

The Conveyancing Association Protocol For England and Wales Fifth Edition

The Conveyancing Association (CA) endorses the principles that underpin this protocol but recognises 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, reduce enquiries and administration.

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) The Law Society's copyright of which is acknowledged.
- Be read in conjunction with the CA Cyber Protocol which is available via the CA website download section, or other cyber security advice available.

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 subject to acting in the best interests of your clients.

Issue Addressed	Agreed Practice	Practice Guidance
1.0 Delays in the transaction	Improved Communication	<p>Make an initial introductory call to the client, thereafter the first choice for all correspondence for all parties (where appropriate) is electronic via a secure portal or encrypted email.¹</p> <p>Any staff working from home should be able to take and receive phone calls from all parties, preferably via the law firm telephone exchange.</p> <p>Bank details should be sent to the client by post at the beginning of the transaction to avoid fund interception by fraudsters.²</p> <p>Work with the other lawyer, responding promptly to communication in a co-operative manner and sharing all information.³</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>In your General Data Protection Regulations disclosure advise your client that you will keep the other lawyer and estate agent updated on the progress of the transaction and any linked</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 CA Cyber Protocol

³ CQS Protocol: General Obligations and Stage B: Pre-exchange

		<p>transaction and maintain such updates throughout the transaction.⁴</p> <p>Routinely request the full chain information from the estate agent.</p> <p>Ask for the Material Information provided by the estate agent under the Consumer Protection From Unfair Trading Regulations 2008.</p> <p>Work proactively on a regular, diarised, file review cycle to ensure that no outstanding issues are left un-progressed.</p> <p>Publish a generic conveyancing email address which estate agents and lawyers can use to correspond before a fee earner has been appointed.</p>
<p>1.1 Delays in the transaction</p>	<p>Monies on Account</p>	<p>Collect monies on account from clients at the earliest opportunity.</p> <p>Highlight early on to clients they should check what limit their bank imposes on the amount of money which they can send at any one time through online banking.</p>
<p>1.2 Delays in the transaction</p>	<p>Covering Staff Absences</p>	<p>Ensure proper arrangements are made for cover for staff absences. Email and voicemail accounts should be monitored during staff absences.</p>
<p>1.3 Delays in the transaction</p>	<p>Obtain Identity Verification upon instruction.</p>	<p>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 39(7) of the Money Laundering Regulations 2017 and in line with the Law Firm's risk assessment of the transaction and the client.⁵ Using UK Digital Identity and Attributes Trust Framework compliant digital ID enables the digital ID Certificate to be shared amongst stakeholders.</p> <p>To help protect the firm and a buyer from fraud you should avoid relying wholly on certified copies and instead use a digital identity and anti money laundering check which incorporates biometric checks and can identify potentially fraudulent use of identity.</p> <p>To help avoid seller ID fraud, staff should be aware of indicators of high-risk properties e.g. a sole owner, no mortgage, payments outside of the UK or where the seller's address is not the property address. In these cases additional checks should be undertaken to ensure the seller is genuine.</p>

⁴ CQS Protocol: Stage B: Pre-exchange

⁵ CQS Protocol: Stage A: Instructions

<p>1.4 Delays in the transaction</p>	<p>Obtain evidence of source of funds early</p>	<p>Consider utilising an open banking technology provider⁶ to establish source of funds. 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 lender⁷ and that the buyer should include this information on their mortgage application. Highlight that further evidence of source of funds might be required at a later stage.</p>
<p>1.5 Delays in the transaction</p>	<p>Post valuation queries</p>	<p>Where there is a gifted deposit, ask the donor to complete a standard Donor Confirmation of Gift which can be sent to the lender upon receipt of mortgage instructions.</p>
<p>1.6 Delays in the transaction</p>	<p>Collecting Deposits</p>	<p>Request the deposit monies at the earliest appropriate opportunity once anti money laundering checks have been completed. Additionally this can reduce the risk of misdirection of deposit monies by fraudsters and ensure the client is aware of any limitations on the amount which their bank will allow them to send at any one time.</p>
<p>1.7 Delays in the transaction</p>	<p>Defects in Title</p>	<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>
<p>1.8 Delays in the transaction</p>	<p>Pre-Sale Preparation</p>	<p>If the commercial decision of the Law Firm is to prepare pre-sale packs, the following should be included.</p> <ul style="list-style-type: none"> • Title Information Document • Documents referred to therein e.g. Transfers, conveyances and leases referred to as containing rights, reservations, covenants etc ⁸ • Title Plan • Buying and Selling Property Information including the Material Information for CPRs⁹ • Establishing cost and location of Landlord/Management company information. • All documents held by the client • Local Authority search • Drainage & water search • Environmental and locality dependant searches

