

**The Conveyancing Association Protocol
For England and Wales
Second Edition**

The Conveyancing Association (CA) endorses the principles that underpin this protocol but recognises that each transaction must be judged on its own merits. In some cases established working practices, system limitations and the instructions of a client or lender may prevent the adoption of the protocol in full. Within these acknowledged limitations the CA commends the adoption of the protocol to its members as an opportunity to improve client satisfaction and shorten transaction times.

This protocol is intended to:

- Deliver a robust and efficient conveyancing service through the co-operation of all parties within the transaction.
- Complement both the Conveyancing Association's Pledges and the Conveyancing Quality Scheme (CQS). NB. The CA does not intend the Protocol to conflict with any regulatory or Law Society guidance but if any such conflict is apparent the demands of the latter prevail.

Issue Addressed	Agreed Practice	Practice Guidance
<p>1.0 Delays in the transaction</p>	<p>Improved Communication</p>	<p>Best practice is to make an initial introductory call to the client, thereafter the first choice for all correspondence for all parties (where appropriate), is electronic.¹</p> <p>Work with the other lawyer, responding promptly to communication in a co-operative manner.²</p> <p>Protracted email exchanges over complex issues, which are unresolved by the first round of enquiry, can be avoided by discussion over the phone.</p> <p>Keep other lawyer updated on the progress of any linked transaction.³</p> <p>Work on a regular, diarised, file review cycle to ensure that no outstanding issues are left un-progressed.</p> <p>Where there is no assigned fee earner, it is recommended that firms maintain a monitored, and published, generic email address for conveyancing; which can be used on Memoranda of Sale and correspondence before a fee earner has been appointed.</p> <p>This will enable the transition of initial communication by email and allocated internally upon receipt of Instructions.</p>

¹ Electronic Communications Act 2000 Part II Clause 7 states that information delivered by email from a known source is considered electronically signed and admissible in legal proceedings.

² CQS Protocol: General Obligations 5, 6 & 8.

³ CQS Protocol: General Obligations 7 Stage A: Instructions 4 & 5 & Stage B Pre-Exchange:26 Stage C: Prior to Exchange of contracts 43

1.1 Delays in the transaction	Monies on Account	Collect monies on account from clients at the earliest opportunity.
1.2 Delays in the transaction	Covering Staff Absences	Ensure proper arrangements are made for cover for staff absences. ⁴ Email and voicemail accounts should be monitored during staff absences.
1.3 Delays in the transaction	Obtain Identity Verification upon instruction.	As part of the Due Diligence process, and as good customer service, the Law Firm should consider accepting evidence of Identity from a trusted third party in accordance with the principles of reliance or agency set out in clause 17 of the Money Laundering Regulations 2007 and in line with the Law Firm's risk assessment of the transaction and the client. ⁵
1.4 Delays in the transaction	Obtain evidence of source of funds early	In line with the Law Firm's risk assessment, establish source of funds at the earliest possible stage advising that information relating to gifts or loans will be reported to the lender ⁶ and that the buyer should include this information on their mortgage application. ⁷ Highlight that further evidence of source of funds might be required at a later stage.
1.5 Delays in the transaction	Collecting Deposits	Request the deposit monies at the earliest appropriate opportunity.
1.6 Delays in the transaction	Defects in Title	<p>Significant delay is caused in debating the responsibility for perfecting defects in title.</p> <p>This can be avoided where it is assumed that the seller is responsible for their title and would not expect to receive full market value for a genuine defective title. Any other 'potential' defects are a matter for negotiation between the parties.</p>
1.7 Delays in the transaction	Pre-Sale Preparation	<p>If the commercial decision of the Law Firm is to prepare pre-sale packs, it is recommended that the following should be included.</p> <ul style="list-style-type: none"> • Official Entries⁸ • Title Plan • Seller Information Forms • Establishing cost and location of Landlord/Management company information. • All documents held by the client

