

A letter from Mark Stobbs, Director of Legal Policy at The Law Society, to Law Society Council Members.

July 2010

(reproduced with permission)

Dear Council Members,

We have received some calls and enquiries regarding the current situation of lender panels. I have included below some background and sources of information which may be of assistance to your constituents. We also sent out in PU on Friday an update regarding Lloyds Banking Group and I attach the link here:

<http://www.lawsociety.org.uk/newsandevents/news/view=newsarticle.law?NEWSID=429049>

Background:

The Law Society has been very conscious of the rationalisation of conveyancing panels which has occupied much of our time over the last 18 months. Previously the issue was contained to some small providers and Bristol & West.

Now, a number of the banks and building societies are merging, focusing on risk/fraud and reviewing their infrastructure and relationships. The result has been the rationalisation of conveyancing panels and those most affected have been small firms and sole practices with relatively low volumes of work.

Law Society Response

We have been in negotiation with the lenders who have changed their panel criteria; with CML, SRA and BSA. It has been vital for us to maintain open channels of communication and work to identify the ways in which we can help to satisfy lenders' concerns. This is a uniquely fragile economic environment which has seen increases in the incidence of fraud. In addition there are no immediate clear actions open to the Law Society. The relationship between a lender and a solicitor is governed by the law of contract. The lender can instruct whomever they choose and do not have to give reasons for removal. Discrimination law does not apply and unless a particular lender attains a 40% share of the market and competition law becomes an option, there are no legal remedies.

We have been looking at the Compensation Fund and other insurance options. It is a complex situation involving a number of issues and parties.

We have successfully negotiated appeals procedures within some banks and building societies, have been working closely with the SRA to safeguard and improve the work being undertaken to address concerns about fraud and we have been promoting the need for due diligence and vigilance by the profession. Practice notes on fraud and anti-money laundering are available to members on our website.

We are launching a conveyancing membership scheme this autumn which in part seeks to address some of the lenders' concerns. This follows on from other successful schemes in other practice areas that we run here at the Society.

Latest Developments

Santander:

Further to our successful negotiations last year, that saw the majority of firms reinstated onto their conveyancing panel, Santander has performed another review which has culminated in the removal of firms based on volumes of work. Those firms removed are given the option to appeal to the address detailed on the removal letter and to reapply if work increases. This appeal process was implemented on the request of the Society.

Nationwide:

Recently Nationwide has removed a small number of firms from its panel based on individual reviews of firms.

Lloyds Banking Group (LBG):

Lloyds Banking Group is removing firms from its panel which have conducted a low volume of transactions on a rolling twelve month period. LBG is currently in the process of sending letters to firms who are affected by this. Regardless of this review its panels will remain open to new applicants who will need to meet the volume threshold within twelve months of membership. Firms removed from panels will still be entitled to carry out 'pipeline cases'.

Following this action, LBG will look to further rationalise during the remainder of 2010 using a risk based model which would assess firms individually. Although the low volume criteria will be applied across the board, LBG will look at each firm on a case by case basis to ensure that, in for example, rural areas, access to solicitors' advice and representation is maintained.

Firms who receive a letter from LBG will be provided with a contact telephone number to use to raise any issues.

Advice for constituents

Some lenders are rationalising their panels on an individual basis, others on a stricter criteria based on size or volume of work. For both of these scenarios we need to work together to address these concerns, particularly about the increase in the incidence of fraud across the profession.

Please take the time to:

- Read our Practice Notes and attend our events on Mortgage Fraud and anti-money laundering
- Practise due diligence and vigilance

*If you are removed from a conveyancing panel and you either do **NOT** fall foul of the new criteria or are unaware of and/or disagree with the reasons for your removal in the first instance you should:*

- Contact the bank/building society directly to the contact details supplied. If there is an appeals process detailed on your letter please utilise this if appropriate.

If appealing a decision by the lender, it may be useful to provide the following information:

- A full account of your transaction history
- Your recent claims history
- Full details of all staff in your practice and their position within your practice. If a solicitor has been admitted to the role on completion of the Qualified Lawyers Transfer Test note this.
- Provide copies of Practising Certificate(s), the firm's current PII policy and your accountant's certificate (confirming what percentage of the firm's gross fee income is generated from residential conveyancing)

Again, please keep up to date with information on this issue via our website and Professional Update. We will continue to do all we can to resolve this situation and protect our members' businesses.

Mark Stobbs

Director of Legal Policy

The Law Society