

LEGAL
OMBUDSMAN

Complaints in focus:
Stamp Duty



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Summary

The Legal Ombudsman is currently seeing a number of complaints regarding Stamp Duty Land Tax. This is a tax paid when buying a house above a certain value and is collected by HM Revenue and Customs (HMRC).

A lawyer will usually prepare a financial statement on behalf of their client before completion, and collect the stamp duty payment from them. They then pay this money to HMRC. However, we are seeing a number of cases in which the lawyer has failed to make the payment. Unfortunately, as the rules stand, if a lawyer doesn't make the payment for whatever reason, it is still the client's responsibility. As a result, HMRC has been contacting home owners requesting the outstanding fees along with interest and penalties.

Reasons for the non-payment vary; from simple mistakes to providing false information or a firm becoming insolvent. The end result is damaging for consumers who subsequently have to try and get their money back. And in the long run it is also damaging for the lawyers involved as they ultimately pay the price.

This short report sets out our concerns and includes six cases that illustrate what can go wrong. We conclude that:

- **Lawyers must improve service standards to stem the growth in the number of conveyancing complaints;**
- **In particular, stamp duty payments should be made within HMRC's 30 day time limit and for the correct amount;**
- **Complaints should be treated seriously and dealt with as quickly and effectively as possible; and,**
- **Consumer signposting to the correct compensation fund or indemnity insurance provider should be more transparent where a firm has ceased trading.**

Finally, we raise the question as to whether lawyers, and not clients, should be held accountable for non-payment of stamp duty by HMRC.

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Business Secretary, Vince Cable, has warned of a “raging housing boom”, particularly in London and the South East¹. In one sense this is great news for conveyancing lawyers who, having suffered a difficult few years of slow market activity, are now finally getting customers through the door again.

However, this emerging housing “bubble” may have some less positive implications for the legal profession and its customers. It seems the increase in demand for legal services is placing pressure on firms’ resources and being manifest in mistakes and poor service. Earlier this year the Law Gazette reported the existence of a skills gap in the aftermath of the recession, and it could be that the recent upturn is now exposing it².

Ombudsman figures support the idea that the housing boom is affecting complaint levels: we have seen, for example, an overall increase in residential conveyancing complaints from 1189 in 2012-13 to 1476 in 2013-14. One in five (1 in 5) legal complaints now made to the Ombudsman is about residential conveyancing; a recent increase which makes it the most complained about area of law. And in the last year we have helped people recover around £800,000 to put right complaints.

More pertinently, the regions with the highest percentage of complaints about conveyancing lawyers made in the last financial year were London (22%) and the South East (17%); with the number of complaints increasing by around 24% compared to the previous year.

Issues with stamp duty

As ever, the people most affected by these worrying statistics are the house buying public. And having scrutinised the details of cases in which we have had to order some of the largest financial remedies, we have noticed a potentially alarming trend regarding lawyers failing to pay Stamp Duty Land Tax. A number of distressed people have contacted our scheme in the past year after receiving demands from HMRC for thousands of pounds in unpaid fees plus interest because their lawyer hadn’t made the necessary payments.

The problem has prompted this scheme, which resolves around 8,000 disputes each year, to share some of the worst examples so that we can highlight the issues, while urging lawyers to do better. In so doing, we hope to prevent the recent increase in complaints from escalating further. At the same time we want to alert consumers to the fact that their house purchase isn’t necessarily complete when they get the keys.

continued over.

¹ David Cameron rejects Help to Buy housing bubble fears: <http://www.bbc.co.uk/news/uk-25572757>

² Conveyancing boom exposes skills ‘gap’ - <http://www.lawgazette.co.uk/practice/conveyancing-boom-exposes-skills-gap/5039886.article>

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As the case studies show, the impact on home owners, some of whom may have completed their house purchase many years ago, can be significant. Imagine opening a letter from HMRC one day to discover that you are being chased for thousands of pounds plus penalties and interest and then consider the stress, anger and upset – not to mention confusion – you would feel when you have already given that money to your lawyer in good faith. That is exactly what has happened to the people featured in this report. Fortunately, we were able to help. Nevertheless, they needlessly suffered months of distress while waiting for the mess to be sorted out.

