evidence of discharge to be available on completion, include separate representation for the seller and the seller's lender, personal attendance at completions or, as already mentioned, bridging finance to enable discharge in advance of completion. Each of these options would significantly increase the costs of the transaction payable by the seller. Another solution would be for the paper DS1 to be released by the lender to the conveyancer in advance of completion against an appropriate undertaking. However this seemed unlikely to be acceptable to lenders at present.
16. The Law Society believes that a fresh protocol to be agreed between itself and the CML, in place of the 1992 guidance, might provide a practical solution. The protocol would prescribe a standard redemption request and a standard redemption statement so as to minimise the possibility of lack of clarity or misunderstandings on either side. Provided that the conveyancer on completion sent to the lender the monies shown on the redemption statement, the lender would not be able to object to the Registrar discharging the charge.
17. The revised protocol would require the lender to provide proof of satisfaction to the conveyancer at an early stage that could be used to effect the discharge if the charge was not otherwise released within the agreed time. The conveyancers' obligations might include obtaining full details of borrowings from the borrower, requesting the redemption statement five working days before completion, checking the statement with the borrower and notifying any discrepancies and advising the borrower to continue all anticipated payments to the borrower until redemption.

Council of Mortgage Lenders' position

18. Although originally opposed to the Land Registry's proposal, the CML recognised that the new lender would at least gain the protection of registration, albeit as a second charge, and to the extent the proposal had some merit. Nevertheless there could be no relaxation of the CML Lender's handbook requirement that the lender obtain a first legal charge and there was a concern that in some cases a second charge registration effected under the proposal would not be



pursued. The problem might then become more difficult to solve after the passage of time.

19. The CML questioned whether the issue was as significant as Land Registry claims. On current performance more than 90% of transactions are registered within 15 days of the registration application being received. Perhaps the process might be modified, and cancellation of applications avoided, by not issuing a requisition immediately on receipt of an application so as to allow more time for the redemption to be effected.
20. There were many reasons why lenders might not be in a position to release a charge as quickly as Land Registry might like. For example, there might be a delay in the redemption monies being cleared through the banking system, fraud checks may need to be undertaken in some cases and sometimes there were delays in receipt of ENDs notifications from conveyancers. In one case a borrower had drawn down a further advance within five minutes of the issue of a redemption statement to his conveyancer. In that instance the lender had observed the 1992 protocol and taken a loss, being unable to prove any collusion between the borrower and the conveyancer.
21. There were other issues in the air at present which made it difficult to assess the need for change and what changes might be appropriate. For example, Land Registry was now promoting Electronic Discharges and was shortly to embark on a pilot of electronic DS1s. There were also suggestions of a forthcoming consultation on the introduction of Land Registry fees for discharge applications. The lenders needed to be able to understand the full implications before deciding how they should proceed. Would it not be more sensible to allow the pilots to bed in before proceeding with the current proposal? Lenders have no appetite for standard redemption statements which would inevitably require substantial amendments to their systems.
22. The scale of the lenders' task in handling redemptions should not be underestimated. Three of the larger lenders reported issuing more than one million redemption statements between them in the last year. Some lenders reported that three or more statements were requested and issued for each redemption actually effected.
23. The 1992 Joint Law Society and CML guidance on redemptions remained in place. CML was prepared to continue issuing regular reminders to its lenders of the desirability of following that guidance. It was also prepared to look into any significant departures from the guidance by its members but, although general allegations of failures to



follow the guidance were frequently made, specific instances were only rarely brought to CML's attention. In any event it was important to remember that CML is a trade association of first charge lenders; it is not a regulatory body and consequently has no power to enforce its guidance.

Other points emerging in discussion

24. Having requested a redemption statement conveyancers assume that they will be told about all the monies required to redeem all charges. They only know what the borrower has told them; it is the lender who has the full picture. But sometimes they are only given details of one account or charge, only for others to be brought forward for payment on or after completion.
25. Differing requirements between lenders cause confusion for conveyancers.
26. From the lenders' perspective, while acknowledging that there could be failures of communication between silos in financial institutions, mistakes sometimes were caused by inadequate information supplied by conveyancers who may have failed to ask the right questions of their clients. The borrowers should, at least, be able to produce statements from their bank or building society that would give a broad idea of their indebtedness.
27. Members of the public were generally unaware of the details of the different mortgage products or that their current account overdraft might be secured on their property. Redemption statements for offset mortgages posed particular difficulties for lenders since the amounts due were subject to change as money moved into and out of the offset account.
28. Secondary lenders often do not operate in the same way as CML members. Conveyancers are less likely to give undertakings in respect of their charges.
29. Lenders' computer systems are all different and the resources that can be devoted to IT changes are finite. Standard redemption statements would not be considered a priority by lenders and would not therefore be a realistic prospect. Law Society may nevertheless consider promoting a standard form of request for a redemption statement.
30. Some lenders operate a "float" system, adding two months' mortgage payments to the final figure so as to cover any unexpected costs. The balance is refunded to the borrower in due course. Understandably this was not popular with customers and many lenders would not wish to go down this route.



