

Coronavirus (COVID-19) sector-specific guidance: Conveyancers

The impact of coronavirus (COVID-19) continues to cause significant uncertainty not only for buyers and sellers but also for conveyancers against the backdrop of continuing changes to lockdown and tiering guidance as well as the rollout of the vaccination programme.

This sector-specific guidance provides conveyancers with information to enable sales and purchases to be carried out while maintaining safety as social distancing measures continue to ease or increase in line with UK Government guidance.

This accompanies the pan-industry guidance: *Re-opening the Home Moving Market Safely* and the related [Government guidance](#). The latest changes to Government restrictions include the creation of new tiers.

This document has been developed collaboratively by the residential conveyancing sector and their professional and membership organisations.

This guidance is applicable to both England and Wales, but the regulations and guidance relating to the re-opening of the market issued by the Government and referred to in this guidance apply only in England.

The regulations and guidance currently applicable to Wales relating to the housing market are set out in section 10.

This guidance applies to owner-occupied homes and to second hand, rather than new-build, homes.

Sector-specific guidance: Conveyancers

‘Conveyancers’ are legal executives, licensed conveyancers and solicitors.

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Introduction

Coronavirus (COVID-19) continues to have an impact across the home moving industry. Buyers and sellers will find the process very different from the way it was before the pandemic started. They may need support to help them understand the continuing changes to the buying and selling process.

The housing market is to stay open, but Government can revoke this if necessary. Government appears to have no plans to tighten restrictions at this stage, so long as people adhere to the safe moving guidance. Government say “the housing market in England will remain open during this national lockdown. This means that people looking to move home will be able to both continue with planned moves and view new properties to move into in the future. Estate and lettings agents, removers, valuers and people in sales and lettings offices and show homes will be able to continue working”. Everyone who can work from home should do so, but law firms can remain open, provided they’re COVID secure.

For the time being, people can continue to move home even where this involves moving to other areas in England to do so – if the move is absolutely necessary and cannot be delayed. However, people not in a household or support bubble should not help someone move house unless absolutely necessary. People can market their homes and estate agents can visit in order to take photos/videos of properties.

Provide clients with an electronic copy of, or a link to, the pan-industry consumer guidance if they have not received this from the estate agent or other property professional.

Clients may also find it useful to see the general Government guidance on how to buy and how to sell.

The impact of COVID-19 is causing significant uncertainty not only for buyers and sellers but also for conveyancers.

The position will probably continue to be uncertain for some time as the UK Government monitors the effect of the changes it’s introducing and amends its guidance in accordance with the results.

The purpose of this sector-specific guidance is to provide conveyancers with information to enable sales and purchases to be carried out while maintaining safety as social distancing measures are eased or increased in line with Government guidance.

This document has been developed collaboratively by the residential conveyancing sector and their professional and membership organisations.

It expands on the latest [UK Government guidance](#) which says:

“Conveyancers can open for business and can take on new instructions. They should make sure their clients are aware of the differences in completing transactions during this period.

- Conveyancers should aim to conduct as much of their business remotely as possible.
- Where client meetings need to take place, appropriate social distancing and hygiene measures should be put in place.
- Conveyancers should do what they can to promote flexibility making provisions for the risks presented by coronavirus, for example when advising their clients who are ready to move not to exchange contracts on an occupied property unless they have made explicit provision for the risks presented by the coronavirus.
- Conveyancers should prioritise support for anyone who is clinically vulnerable, with symptoms of coronavirus or self-isolating to agree a new date to move”.

Be flexible and pragmatic and use common sense to enable buyers and sellers to achieve what they want. Communicate more.

Update your advice to clients as the guidance from Government evolves.