The consequences can be severe for law firms too. In all of the case studies included in this report the lawyers ultimately had to pay the outstanding stamp duty, any associated penalties and interest, plus compensation for the distress and inconvenience caused. For those still trading it will have inevitably impacted on their cash flow and reputation, particularly those firms where we found multiple examples of poor service. And in some cases, following conduct referrals, regulators have also intervened and closed their operations down.

The reasons behind these non-payments are varied. In **Mr A's** case, for example, we found that the firm had stated no stamp duty was required since it had declared a lower buying price to HMRC than the amount actually paid. Similarly, in **Mr F's** case the firm registered an incorrect house value, leaving him to pick up the mess some time later when HMRC spotted the mistake. We wouldn't, and haven't, speculated as to the reasons why the firms acted in this way. Our role is simply to decide whether or not the client received a poor service and to put things right if they did. If we suspect the firm may have also been guilty of misconduct, we refer the matter on to the relevant regulatory body. Having said that; cases like these do raise eyebrows. It is possible that a small minority of lawyers are willing to defy their code of conduct in order to pocket the stamp duty themselves. Since it sometimes takes HMRC years to catch up, they may think they have a good chance of getting away with it.

Mr and Mrs B, on the other hand, were simply unlucky. They used a firm that had ceased trading before it could get its house in order. And the firm used by **Mr and Mrs E** became insolvent. Many firms have been struggling to survive amidst challenging economic conditions; these closures may well be a symptom of that struggle. But difficult as it must be in the face of an imminent closure, it is paramount that lawyers remain professional to the end and see outstanding legal issues through to fruition. If not, they risk further damage to their profession's reputation, while potentially ruining the lives of the people they desert.

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Even where imminent closure isn't on the cards, we see examples of lawyers failing to fulfil their duties. Once a purchase has completed, there are likely to be many more cases that need a lawyer's attention to get them to completion. It is all too easy to focus on those cases and forget about post-completion issues, such as paying stamp duty. That was behind **Mr and Mrs C's** and **Ms D's** complaint. In each of these examples the firm also exacerbated the problem by refusing to take their complaint seriously. Admitting when a mistake has been made is a fundamental part of good customer service, and we recently published a convincing **business case for good complaint handling**; but still we see examples of firms failing to recognise the added value this brings.

Conclusion

We work closely with regulators to share data, which has helped sustain a two-tiered safety net for consumers: 1) by offering individual redress through our scheme and 2) by also addressing systemic issues via regulatory interventions. But clearly, as the figures show, there is more to do. As a starting point we have published two guides; one for consumers and one for lawyers. Both guides focus specifically on stamp duty. Hopefully, they, alongside a closer working relationship with regulators, can help us nip the problem in the bud. Meanwhile, we will continue to roll out our CPD courses and share data to address more general concerns around legal service provision.

Anecdotal evidence from stamp duty related complaints suggests that a level of confusion still exists among consumers who are desperately trying to get their money back. So we also need to ensure, along with regulators, that there is more effective signposting to the correct compensation fund or indemnity insurance provider where a firm has ceased trading.

Finally, there is room for a debate around the legal responsibilities of lawyers, and who should, ideally, be held accountable by HMRC for the non-payment of stamp duty. It is logical to argue that if a client has paid their stamp duty money to a lawyer, and they have signed a contract under which the lawyer agrees to pay this money onto HMRC, then the lawyer should be the one who answers to them when the payment isn't made. Of course, this could tempt lawyers to relinquish responsibility for stamp duty payments altogether – creating further issues for consumers.

