



### ***Vendor Disclosure (Upfront Information) – 14<sup>th</sup> Programme of Law Reform Proposal***

Whilst the Conveyancing Association considers that information provide upfront and in a timely manner can improve the process, this can be delivered through different means, for example, the creation of digital log books to store the information and enable instant access when the property is transacted.

This paper sets out what upfront information could be and the issues that would need to be considered should this be made mandatory so that the Law Commission have a full picture of the areas which would need research in this respect.

For this reason we want to make clear that the contents of this paper are not reflective of the policies of the Conveyancing Association but the concerns that the Association has to avoid unintended consequences which would negatively impact the consumer's home moving process.

#### **Process:-**

Seller instructs conveyancer on listing their property for marketing. They verify the seller digital ID to the HMLR Safe Harbour Standard to guard against seller impersonation fraud, and prepare a Property Pack on marketing to include

- EPC – *important from a financial perspective but also for anyone looking to buy to let.*
- BASPI (PIQ/TA6) – *important to ensure that all data is collated and material facts are made aware to the buyer for them to assess whether the property is suitable for their use and enjoyment and their lender's policy. Reducing fall throughs and timescales. Also enabling the seller conveyancer to look out for issues eg lack of building regulations, and for the valuer to avoid assumptions resulting in PVQs.*
- Title and referred documents – *important for the conveyancer to advise the seller on potential generic issues that can be resolved eg onerous lease terms and for the material legal facts for the buyer to be identify eg restrictions on alterations, and for the valuer to avoid assumptions resulting in PVQs*
- LPE1/FME1 – *important for the buyer to identify their financial position or restrictions on use, and for the valuer to avoid assumptions resulting in PVQs*
- Searches (Local, Water, Enviro, locality dependent) – *use by the conveyancers to identify to their clients any material facts that may need addressing, and for the valuer to avoid assumptions resulting in PVQs.*
- Condition Report – *in Scotland used to improve the housing stock and for structural issues to be raised as material fact for the buyer or seller.*

The conveyancer reviews the information to identify potential issues and makes recommendations to resolve eg short lease term, lack of building regulation indemnity insurance etc

Prior to offer the buyer and their advisors have access to the material facts and can raise enquiries on issues which might impact their ability to proceed and share them with their broker to ensure their mortgage lender's policy will accept the property and its title.

On offer being made the conveyancer sends the full contract pack and information to the buyer's conveyancer.

The buyer's conveyancer undertakes the normal due diligence (though can use the searches if they are regulated or official, accepted by their lender - 95%+<sup>1</sup> of mortgage instructions issued accept regulated searches and in date) in respect of their client's intended use and enjoyment and their chosen lender's lending policy. Therefore liabilities do not change.

However, if this is made law then the seller could have action taken against them with civil liabilities for not providing the information as required by law or under the Misdescription Act if the information is incorrect.

The estate agent would have criminal liability if the information is not provided and the property advert is not marked as "Information Incomplete" under CPRs. By making this a legal requirement then the agent would be regulated by the National Trading Standards Estate and Letting Agent Team but also under the Property Ombudsman for failure to provide customer service.

The ideal would be the enactment of the Regulation of Property Agents recommendations so that the Property Regulator could take action against the agent and if necessary, withdraw their licence if they fail to comply.

On completion the data is stored in a property logbook to prevent it having to be reconstructed again and providing a digital deeds package.

Imperative: this should not be a replication of the HIPS regime which introduced third party providers who did not provide quality assured products or solutions to title issues.

The property pack should be produced by the seller's conveyancer who should advise the seller on any known generic issues eg onerous lease terms, cladding issues, rentcharges, lack of building regulation. The conveyancer should produce an exception summary outlining the material facts about the legal side to the property and this could be a reserved legal activity to ensure that the property pack is reviewed by a legally qualified entity.

The consumer impact of the conveyancer's charging will be moved from post offer to pre- and post- offer work to reflect the work required to collate the information and review and advise.