⁴ CQS Protocol: General Obligations 12

⁵ CQS Protocol: Stage A: Instructions 2

⁶ CML Part 1: 5.13.1

⁷ CQS Protocol: Stage A: Instructions 7

⁸ CQS Protocol: Stage A: Instructions 8

		<ul style="list-style-type: none"> • Relevant Title Documents from the Land Registry rather than wait for a 'deeds package' • Provisional redemption figures⁹ • Required permissions and consents which exist for alterations and obtain copies¹⁰
1.8 Delays in the Transaction	Issue of Contract Pack	<p>At the earliest opportunity, to issue a contract pack to the buyer's lawyer, to include as a minimum:-</p> <ul style="list-style-type: none"> • The latest edition of the Standard Conditions of Sale, without amendment, save for transaction specific amendments.¹¹ • Official Entries and Plan. • All downloadable title documents held at the Land Registry. • A draft Transfer¹² (with the buyer's details and price left blank if necessary). Any required clauses will in the main be a requirement of the seller. Duplicate Transfers are acceptable to the Land Registry and the buyer's lawyer can add any required joint ownership clauses;¹³ and • Replies to Requisitions on Title.
1.9 Delays in the Transaction	Leasehold Enquiries	<p>Avoid delays by advising the client that payment will be required by the Lease Administrator for providing the information required by the buyer's lawyer.</p>
1.10 Delays in the Transaction	Obtaining Signed Contract at the Earliest Opportunity	<p>The seller's lawyer may leave the buyer's details blank on the draft contract so that the buyer's lawyer may fill those in by hand and be confirmed on Exchange of Contracts, if necessary</p> <p>This enables both the buyer and the seller's lawyer to report to the client early¹⁴ and request that their client sign the contract prior to final approval which the lawyers will do on their behalf, initialling any</p>

⁹ CQS Protocol: Stage A: Instructions 7

¹⁰ CQS Protocol: Stage A: Instructions 9

¹¹ CQS Protocol: Stage B: Pre-Exchange: 24

¹² CQS Protocol: Stage B: Pre-Exchange: 24

¹³ The Land Registry's eDRS acceptance of scanned copies of the documents mean that the Seller's Lawyer can email the scanned copy of the dated document to the Buyers conveyancer with their undertaking that it is a true copy of the original.

¹⁴ CQS Protocol: Stage B: Pre-Exchange: 33

		agreed amendments as agent for their client with their verbal or emailed authority. ¹⁵
1.11 Delays to the transaction	Avoiding Delays on Completion	<p>Request client and lender monies to arrive at least the day before Completion and check with the sender, in advance, to ensure that they will be sent.</p> <p>Set up telegraphic transfers the day before Completion when in funds, to go first thing on the day of Completion, as appropriate.</p>
2.0 Additional Enquiries	Avoiding Unnecessary Additional Enquiries	<p>Limit all additional enquiries to those relating to title or required by your client.¹⁶</p> <p>Seller's lawyers may refuse to answer Additional Enquiries which do not relate to the title, are not property specific or appear to be "standard" and have not been raised on the instructions of the buyer or lender.</p> <p>Buyer's lawyers should avoid requesting unnecessary documentation eg Blanket Tree Preservation orders, FENSA Certificates revealed by the Local Search unless the nature of the transaction or the lender requires it.</p>
2.1 Additional Enquiries	Providing Relevant Documentation on Request	Assisting the buyer's lawyer wherever possible by advising the seller that they are required to provide, at their own expense, documents which will be required by the buyer. For example, s.106 Planning Act Agreements of any age, Road and Sewer Adoption Agreements where a road or sewer is unadopted etc. ¹⁷
2.2 Additional Enquiries	Providing Full Replies to Enquiries	Review and augment replies given by the seller to ensure that all appropriate information is given to the buyer's lawyer at the earliest stage and to ensure that the seller is not vulnerable to a later claim of mistake or negligence. ¹⁸
2.3 Additional Enquiries	Avoiding Leasehold Delays	<p>Use agreed standard Leasehold Property Enquiries (LPE1) which should be sent to all relevant parties involved in the Lease administration at the earliest opportunity.¹⁹</p> <p>Ring the contact given for the Lease Administrator at the earliest opportunity to establish their requirements and to check whether there are other</p>

¹⁵ CQS Protocol: Stage B: Pre-Exchange: 38

¹⁶ CQS Protocol: Stage B: Pre-Exchange: 32

¹⁷ CML Handbook s.5.5.4

¹⁸ Legal Ombudsman: recommendations on advising the client.