We don't have all the answers in this report, but it is important that we raise the issues. One thing is for certain, at the moment some consumers are getting a raw deal through no fault of their own. This can't continue.



Mr A

Mr A wanted some legal help when buying a new home for him and his family. He used a lawyer who specialises in conveyancing transactions to take care of the legalities and to help with calculating and paying any third party costs. One of the lawyer's responsibilities was to pay stamp duty land tax to HMRC, which is due on properties above a certain value.

As well as paying costs for overseeing the legal requirements of the transaction, Mr A transferred an additional £10,500 to the law firm's bank account so that they could pay the stamp duty on his behalf.

The firm's completion statement confirmed that they had held funds of £10,500 in order to pay the stamp duty. As far as Mr A was concerned then, everything was in order and the house sale was complete. He and his family were thrilled that they could move into their new home.

Four years after moving in, Mr A received a letter completely out of the blue from HMRC. It stated that they had not received the stamp duty he owed them and that he must pay it along with interest. The outstanding amount due was now £12,000. Mr A was completely shocked and upset - particularly as the law firm knew that the stamp duty was due no later than 30 days from completing the purchase. He was also worried where this would leave him financially.

Mr A wanted to complain to the firm but by now it had ceased trading; instead he decided to bring his complaint to the Legal Ombudsman. When we investigated we found that the firm had declared no stamp duty was required since it had declared a lower buying price to HMRC than the amount actually paid by Mr A.

We ordered the firm to repay Mr A the £10,500 he originally gave them, plus a reimbursement to cover interest. We also ordered the firm to pay £200 compensation for the impact of their poor service. As the firm no longer existed, we advised Mr A to contact the Solicitors Regulation Authority to retrieve the money via its Compensation Fund.

Mr and Mrs B

Mr and Mrs B instructed a firm to act for them in the purchase of a new home. The purchase price for the property was £650,000. Prior to completion the firm sent Mr and Mrs B a completion statement and invoice, which confirmed that the stamp duty owed on the property was £26,000 and that the firm required a total of £192,000 to complete the purchase.

Mr and Mrs B transferred the money to the firm as requested and completion took place shortly afterwards. Everything seemed to have gone smoothly for the couple.



However, about six months later they received a letter from HMRC, which advised that the stamp duty had not been paid. As a result, £26,000 remained outstanding and in addition interest was accruing from the date of the completion onwards.

The firm had ceased trading since working for Mr and Mrs B, meaning they couldn't raise the issue directly with the firm. Consequently, they brought their complaint to the Legal Ombudsman.

When we investigated it became apparent that the firm had transferred Mr and Mrs B's money, intended to cover stamp duty, to its office account rather than making the payment to HMRC. After reviewing the evidence an ombudsman decided that the firm's service was far below the standard that Mr and Mrs B could reasonably have expected.

We ordered that the firm should repay Mr and Mrs B £26,000 and additionally pay any interest or penalties arising as a result of their failure to make the payment to HMRC. As the firm no longer practised, the money would be repaid via its indemnity insurance provider.



Mr and Mrs C

Mr and Mrs C received a letter from HMRC sometime after moving into their new home stating that they owed £15,000 in stamp duty plus interest. This came as a major surprise to the couple since they had paid a lawyer to settle the stamp duty payment on their behalf.

At the time of making the purchase Mr and Mrs C received confirmation from their lawyer that including fees and stamp duty, £38,000 was required to complete the transaction. They promptly transferred this money into the firm's account. They were relieved that everything had gone through and excitedly moved in as soon as they received the keys.

However, the firm did not pay the stamp duty on completion and nor did they contact Mr and Mrs C to explain that they had not done so. When we investigated we found that the service provided was below standard.

An ombudsman decided that the firm should repay Mr and Mrs C the £14,700 in unpaid stamp duty together with any costs to cover penalties or interest arising as a result of the failure to pay this on completion. They were also ordered to pay £150 compensation for the distress and inconvenience caused.