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1. At the start

At the beginning of every sale and purchase instruction:

- be vigilant: check for fraud warning signs. There’s an increased risk of fraud in this changed environment, especially where conveyancers are working from home

- carry out a full fraud risk assessment and an anti-money laundering (AML) risk assessment for the transaction. Remember a transaction may be low risk for one but high risk for the other
- check the client understands how the process will work up until completion
- establish with the other side what's acceptable in terms of electronic or digital procedures and what will be required in terms of documentation
- point out the risks, assess the clients' appetite for risk, set out the options and likely consequences of each option, establish whether they want to proceed and, if they do, how they want to do this
- explain the risk of completion not taking place because of the presence of COVID-19 and how the provisions of the contract will apply and affect them if completion cannot take place when scheduled
- establish the details of any chain so that attempts can be made to settle any variations to the contract across the whole chain

SDLT concession deadline – 31 March 2021

Whilst we have made suggestions to Government to soften the deadline of the SDLT concession on 31 March 2021, you should continue managing clients' expectations about obtaining the benefit of the SDLT concession. Clients need to understand that the transaction is not wholly within your control and that there are many factors that can prevent the purchase or sale proceeding. The main causes for transaction delays and withdrawals seem to be valuations, obtaining mortgage offers, obtaining EWS1 forms, obtaining some search results, an increase in enquiries being raised and delays caused by all sectors of the industry having staff working from home. You may want to let your clients know about these potential delays on instruction. You should ensure that your clients do not have unrealistic expectations about completing before the 31 March deadline. Check whether your clients still want to proceed with the transaction, or not, if it looks unlikely that they can complete before 31 March and whether they want to renegotiate the contract to reflect any new terms agreed. You will need to ensure, preferably before exchange of contracts, that should they not be able to complete by 31 March 2021, they can let you have the money necessary to pay the SDLT which will be due on completion after that date.

Note that the end of the SDLT holiday in England and LTT holiday in Wales coincides with the busy Easter holiday period and the end of the Help to Buy scheme in its current format.

2. Meeting with clients

Use virtual, electronic and/or telephone options to discuss issues with clients wherever possible. If a client must visit the office, consider taking the following precautions:

- ensure you follow the [latest guidance on practical steps to reduce transmission](#) and maintain a 2-metre distance apart where possible

- meet with them by appointment only
- actively discourage people from making drop-in visits
- change the physical layout of the office as necessary to protect clients and staff
- ask clients to clean their hands when they arrive: provide sanitiser or access to a sink, soap and paper towels
- install a screen at the reception desk
- make provision in your waiting area to enable visitors to socially distance from each other: consider the use of floor markings using tape or similar. If this is not possible, arrange appointments with adequate intervals
- establish a procedure for the use of any lift so that visitors and staff can comply with social distancing requirements
- hold meetings outdoors or in well-ventilated rooms whenever possible

3. Initial instructions

Make sure that clients understand that:

- they'll need to remain flexible and patient as the matter progresses. They may need to put matters on hold at short notice. Although attempts will be made to make some provision for this in the contract, it's not possible to provide for every situation
- once contracts have been exchanged, they will have entered into a binding legal contract and if they fail to complete the purchase or sale, they may incur serious financial penalties
- as the Government increases testing, more people who are asymptomatic may have to self-isolate, meaning that they may not be able to complete their move
- new restrictions may be imposed by UK and/or Welsh Government which might prevent completion taking place
- regulations may be introduced by the UK or Welsh Government at any time to pause all home moves locally or nationally
- if they were hospitalised as a result of COVID-19, the contract would not be frustrated, and they would still be obliged to complete
- they may be moving into a property where one of the occupants has had COVID-19 or may be suffering from COVID-19 symptoms

You should also ensure that:

- if your client is buying, whether or not they would choose to proceed if the completion takes place after the 31 March 2021 SDLT concession deadline
- you have discussed with your client the options they have in terms of the usual contract provisions, whether or not working towards simultaneous exchange and completion or adapting the Covid rider to the agreement. Discuss the advantages and disadvantages of each of these options as set out below
- if your client wants to include a Covid clause in the contract, you need to ensure an identical clause, or a clause with a similar effect, is included in every other contract in all transactions in the chain.

Discuss with clients the risks associated with each of these issues and how they can be addressed.

Covid rider to the agreement

If your client wishes to use the Covid rider in the contract, you should refer them to the contents of clause 2 at the initial instruction stage. If your client chooses to use the rider, the appropriate number of working days needs to be inserted in clause 2 and if they want to complete before 31 March, this needs to be calculated cautiously. You would also need to make sure everyone in the chain has inserted the same number of days. Similar matters apply to the time limits in relation to the service of notice to complete.