### *Timescales*

It is important that properties are not delayed going on to the market but the potential buyer should be aware that information is not available.

Would therefore suggest that properties can be marketed but identified as "Information outstanding". Where the upfront information is available then the property advert can be

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<sup>1</sup> Data provided by COPSO. The lenders that do not are very niche and COPSO members will generally provide a Local Authority Search to replace a regulated search where the lender will not accept it.

marked as “Property Pack Available” with a filter facility enabling consumers to prioritise properties marked as “Property Pack Available”. Therefore the estate agent will be incentivised to ensure that the information is made available as quickly as possible but the property can still be marketed.

#### *Insurance liability*

Insurance liability should not change. The seller will continue to be covered by Misdescription Act in respect of generic information, and material facts via the estate agent under CPRs, provided prior to offer but the collation is generic as obviously the buyer’s intended use and enjoyment will not be known.

For this reason the buyer’s conveyancer advice will be based on their due diligence, as before checking the generic issues but also their own client’s planned activities and explaining what the matters recorded in the title will mean to the buyer and their lender.

If Vendor Disclosure is enacted then civil liabilities could be created against the seller for not complying. If the material facts exception summary becomes a reserved legal activity then the conveyancer could have increased liability if they fail to provide the right information but this would be enforced by their regulator, their insurance liability does not change unless they fail to comply with a request from their regulator.

#### *Cost of development of case management systems*

The delivery of vendor disclosure will have minimal impact on the development of the technology currently used by conveyancers as it simply re-orders the process rather than creating new services. Eg the data would need to be pulled together by the conveyancer for the contract pack it is just being collated earlier and with the searches which the systems already have order platforms for.

#### *To support delivery of upfront information:-*

- Property Log Book to create a digital deeds package and enable it to be transferred as a reserved legal activity to avoid seller impersonation fraud.
- Regulation of Property Agents to ensure that the conveyancers are instructed and the property is not marked as Property Pack available unless the information meets the standard set.
- Secure data sharing eg portal/APIs/other eg the creation of a standard format API to enable the digital sharing of data across stakeholders in the home moving process and reduce duplication.

### **Potential issues**

#### *Lender Panels*

On an onward transaction the seller’s conveyancer may not be on the panel of the lenders which the seller wishes to use on their onward purchase. This is already an issue and where this happens the client will decide whether to proceed with the existing conveyancer and have a separate conveyancer act for their chosen lender or whether they will de-instruct on the sale and instruct a conveyancer who can act for both them and their lender on the purchase.

Moving away from no sale – no fee or having a fee agreed for the pre-offer proceed will avoid this being an issue as the seller’s conveyancer will be paid for the work carried out prior to dis instruction.

In any event the majority of conveyancers do not act on a no sale-no fee basis currently and those that do have made the commercial decision to do so and will be able to continue to review and make the right commercial decision for them.

#### *Financial Vulnerability of Seller*

The seller may be financially unable to pay for the information necessary to market the property and may be financially worse off if they sign up to credit to pay for it but then cannot move. However, with the exception of sellers at the end of the chain, most sellers are buying also and therefore the cost implications are neutral.

Under the HIP regime financial products were created to assist sellers without finance available.

Additionally, the seller at the end of the chain is realising an asset whereas the first time buyer at the beginning of the chain currently takes all of the risk paying for information prior to exchange of contracts when they may not be able to purchase the property because it does not meet their intended use and enjoyment or lender's lending policy.

Therefore, whilst there undoubtedly could be sellers put in a worse position, the majority of sellers are buying also and the number of home movers currently impacted by having to pay for information after offer but before exchange is much greater as there are higher instances of fall through than there would be if information was available upfront

#### **Other considerations**

A large proportion of failed transactions are attributed to a lack of buyer financial qualification.

The upfront information enables the buyer to establish which lender will lend on the property. Therefore the buyer can obtain a decision in principle from a lender who will lend which removes the concerns over a consumer's credit score being impacted by multiple hard credit checks, which can happen if they later find that the title is not acceptable to their chosen lender.

**-End-**