Ms D

Ms D had instructed a law firm ten years previously to help her purchase a property. In particular, she had wanted the firm to take care of paying her stamp duty and to complete the land registry forms. Her lawyer seemed helpful enough and shortly after starting proceedings Ms D received a completion statement, confirming that everything was in order.

Ms D moved into her home and lived there unaware of any problems until she was eventually contacted by HMRC. They confirmed that her stamp duty, amounting to £6,000, had not been paid. They wanted the initial payment plus interest, which had accrued over 10 years. In total, she was being asked to pay back £22,000. When Ms D looked into the matter further she also discovered that her property had not been registered with the land registry.

Ms D was extremely distressed and contacted the firm immediately to see what had gone wrong. However, the firm was unhelpful at first, failing to return calls or accept any responsibility for the problems she was facing.

Eventually Ms D brought her complaint to the Legal Ombudsman. An investigator looked at all of the facts of the case and concluded that the firm had not fulfilled its duties; neither paying the stamp duty nor processing the land registry forms.

Once the firm knew that the Legal Ombudsman was involved it was easier for Ms D to broker an agreement on how to resolve the issue. The firm accepted our suggestion of an informal resolution, and agreed to pay Ms D the stamp duty costs plus penalties. HMRC agreed to waive the interest charges once it became aware of Ms D's situation but we also sought assurances that should the money be required after all, the firm would cover the shortfall. Finally, we recommended that the firm pay Ms D £1,000 in compensation for the distress and inconvenience caused by its poor service.

Mr and Mrs E

Mr and Mrs E used a law firm to help them buy a new home shortly after getting married. The firm sent them a completion statement, which stated that they required £110,000 to complete the purchase. This included a payment of £14,000 (representing 3% of the purchase price) towards stamp duty.

Mr and Mrs E promptly paid the money required to the firm and shortly afterwards received the keys to their new home. They were so excited about the next chapter in their lives that they never thought to check whether the firm had fulfilled all of its responsibilities.

Unfortunately, some time later the couple received a letter from HMRC stating that the stamp duty due on their home was still outstanding. In addition, the

Case studies

couple owed a penalty for late payment and interest was accruing on the outstanding amount. They were completely stunned.

When they went to raise the issue with the firm they discovered that it had become insolvent and subsequently ceased trading. Finally, they contacted the Legal Ombudsman for help.

We investigated and concluded that the firm had provided poor service, ultimately holding onto Mr and Mrs E's stamp duty money. We ordered that the firm should pay this money back, along with costs to cover associated penalties and interest. Because the firm had ceased trading the couple were advised to contact the Council for Licensed Conveyancers to recover the money from its Compensation Fund.

Mr F

Mr F appointed a law firm in 2009 to act in the purchase of a new property. The purchase price was £400,000; Mr F therefore paid £12,000 to the firm to cover stamp duty in addition to the firm's costs. As far as he was concerned he had done everything required of him and duly moved into his new home.

About four years later Mr F received a letter from HMRC stating that the stamp duty had not been paid. He was furious and promptly tried to contact the law firm to get to the bottom of the matter. However, the firm had been intervened with by the Solicitors Regulation Authority (SRA) and was no longer trading. Mr F then contacted us.

When we reviewed the evidence we found that he had provided the firm with the correct amount of money intended to cover the purchase price, the firm's fees and disbursements including stamp duty. A copy of a letter from HMRC to Mr F revealed that the firm had filed an incorrect purchase price for the property and had therefore not paid the correct amount of stamp duty.

We concluded that the service provided was not of the necessary standard and recommended that the firm should pay the £12,000 stamp duty outstanding together with any interest and penalty costs. As the firm had ceased trading Mr F was advised to contact the SRA to claim the money back via its Compensation Fund. Failing that, the firm's indemnity insurance provider would be able to reimburse Mr F.

