



Upfront Information Policy Friday 22nd October 2021

A meeting of the available Conveyancing Association (CA) Policy and Strategy Board (PSB) members was held on 22nd October 2022 during which the group debated key questions relating to the provision of Upfront Information and the potential for unintended consequences, to formulate the Association policy.

Home Buying and Selling Group (HBSG) Property Pack

The group reviewed the content recommended by the HBSG Upfront Information Group in their proposal that, anyone marketing property should have the material information collated upfront, and that when the finite list of prescribed documents (see Annex) are available the property may be marked as Property Pack Available.

The CA view is that the prescribed documents to be included in the Property Pack would be iterative due to the unreasonable fees charged for the LPE1/FME1 and the current delays in obtaining the responses, where the seller could answer from their own knowledge key facts such as previous service charge payments and ground rent.

Similarly, the feedback from the RPSA is that they are working on a consumer-focused condition report as their research indicates the buyer would not trust the seller's condition report. The inclusion of a condition report would therefore be a later iteration.

Phase One

- Energy Performance Certificate (EPC).
- Buying And Selling Property Information.
- Evidence of Title.
- Searches.
- Key environmental information.
- Seller's ID had been established to DCMS/HMLR Safe Harbour standard.

Phase Two – once the legislation manages the LPE1/FME1 cost and timescales to make them reasonable

- Shared amenity information in form LPE1/FME1.

Phase Three

- Condition Report.

Responsibility for Producing a Property Pack

Any party which markets the property is responsible for collating the Property Pack, for example, an Agent or site office of a new build.

Responsibility for Reviewing the Property Pack

The seller's property lawyer should review the prescribed documents in the Property Pack when received, and advise the seller should they identify any issues which may impact the

sale of their property. However, the seller's property lawyer would not be responsible for accrediting the Property Pack or confirming its accuracy.

The purchaser's property lawyer should review the Property Pack as usual and raise enquiries as required under the existing due diligence rules, however, they could accept the prescribed document provided in the Property Pack where the provenance of the documents was authenticated.

The buyer, having had the material information from the agent prior to offer, would have the choice whether or not to instruct their property lawyer to review the documentation prior to an offer being made, due to the cost involved in the legal resources necessary to review the prescribed documents.

Prescribed Document Production Timescales

CA policy is that properties can be listed without upfront information so long as the prescribed documents which make up the content of the Property Pack have been ordered and it is clear from the advertisement that material information is not yet available.

As the prescribed documents arrive the material information should be available to a potential buyer.

Responsibility for Payment for Prescribed Documents in the Property Pack

The seller should be responsible for the cost of the Property Pack, however, agents may choose to subsidise the cost as a sales tool to boost instructions to their firm.

There should be no cost passed on to the buyer, or their property lawyer, to access the prescribed documents in the Property Pack.

Material information should be available digitally, wherever possible, reducing cost to the agent in the provision of prescribed documents.

Mandating and Enforcing

Legislation mandating may be required to ensure Property Packs are adopted across the industry.

National Trading Standards should have the ability to pursue agents where they have said a Property Pack was available but the pack was incomplete. The content of the prescribed documents includes material information for a potential buyer. The Consumer Protection From Unfair Trading Regulations requires that the agent must disclose material information which they know or should know.

The Property Ombudsmen should also take action against their members for unresolved service complaints where the potential buyer or the seller has terms and conditions with the agent indicating that the display of a Property Pack Logo indicates the prescribed documentation is there when it is not.

Liability

The CA policy is the liability should not change from caveat emptor (buyer beware). Material information should be available to a buyer prior to offer and provided to the buyer's property lawyer earlier but under the same due diligence requirements as exist currently.

The authenticated provenance of the prescribed documents will mean that it is in the buyer's best interests to accept the prescribed document in the Property Pack where any relying party is covered by insurance, an indemnity or State guarantee and does not need to be refreshed, and are accepted by the property lawyer's lender client.

Where the prescribed documents are provided by a supplier with a free refreshment service (for example, a regulated local search), it is in the buyer's best interest to accept the refreshed document.