⁶ <https://www.openbanking.org.uk/providers/>

⁷ UK Finance (UKF) Mortgage Lender's Handbook Part 1: 5.13.1

⁸ CQS Protocol: Stage B: Pre-exchange

⁹ <https://www.propertymark.co.uk/media/1043356/ntseat-guidance-on-property-sales.pdf>

		<ul style="list-style-type: none"> • Required permissions and consents which exist for alterations and obtain copies¹⁰ <p>Upon receipt, all documentation should be checked through by the seller's conveyancer to identify and resolve any potential additional enquiries e.g. where forms are incomplete etc.</p> <p>At the commercial decision of the conveyancer and instructions of the client identify title issues and make recommendations to the seller as to how these might be solved providing an estimate of the cost to resolve. Under Common Law, the seller has implied duties to sell a property free from encumbrances (other than those disclosed to a buyer or subject to which the sale is expressly made) and to disclose all latent (i.e. non-obvious) defects in title and encumbrances.¹¹</p>
<p>1.9 Delays in the Transaction</p>	<p>Issue of Contract Pack</p>	<p>At the earliest opportunity issue a contract pack to the buyer's lawyer, including 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.¹² • Title Information Document and Title Plan. • All downloadable title documents held at the Land Registry referred to in the Title Information Document. • A draft Transfer¹³ (with the buyer's details and price left blank if necessary). Any required clauses will in the main be a requirement of the seller. This can either be prepared using the HM Land Registry Digital Registration Service for digital execution or using the standard TR1 form. Duplicate Transfers are acceptable to the Land Registry and the buyer's lawyer can add any required joint ownership clauses, however care should be taken to ensure that the agreed form of wording is executed and provided on Completion;¹⁴ and • Replies to Requisitions on Title. • The Certificate required by a restriction registered at Land Registry under Form RQ <p>Where the contract pack is issued by email, so long as the recipient is expecting the contract pack for that transaction and has up to date security software, this should be accepted after the appropriate virus check without the need for a hard copy of the documentation to be requested.</p>

¹¹ SPS Groundworks & Building Ltd -v- Mahil [2022]

¹² CQS Protocol: Stage B: Pre-Exchange

¹³ CQS Protocol: Stage B: Pre-Exchange

¹⁴ 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.

		<p>When sending a contract pack by email each document should be a separate attachment.</p>
<p>1.10 Delays in the Transaction</p>	<p>Leasehold Enquiries</p>	<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> <p>Request referrers and estate agents encourage sellers to make contact with the Lease Administrator at the point of marketing to establish the cost and procedure to obtain the information.</p> <p>Check the Proprietorship Register of the superior Title to the lease to see if there is an email address recorded.</p>
<p>1.11 Delays in the Transaction</p>	<p>Obtaining Signed Contract at the Earliest Opportunity</p>	<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. Alternatively, a digital version of the contract can be signed digitally.</p> <p>This enables both the buyer and the seller's lawyer to report to the client early and request that their client sign the contract prior to final approval which the lawyers will do on their behalf, initialling any agreed amendments as agent for their client with their verbal or emailed authority.</p>

<p>1.12 Delays to the transaction</p>	<p>Avoiding Delays on Completion</p>	<p>Employ the Conveyancer's Code for Completion to enable funds to be transmitted the day before Completion.</p> <p>If unable to use the Code, 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>Highlight early in the transaction to clients that their bank may limit the amount which they can send in one day, so that they can make alternative arrangements.</p> <p>Set up funds transfers the day before Completion when in funds, to go first thing on the day of Completion, as appropriate.</p>
<p>2.0 Additional Enquiries</p>	<p>Avoiding Unnecessary Additional Enquiries</p>	<p>Limit all additional enquiries to those relating to title or required by your client.¹⁵</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 e.g. Blanket Tree Preservation orders, FENSA or CERTAS, Cavity Wall Insulation or Gas Safe Certificates revealed by the Local Search unless the nature of the transaction or the lender requires it.¹⁶</p> <p>Prior to raising an enquiry relating to an entry revealed by the Local Search, check whether sufficient information is available on the Local Authority's portal.</p>
<p>2.1 Additional Enquiries</p>	<p>Providing Relevant Documentation on Request</p>	<p>Assist 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</p>