¹⁹ CQS Protocol: Stage A: Instructions 12

		parties who will also need to provide information, eg a Resident's Association.
2.4 Additional Enquiries	Preventing Last Minute Enquiries	<p>Raise enquiries at the earliest possible stage, to prevent delays to exchange.</p> <p>Issues arise where activities are delegated to inexperienced staff. Whilst the delegation of work is the commercial decision of the member, delays can be avoided by implementing a Supervisor review of the files at regular stages of the transaction to identify issues that may require additional enquiry at the earliest stage possible, rather than on the final review prior to exchange.</p>
3.0 Post Completion	Land Registry Requisitions	So far as required by the terms of the Contract and covenants for title, the seller's lawyer should assist the buyer's lawyer with Land Registry Requisitions in a co-operative and timely fashion.
4.0 Technical Issues	Dealing with Issues with Extensions & Alterations	<p>The following is not exhaustive and each transaction should be judged on its own merits and with due consideration to any other statutory requirements e.g. Conservation Areas, Article 4 Directions, Listed Buildings etc.²⁰</p> <p>Planning Permission</p> <ul style="list-style-type: none"> • Works requiring planning permission which was not obtained and which were carried out within the last 12 months – require either a regularisation certificate or bespoke indemnity insurance, as appropriate to the client's needs and requirements. • Without required planning permission but there is evidence work was completed over 4 years ago without concealment²¹ (unless there is a change of use involved then 10 years is required) – no further action²² • Without required planning permission work completed over 12 months ago²³ but less than 4 years - obtain indemnity insurance on purchase or advise the client to supply indemnity insurance on sale

²⁰ CML Handbook s.5.5.1

²¹ Ss124-7 Localism Act 2011

²² Planning Act 1990 states that work completed over 4 years ago is unenforceable and immunity for breach of condition or change of use after 10 years. NB you should ask the seller to confirm that the work was not concealed as in the case of *Welwyn Hatfield Council v. SSCLG* [2010] EWCA Civ 26 & *R. (Fidler) v. SSCLG* - [2011] EWCA Civ 1159

²³ Specialist indemnity insurance would be required for works completed less than 12 months ago which might affect due to the increased chance of enforcement actions by the Local Authority.

- Planning permission revealed by search without conditions²⁴ – no further action
- Planning permission revealed by search with conditions - **obtain copy whatever the age of the consent**. If the consent is more than 20 years old the buyer's lawyer should obtain it direct from the appropriate planning authority.

In all cases where planning permission was not obtained, the lawyer should advise their client and the surveyor that permission was not obtained and that the surveyor should confirm that it is structurally sound and value the property on this basis.

Buildings Regulations

- Pre-1985²⁵ no action required as the Local Authorities were not compelled to keep records until the advent of the Building Act 1984.
- Works carried out post 1985 and a Building Regulations Completion Certificate is revealed by your search – no further action
- Works carried out post 1984 but over 10 years ago and no Building Regulations Completion Certificate is revealed by your search; **advise** the client and lender of lack of availability of a Completion Certificate, the issues that arise if they wish to undertake additional works, and to check with Valuer/Surveyor as to the safety and structural integrity of the alteration. Consider the need for an indemnity insurance policy at the buyer's cost only if you consider there is a material risk of enforcement action being taken.²⁶
- Works carried out within the last 10 years and no Building Regulations Completion Certificate is revealed by your search; **advise** the client and lender of lack of availability of a Completion Certificate, the issues that arise if they wish to undertake additional works and to check with Valuer/Surveyor as to the safety and structural integrity of the alteration. Recommend indemnity

²⁴ Planning Permission granted without conditions, so long as it's Subject Title is sufficient to identify the alteration is relates to, will reveal nothing further of use. Lack of sufficient description should be resolved by a call for confirmation to the Local Authority.