Other Policy Objectives

An offer should not be put to, or accepted by, the seller without the potential buyer's proof of funds having been qualified. Qualification of the proof of funds would need to be undertaken by a regulated entity, for example, a mortgage broker, financial advisor, chartered accountant, bank, lender, property lawyer or an appropriate service provider using authenticated open banking to establish source of funds.

Property Logbooks

CA proposals are that the information should be available digitally via a service provider; who should be accredited and regulated.

It was suggested that a kitemark standard be implemented for the Logbooks and that the information provided must meet a common data standard to enable the interoperability of the data between systems, and to ensure the data provenance can be authenticated.

It was agreed that Land Registry information and utilities information should be included in the Property Logbook, as well as warranties and guarantees and information provided, or obtained, on the acquisition of the property. Internet of Things passwords and access details will need to be transferred on completion of the sale.

Transfer of Ownership of a Property Logbook

The CA proposal would be to create on the HM Land Registry registers of title (currently registers A, B and C), a Register D: Property Logbook Register, identifying the Property Logbook company that holds the Property Logbook for that property.

The Property Logbook would then be transferred to the new registered proprietor of the title, who could change the existing Property Logbook provider, to a provider of their own choice whilst they own the property. Responsibility would sit with the new Property Logbook provider to update Register D with the new Property Logbook provider's name and contact details, for example, like a mortgage lender's name is updated in Register C when the owner remortgages.

The CA propose that the transfer of ownership of a Property Logbook should be a reserved legal activity.

Access to a Property Logbook

The CA proposal is that if a homeowner wishes to change their property logbook provider, an application would be made to HMLR. It was also noted that a property owner, their executors or legally-appointed attorney under a lasting power of attorney, should control who has access or can view the Property Logbook and can rescind access to third parties at any time.

Next Steps

The CA will identify the necessary amendments to the relevant protocols, which would be required to support upfront information and digitisation of the property data, to include the CA Technical Protocol.

The CA will identify which of its affiliate members produce searches which could be refreshed if the transaction cannot go through within six months or where live data is not available.



Property Pack Available

The pack fills the requirements to ensure the material facts which are known, or should be known, are revealed and prepares the property for sale to avoid delay and loss.

Consumer regulations require the disclosure of what the person marketing the property knows, or should know, about the property.

What they should know is included in the following, together with details on how to get the information. This is the information which would be relevant to any person thinking of buying the property. However, their decision to transact will be based on their own financing and personal requirements in terms of the intended use and enjoyment of the property which may not be covered here but their property lawyer will review as part of the legal process.

1. Energy Performance Certificate less than 10 years old []

Not sure? Click [here](#) to see if you have one which is in date, eg less than 10 years old.

Why? The details in the EPC are particularly relevant if the buyer is looking for a buy to let property, as a let property currently requires a minimum energy performance rating of E which will change to a rating of C in 2025. Low energy efficient properties will also have increased financial impact.

2. Completed Buying and Selling Property Information (BASPI) or:- []

- a. Material Facts Disclosure identifying facts affecting the average buyer's transactional decision; and
- b. Property Information Form from the seller (Law Society TA6 or equivalent)

You can complete the BASPI for free [here](#).

Why? The BASPI provides information about the seller's knowledge of the property and their use and activities whilst they owned it. It will provide information to the buyer about the standard of the property eg double glazed windows installed before 2010 may have low ventilation as double glazing only required trickle vents after 2010.

3. Evidence of Title

- a. Registered land: Title Information Document including plans and documents referred to, but not set out, in the title, for example, Lease or documents containing rights, restrictions or covenants.
- b. Unregistered land: epitome of Title and the relevant documents referred to in the epitome documents, for example, Lease or documents containing rights, restrictions or covenants.

While you can download a copy of the property title from HM Land Registry [here](#), there may be other documents referred to in the title which you will need to instruct your property lawyer to get. Your property lawyer can also review all of these documents to find any issues, which might cause a delay or fall through in the legal

process and which you can solve.