4. ID requirements

4.1. ID to comply with anti-money laundering (AML) obligations

- Continue to carry out due diligence under the Money Laundering Regulations. These have not been suspended
- If there's no face-to-face contact, continue to comply with the enhanced due diligence (EDD) requirements as set out in the *Legal Sector Affinity Group guidance for the legal sector*
- Comply with the Legal Sector Affinity Group's more detailed guidance on dealing with anti-money laundering compliance during the coronavirus pandemic
- Use electronic ID – the Financial Action Task Force Guidance on electronic ID provides some information about verification services
- Even if there's face-to-face interaction and paper ID documents are provided, consider using electronic ID in addition as the best forms of this are more reliable

4.2. ID for lenders

Continue to comply with obligations as set out in the UK Finance Mortgage Lenders Handbook and in the BSA Mortgage Instructions.

4.3. ID for HM Land Registry (HMLR)

HMLR has introduced some temporary changes to their requirements to make it easier to verify identity for land transactions. Full details on these changes, including the conditions that must be satisfied, are available in Practice Guide 67A.

HMLR will now not reject applications where identity evidence is not provided. They will raise a requisition so that applications do not lose their priority.

This does not reduce the responsibility to ensure that adequate steps have been taken to verify identity.

Continue to comply with the previous HMLR ID obligations as far as possible.

Note that HMLR [resumed cancelling applications with outstanding requests for information \(requisitions\) on Monday 16 November 2020](#). Failure to comply with outstanding requests from HMLR resulting in the cancellation of applications may result in a firm's membership of lender panels being at risk.

5. Undertakings

Only give undertakings that can be performed. Performance may be more difficult as circumstances continue to change.

Continue to amend the usual undertakings given in conveyancing transactions to suit the circumstances of the transaction as necessary.

For example, the current circumstances may prevent the conveyancer from complying with standard undertakings given under the Law Society Formulae for Exchange and Code for Completion paragraphs 12 and 13.

Subject to the circumstances, it's unlikely to be necessary to amend the standard undertakings relating to monies or discharge of charges.

Make sure that you carefully record any variations agreed to the standard undertakings.

6. Lenders

Encourage clients to check the status of mortgage offers.

The lender may want to review the client's financial position as changes are made to furloughing provisions etc.

Some lenders may be prepared to lend less in relation to value.

7. Exchanging contracts and Code for Completion

- Consider the impact of the changed circumstances on the transaction
- Establish exactly how exchange will take place
- Establish exactly how and when completion will take place taking account of social distancing
- Be careful not to effect an exchange of contracts if you do not intend to do this. Exchange of emails may constitute a valid exchange of contracts (see *Neocleous v Rees [2019] EWHC 2462 (Ch)*) under section 2 of the Law of Property (Miscellaneous Provisions) Act 1989
- Establish whether standard conditions in the Standard Conditions of Sale need to be amended in the contract; for example, condition 1.3 in relation to 'Notices and documents'
- Agreeing the completion date needs thought – the date needs to accommodate:
 - the circumstances of the transaction
 - further waves of COVID-19 that could result in the parties not being able to move should Government implement a more restrictive lockdown
 - provision for deferring completion with a longstop date (remember that if completion is delayed beyond 31st March the SDLT liability is likely to be different. Make sure that clients understand this, and the likely amounts involved)
- Agree with the other side how the formula for exchange being used needs to be changed to reflect the particular transaction
- Make changes in writing and record the agreement with the other side
- If exchange of contracts is to take place under one of the formulae for exchange, the formula may need to be amended to agree before exchange, for example, how the contracts will be or have been signed:
 - by the solicitor with written authority from the client/consumer
 - wet ink signature from client/consumer
 - PDF in accordance with the practice note on virtual signings

- by third party digital signature provider
- that, for example, once holding the clients' contract with wet ink signature or electronic signature, it will be scanned and emailed to effect exchange. The undertakings may need to be altered to confirm that the original documents will be sent when it's reasonably possible