¹⁵ CQS Protocol: Stage B: Pre-Exchange

¹⁶ CQS: Stage B: Pre-exchange

¹⁷ UKF Handbook s.5.5.4

<p>2.2 Additional Enquiries</p>	<p>Providing Full Replies to Enquiries</p>	<p>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</p>
<p>2.3 Additional Enquiries</p>	<p>Avoiding Leasehold/Managed Freehold Delays</p>	<p>Use the up to date version of the Leasehold Property Enquiries (LPE1) /Managed Freehold Enquiries (FME1) which should be sent to all relevant parties involved in the Lease administration or maintenance of shared amenities at the earliest opportunity together with a copy of the title to assist the lease administrator.</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 parties who will also need to provide information, e.g. a Resident's Association. Remind them that the government's expectation¹⁹ is that £200 plus VAT is the maximum reasonable fee for providing the LPE1 information which should be provided within 15 days.</p> <p>Where the property is in a building with five storeys or above, check the remediation status under the Building Safety Act 2022. NB Part 5 of the Act does not apply to properties in Wales so there is no need to ask for confirmation of the Lessee's qualification under the Act.</p>
<p>2.4 Additional Enquiries</p>	<p>Preventing Last Minute Enquiries</p>	<p>Raise enquiries at the earliest possible stage, to prevent delays to exchange.</p> <p>Issues arise where activities are delegated to inexperienced staff. While 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>
<p>2.5 Additional Enquiries</p>	<p>Proportionality of retentions</p>	<p>Having advised the client appropriately, rely upon the provisions within the Standard Conditions of Sale rather than requesting retentions of less than £200.</p>

¹⁸ Legal Ombudsman: recommendations on advising the client.

¹⁹ <https://www.lawsociety.org.uk/news/stories/government-responds-to-leasehold-reform-consultation/>

<p>3.0 Post Completion</p>	<p>Land Registry Requisitions</p>	<p>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.</p>
<p>4.0 Technical Issues</p>	<p>Dealing with Issues with Extensions & Alterations</p>	<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 four years - obtain indemnity insurance on purchase or advise the client to supply indemnity insurance on sale. • Planning permission revealed by search without conditions²⁴ – no further action • Planning permission revealed by search with conditions and the Local Authority have not recorded satisfaction of the condition then you should obtain a copy whatever the age of the consent unless evidence is available of the breach of the conditions occurring over 10 years ago and the condition is not an ongoing condition such as removal of permitted development rights which should be advised to the client to avoid future breach. • If the consent is more than 20 years old the buyer's lawyer should obtain a copy direct from the appropriate planning authority if they require the same

²⁰ UKF 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 due to the increased chance of enforcement actions by the Local Authority.

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

		<p>In all cases where planning permission was not obtained, the lawyer should advise their client and the valuer that permission was not obtained and that the valuer should confirm that it is structurally sound and value the property on the basis that no Local Authority consents were obtained in respect of the work.</p>
		<p>Buildings Regulations</p> <ul style="list-style-type: none"> • 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 • Non-structural works carried out over 12 months ago and 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. 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.²⁷ • Structural works carried out over 12 months ago and 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

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 UKF 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."

²⁷ UKF 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>Valuer/Surveyor as to the safety and structural integrity of the alteration. Recommend indemnity insurance against enforcement at the seller's cost.²⁸</p> <p><i>In all cases where Buildings Regulations was not obtained, the lawyer should advise their client and the surveyor that Local Authority consent was not obtained for the work and that the surveyor/valuer should confirm that it is structurally sound and value the property on this basis. Clients should be advised that lack of Buildings Regulations may indicate a lack of building safety compliance and a survey is recommended in any event to establish risk to life.</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 and still has land benefitting from the covenants. Advise as to the availability of indemnity insurance at the buyers cost.²⁹</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 application³⁰; otherwise ▪ If the Seller can confirm that no material changes have been undertaken to the property or to the use of the property within the last 20 years and no enforcement action is being taken or threatened³¹; 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 whether there have been changes of external structure or use within the last 20 years consider the need for an indemnity insurance policy at the seller's cost

²⁸ The Local Authority has rights to serve a Stop or Enforcement notice within 12 months under s.36(4) of the Buildings Act 1984
²⁹ 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.