Why? The legal title identifies the tenure of the property, whether it is freehold or leasehold or shared ownership and whether there are rights, restrictions or covenants. For a buyer they would be able to see if there were issues that would impact their intended use of the property, for example, a restriction on extending or letting the property, running a business and also whether there were any financial implications such as a leasehold ground rent that increases regularly. The property title information will need to be checked to identify which lenders would accept the property to lend on, and that it has a good and marketable title they are willing to lend on.

4. Applicable shared amenity information (eg LPE1/FME1)



If you have shared amenities at your property such as a shared driveway, building, garden etc then you will need to get a form completed by the lease administrator or freehold manager for the buyer to be able to find out what the financial impact of maintaining the shared amenities will be on them. For leaseholds, the form is the Leasehold Property Enquiry Form (LPE1) and for managed freeholds it is the Freehold Management Enquiries (FME1), both of them are available for free [here](#).

Why? The LPE1 or FME1 identifies additional costs involved in the purchase and ownership of the property eg service charges and major planned works as well as any local rules which might not be acceptable to a buyer eg restrictions on keeping pets or parking vans or caravans at the property.

5. Local Authority Search



The Local Authority Search is made up of two standard sets of questions which will reveal information the local authority have recorded against your property. Your property lawyer or estate agent can order them for you which is why it is a good idea to instruct a property lawyer as soon as you decide to put your property on the market. They can check whether the results of the search could cause an issue that can be resolved before a buyer is found, to save the risk of a sale falling through or being delayed.

Why? The Local Authority Search reveals whether the road or accessway to the property is maintainable by the Highways Authority at public expense or whether it is a private accessway which requires the owner of the property to contribute to the maintenance of it.

The local search also shows whether the property is affected by any additional restrictions such as listed building, tree preservation orders or conservation areas which could impact the buyer's plans, or if the local authority are taking action for breach of various legal requirements, for example, planning permission or listed building.

6. Drainage and Water Search



The Drainage and Water Search is a standard set of questions which will reveal information which the water authority have recorded against your property. Your property lawyer or estate agent can order them for you which is why it is a good idea to instruct a property lawyer as soon as you decide to put your property on the market as they can check whether the results of the search could cause an issue that can be resolved before a buyer is found to save the risk of a sale falling through or being delayed.

Why? The Drainage and Water Search will show whether the property is connected to the mains drains and water supply and whether there are any pipes under the building or through the garden which could impact the buyer's plans to extend or alter the property. If the property does not drain to a public sewer there will be a

financial impact on the buyer in maintaining and emptying a septic tank, cesspit or sewerage treatment works.

7. Environmental Information

[]

Your property lawyer or estate agent can order the information for you which is why it is a good idea to instruct a property lawyer as soon as you decide to put your property on the market as they can check whether the results of their search could cause an issue that can be resolved before a buyer is found to save the risk of a sale falling through or being delayed.

Why? This information should confirm to a potential buyer whether the property is affected by:-

- *Contaminated land.*
- *Flooding.*
- *Radon gas or other health effects.*
- *Mining.*

For example, high radon gas levels increase the risk of lung cancer but can be reduced in the property.

8. Locality dependent searches

[]

Your property lawyer or estate agent can order them for you which is why it is a good idea to instruct a property lawyer as soon as you decide to put your property on the market as they can check whether the results of the search could cause an issue that can be resolved before a buyer is found to save the risk of a sale falling through or being delayed.

Why? These searches are important where the property is built in an area of geology which might impact the property and occupiers, for example, flooding, mining (tin, coal, limestone or any other mineral).

9. Property lawyer instructed

[]

By instructing a property lawyer to collate the property pack, you and your buyer know that the contract can be issued as soon as an offer is accepted and the buyer has chosen a property which is right for them. It also means you can ask your property lawyer to check the title for issues that might impact or delay a sale and which you can solve upfront.

Why? Time is saved, and loss avoided, where the seller has instructed a property lawyer to collate the property pack, so the buyer knows the contract can be issued as soon as an offer is accepted.

10. Seller has been identified and their relationship to the property verified

[]

Your property lawyer or estate agent can order them for you.

Why? Digitally identifying the seller reduces the risk of seller impersonation fraud where a tenant, or someone who has broken into a vacant property, attempts to sell the property pretending to be the owner.