8. Before agreeing completion dates

- Ask clients to check they will have enough time to transfer monies, as online banking limits might mean there are restrictions on the amount they can transfer on one day (sometimes £10,000)
- Ask clients to check with their removers and the other party that the property will be vacated before the buyer and their removers arrive. It's not possible to guarantee this but having the conversation may alert everyone to the additional time that may be required
- Suggest clients check the terms and conditions of their contract with removers. Some may include penalty payments for late cancellations, and some have hourly, rather than fixed, rates after certain times in the day have passed
- Consider asking any mortgage lender and the client to confirm that funds will be paid into the client account by close of business on the working day before the completion date with the aim of reducing delays on the completion date. Some lenders are taking longer to release funds
- Where possible, agree a mechanism with the other party's conveyancer for monies to be transferred through the chain of transactions on undertakings before completion with co-ordinated funds and keys release, to provide as much certainty as possible for the time of the completion. This will enable removers to plan and conduct a safe move for clients

Simultaneous exchange and completion

Some firms recommend to clients that they should exchange contracts simultaneously with completion.

This solves some problems – for example, the risk of completion not happening is reduced – but creates others: for example, if there's a chain, all transactions would need to agree simultaneous exchange and completion which may be difficult and may not always be suitable. Exchanging and completing on the same day can be very difficult for consumers to manage. It may be difficult to organise removers at the last moment.

Some firms suggest that encouraging clients to agree a date for exchange and completion a week or so in advance, enables them to start packing up and booking removers for a fixed future date.

There are obviously still risks with this approach and some removers may not make a booking unless contracts have been exchanged.

The risks need to be assessed against the risks of having a short time between exchange and completion.

Short period between exchange and completion

Keeping the period between exchange and completion short might provide a compromise. A practical approach might be to limit the period between exchange and completion to five working days, having submitted the certificate on title and obtained clear final searches ahead of exchange; but these matters are all for negotiation once the client has provided instructions.

Even having a short period of time between exchange and completion does not eliminate the possibility that someone may become ill or receive a test result in this time and not be able to move. The transaction may need to be paused at short notice.

Remember where a client is buying and selling simultaneously any bespoke provisions should usually apply throughout the chain. Risk should be apportioned fairly.

The aim is to provide the same solution and let the risk fall in the same place across the chain. It's acknowledged that this may be difficult to negotiate.

9. Executing documents

9.1. Wet ink signatures

Where clients are able to execute documents:

- with a wet ink signature
- with witnesses who are physically present and who use wet ink signatures
- where steps can be taken to avoid transmission during appointments, for example, encouraging hand washing and not sharing pens and other objects, especially with vulnerable people
- where this can be carried out safely and in England in accordance with the current Coronavirus legislation
- where physical delivery of the document can be effected (for example, by post)

this can continue.

Where clients report that they're unable to have a document signed or witnessed complying with these requirements, there are alternate methods of execution:

9.2 'Mercury' style execution

HMLR is temporarily accepting the 'Mercury' signing approach for deeds and has updated Practice Guide 8 Execution of Deeds.

For land registration purposes, a signature page will need to be signed in pen and witnessed in person (not by a video call). The signature will then need to be captured, with a scanner or a camera, to produce a PDF, JPEG or other suitable copy of the signed signature page. Each party sends a single email to their conveyancer to which is attached the final agreed copy of the document and the copy of the signed signature page.

HMLR require the conveyancer to certify the resulting transfer/document/deed as a true copy of the original in the usual way as the final step in the process.

The 'Mercury' style execution should only be used if the procedures set out in Practice Guide 8 and the practice note on virtual signings are followed in their entirety.