31. Land Registry will apply early completion to electronic dispositions. The e-transfer or e-charge will almost always be available for registration before the e-DS1 or electronic discharge of the old charge is received. It would not make sense to add extra complexity so as to delay a disposition which the system had identified as being fit for registration.
32. Land Registry did not believe that the Network Access Agreement would offer a solution to delays in processing redemptions. Generally discharges would not be controlled by an NAA. The sanctions available for breach of the terms of an NAA would not, in any event, seem appropriate for addressing this issue.
33. Land Registry also sees little value in extending the requisition period, either by sending requisitions later or by extending the cancellation deadline. Although it appreciates that some conveyancers see the correspondence as unnecessary, since they are already aware of the problem and are trying to resolve it, Land Registry believes that in many cases the requisition triggers action that otherwise would not be taken.
34. The Law Society felt that it would be helpful if conveyancers knew which lenders adhere to the 1992 Joint Guidance and which did not. This would help conveyancers to make risk based judgments when deciding whether it was responsible and reasonable to offer an undertaking in any particular case.
35. Lenders represented at the meeting had a range of views on this proposal. Some felt that they might be prepared to join the A list¹ of those committed to adherence although there was a concern that the required internal assurance systems might be costly and inflexible making changes to the Guidance more difficult. There was some unease about the risk and consequences of breaching the Guidance. Currently there is no obligation to follow it and some lenders felt that any change to its status would need to be debated by all CML members. The consequences of being on the A or B list would need to be better understood. Would conveyancers be advised not to give undertakings if the lender was on the B list? It was thought to be unlikely that this would influence borrowers' choices of mortgage products as the problem manifests itself several years later, at the other end of the transaction.

¹ The 'A' and 'B' list concept was introduced at the meeting held on 16 July 2008. The 'A' list was a shorthand for lenders who would be prepared to publicly adhere to the CML's 1992 protocol on redemptions, and therefore ones that conveyancers would be more prepared to give undertakings for.



Next Steps

36. The Law Society's suggestion that lenders might publicly commit to the 1992 Guidance did not command universal support at the meeting. Nevertheless there was recognition of the problems caused by the present redemptions system for lenders, conveyancers and Land Registry and a readiness to continue discussions in a smaller forum with a view to seeing whether a workable solution might be developed along these lines.
37. Land Registry is prepared to facilitate a further meeting between conveyancers and lenders to that end. It suggests that the conveyancer and lender participants should be selected by the Law Society and the CML respectively and that there should be no more than three representatives on each side. Land Registry would also limit its representation to three individuals with a fourth person to act as note taker.
38. It is difficult to see how Land Registry could become involved in the supervision or enforcement of any revised guidance to be agreed between conveyancers and lenders. However, it remains open to any suggestions for its possible participation in and support of any new arrangements. Possibilities might include publicising the arrangements on Land Registry's website and in its practice guides and/or having regard to the arrangements in applying requisition and early completion protocols in the future.
39. Land Registry will delay implementation of early completion for the time being, so as to allow the proposed further discussions time to bear fruit. However implementation will be effected, after a reasonable period of notice and appropriate publicity, if it appears that the discussions will not result in significant improvements in the redemptions process so as to meet the needs of all parties.



Annex A

Attendees at the meeting of 16 July 2008

Richard Barnett (Law Society)
Samantha Barnett (Council of Mortgage Lenders)
Julie Barry (Land Registry)
Sherry Booth (CML/HBOS)
Megan Charles (Finance and Leasing Association)
Fiona Davis (Land Registry)
Michael Garson (Law Society)
Stephen Gordon (Notaries Society)
Mark Goring (Council for Licensed Conveyancers)
Ian Kirkaldy (CML/HBOS)
Pascal Lalande (Land Registry)
Diane Latter (Law Society)
Ray Lewis (Land Registry)
Peter Mayer (Land Registry)
Conrad Moore (CML/HBOS)
Denise Reynolds (Land Registry)
Maureen Romeril (London Property Support Lawyers)
Katrina Talago (Land Registry)
Joe Timothy (Land Registry)

Apologies were received from

Peter Etchells (Bradford and Bingley Group)
Chris Knight (Nationwide Building Society)
Emma Slessenger (Law Society)