²⁵ The Buildings Act 1984 was the first time that the Authority was required to keep records of Buildings Regulations, there would be nothing in the public interest to support an application for an injunction under s.36(6) of the Buildings Act 1984 However, the structural integrity of the alteration should be verified in all cases. Cottingham –v- Attey Bower Jones 2000

²⁶ CML Handbook 5.5.1: "If there is evidence of such a breach or matter but in your professional judgment there is no reasonable prospect of enforcement action and, following reasonable enquiries, you are satisfied that the title is good and marketable and you can provide an unqualified certificate of title, we will not insist on indemnity insurance and you may proceed."

		<p>insurance against enforcement at the seller's cost.²⁷</p> <p><i>In all cases where Buildings Regulations was not obtained, the lawyer should advise their client and the surveyor that permission was not obtained and that the surveyor should confirm that it is structurally sound and value the property on this basis.</i></p>
<p>4.1 Technical Issues</p>	<p>Restrictive Covenants</p>	<p>Missing Pre-1925 documents containing restrictive covenants.</p> <p>Advise the client of the lack of knowledge and that there may be a risk of enforcement should the covenantee establish a material breach. Advise as to the availability of indemnity insurance at the buyers cost.²⁸</p> <p>Missing Post-1925 documents containing restrictive covenants</p> <ul style="list-style-type: none"> ▪ If the document containing the covenants is dated before the date of first registration, a Land Charges Search against the original covenantor may reveal that the covenants were not protected by a D(II) registration. In which case the Land Registry should remove reference to the covenants for the Charges Register, upon application²⁹; otherwise ▪ If the Seller can confirm that no material changes have been undertaken to the property or of the use of the property within the last 20 years and no enforcement action is being taken or threatened³⁰; consider the need for an indemnity insurance policy at the buyer's cost only if you consider there is a material risk and a suitable policy is available to mitigate the risk; otherwise ▪ If the Seller is unable to confirm the above then an indemnity insurance policy should be provided at the Seller's cost; otherwise ▪ If changes have been made to the property within the last 20 years eg external structural alterations or additions or change of use, advise the

²⁷ The Local Authority has rights to serve a Stop or Enforcement notice within 12 months under s.36(4) of the Buildings Act 1984

²⁸ Privity of Contract & Estate "a Burden cannot pass with the land unless an indemnity has been given". The Doctrine of Notice: Where a covenant is registered it will still bind.

²⁹ Land Charges Act 1972 Charges of classes C(iv) & D are void against a purchaser for money or monies worth if not registered.

³⁰ CML handbook Part 1 5.11.2 following the decision in Hepworth –v- Pickles 1900 "an open and uninterrupted breach over 20 years creates an implied waiver".

		<p>seller that they have a defective title which requires indemnity insurance.³¹</p> <p>Breach of a known Restrictive Covenants carried out within the 20 years without consent or waiver of the covenant</p> <ul style="list-style-type: none"> ▪ Breach over 12 months old: a defective title indemnity insurance should be supplied by the seller.³² ▪ Breach under 12 months either obtain a bespoke indemnity insurance policy or require retrospective consent at the seller's expense. <p>Breach of a known Restrictive Covenant carried out over 20 years ago</p> <p>No further action required,³³ provided the seller confirms no enforcement action is being taken or threatened</p>
<p>4.2 Technical Issues</p>	<p>Short Leases</p>	<p>Lease under 80 years left to run but over 70 years and acceptable to the lender: the risk and cost associated with short Leases should be reported to the client and their instructions taken to ensure that they understand the potential additional costs on sale or remortgage.³⁴</p> <p>Lease under 70 years left to run: Lease Extension required at the seller's expense.³⁵ A fully advised cash buyer of course has the option to instruct their lawyer to proceed without a Lease Extension.</p>

³¹ CQS Protocol: Stage A: Instructions 10

³² It is assumed that the Seller is selling at full value and therefore should perfect any defect in title at their expense.

³³ CML handbook Part 1 5.11.2 following the decision in Hepworth –v- Pickles 1900 “an open and uninterrupted breach over 20 years creates an implied waiver”.

³⁴ Legal Ombudsman advice on common complaints indicates & CQS Protocol: Stage A: Instructions 13

³⁵ CML Handbook Part 2 – the majority of High Street lenders require 70 years minimum term NB Kent Reliance require 75 and New Life Mortgages 80 National Counties, Coventry & Godiva 80 years for lifetime mortgages