9.3 Electronic signatures

9.3.1. Electronic signatures generally

- Use electronic signatures as necessary in the present circumstances rather than wet ink signatures. Make sure they are electronically dated correctly, for example, with the date of the contract
- Electronic signatures can be used for contracts to sell/buy/agreements for lease and other documents under hand
- Electronic signatures can be used for deeds but only if any witnesses are physically present when the signatory applies the electronic signature

9.3.2 HMLR and electronic signatures

- HMLR do not categorise 'Mercury' style signatures as electronic signatures, as they involve scanned manuscript signatures
- As set out in 9.2 above, HMLR are currently registering transfers and other dispositions effected by deeds that have been executed using 'Mercury' style signatures
- HMLR can enter a notice in respect of a contract that has been electronically signed – a notice does not guarantee the validity of the purchaser's interest
- HMLR will not register a disposition purported to be effected by a deed that has been electronically signed
- HMLR will, however, register an electronic disposition in the form of a digital mortgage complying with Notice 1 made under rule 54C of the Land Registration Rules 2003: this is not a deed

9.4 Witnessing

All physical presence witnessing must be conducted in accordance with social distancing requirements.

10.4.1. Principles of witnessing

- The usual principles continue to apply: a party to a deed can never be a witness, there must be no conflict of interest, they should be independent and not benefit directly or indirectly from the contents of the deed
- If there's to be any deviation from usual procedures on witnessing, check with HMLR requirements or individual lender requirements
- If extreme measures are being considered – such as family members being asked to witness – make sure that clients are aware of the risks, warn the other side that this may occur in advance so that they have the opportunity to object, ensure that lenders accept the position before they are requested to advance monies and obtain full details of capacity, age and confirmation that they do not stand to benefit, in any way, however remote, from the contents of the deed

9.4.2 Wet-ink signatures

Witnesses must be physically present when the document is signed.

The video solutions proposed in other jurisdictions or for wills do not apply for HMLR purposes in England and Wales.

Note: For HMLR purposes, witnesses must be physically present when the document is signed

9.4.3. Electronic signatures

Witnesses to electronic signatures must be physically present when the signatory electronically signs on the third-party equipment or device.

Note: HMLR will not register a disposition purported to be effected by a deed that has been electronically signed.

It's suggested that witnesses are requested to sign statements confirming that they were physically present when the document was executed.

10. Transactions in Wales

A four-level alert system was introduced in Wales on 20 December 2020 following the emergence of a new Coronavirus variant. Welsh First Minister, Mark Drakeford, announced another three-week extension to this national lockdown on 29 January 2021. These restrictions are to be reviewed and you should continue to monitor them.

Presently, home moves are still permitted in Wales. Under the rules that apply in Wales travelling to move home, or to view a property in connection with its purchase, sale, letting or rental, is a reasonable excuse to enter Wales. Similarly, the rules in Wales allow people to travel to other parts of the United Kingdom for the purposes of moving home or to view a property in connection with its purchase, sale, letting or rental.

See the Welsh Government's guidance on moving home during the Coronavirus pandemic [here](#).

LTT concession deadline – 31 March 2021

As with the SDLT concession in England, Welsh Government has said that the Land Transaction Tax concession currently in place in Wales will end on 31 March 2021. We encourage you to manage your clients' expectations as the deadline draws nearer and the likelihood of transactions completing in time to take advantage of the concession in Wales diminishes.

Conveyancers checklist

- Note carefully that client confidentiality obligations continue to apply even though some or all staff may be working remotely
- Be aware that there are increased fraud risks in this new environment
- Contact clients/consumers by use of email, video conferencing platforms, telephone etc.
- Searches should be available as usual from most local authorities and providers – check the availability and discuss with the client if there are any difficulties
- Check that you have the capacity to do the work before you accept instructions
- Check to see if the clients' lender has changed its requirements during the transaction (such as their loan-to-value requirements)
- SDLT, CGT and LTT payment dates have not been amended and tax should be paid by the due dates where payable
- Companies House and HMRC are continuing to provide services
- HMLR are continuing to provide essential services that support transactions
- Time limits for making applications for registrations at HMLR and at Companies House (for company charges) have not changed. Continue to comply with the existing time limits.

While every effort has been made to ensure the accuracy of the information provided it does not constitute legal advice for any particular transaction and cannot be relied on. No legal liability is accepted by the organisations or individuals involved in preparing this information. The Government has said it will continue to amend its guidance to reflect the situation as more is known about the effects of the virus. Reference should always be to the latest Government guidance.

If there's anything that's incorrect in this information, please email details to property@lawsociety.org.uk.