³⁰ Land Charges Act 1972 Charges of classes C(iv) & D are void against a purchaser for money or monies worth if not registered.

³¹ UKF 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>only if you consider there is a material risk and a suitable policy is available to mitigate the risk; otherwise</p> <ul style="list-style-type: none"> ▪ If changes have been made to the property within the last 20 years e.g. external structural alterations or additions, or change of use, advise the seller that they have a defective title which requires indemnity insurance.³²
		<p>Breach of a known Restrictive Covenant carried out within the last 20 years without consent or waiver of the covenant and where it is explicit that the breach of the covenant binds successors in title³³</p> <ul style="list-style-type: none"> ▪ Breach over 12 months old: a defective title indemnity insurance policy should be supplied by the seller.³⁴ ▪ 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 where the breach of the covenant does not bind successors in title³⁵ or the breach was carried out over 20 years ago</p> <p>No further action required,³⁶ provided the seller confirms no enforcement action is being taken or threatened</p>
<p>4.2 Technical Issues</p>	<p>Short Leases</p>	<p>Existing Leases Only</p> <p>Lease under 90 years left to run but over 80 years and acceptable to the lender³⁷: 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.³⁸</p> <p>Lease with 80³⁹ or less years left to run: Lease Extension required at the seller's expense where not already reflected in the sale price. A fully advised cash buyer, or one obtaining a mortgage from a lender who accepts a shorter term, of course has the option to instruct their lawyer to proceed without a Lease Extension.</p>

³² CQS Protocol: Stage A: Instructions

³³ Powell v. Hemsley, 1909, 1 Ch. 680, 2 Ch. 252

³⁴ It is assumed that the Seller is selling at full value and therefore should perfect any defect in title at their expense.

³⁵ Powell v. Hemsley, 1909, 1 Ch. 680, 2 Ch. 252

³⁶ UKF 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”.

³⁷ <https://www.cml.org.uk/lenders-handbook/englandandwales/question-list/1846/>

³⁸ Legal Ombudsman advice on common complaints indicates

³⁹ Commonhold and Leasehold Reform Act 2002 states that the marriage value can be ignored in leases with over 80years left

		NB for those leasehold flats in a Relevant Building in England, request wording to extend the qualification of the leasehold interest into the new lease to avoid losing qualifying Leaseholder Protections. ⁴⁰
5.1 Improving Communication with Lender	Post Valuation Queries	<p>Check the relevant section of the Lender's Handbook prior to referring the issue to the lender.</p> <p>Where possible utilise the CA standard referral form to ensure that all information is laid out efficiently and to provide advice to the lender.⁴¹</p> <p>Where the guidance in the Lender's Handbook is ambiguous, highlight this to the lender in your query so that they can review and improve their wording.</p>
5.1 Improving Communication with Lender	Certificate of Title	<p>Provide your contact details on the Certificate of Title so that where their processes allow, the lender can acknowledge safe receipt and confirm that monies are set up for completion.</p> <p>Do not send covering letters with your Certificate of Title as these are scanned and dealt with separately by some lenders and can delay acknowledgement.</p> <p>Do not send the hard copy of a faxed Certificate of Title for the same reason unless it is required by the lender.</p>
6.1 Leasehold	Applications for Information or Consent	<p>Highlight to Lease Administrators the need for reasonable administration charges.⁴²</p> <p>An unreasonable fee for the provision of a consent where consent cannot be unreasonably withheld means the leaseholder can proceed without the consent.⁴³</p>
6.2 Leasehold	Deed of Covenant	<p>Leases Dated Prior to 1996 A fee for a Deed of Covenant should be reasonable.⁴⁴</p> <p>Leases Dated After 1st January 1996 A Deed of Covenant is not required for leasehold properties as covenants are enforceable between the leaseholder and lessor as well as management companies.⁴⁵</p>
6.3 Leasehold	Rent Review Clauses and Onerous Terms	Check any rent review clauses upon receipt of the lease to ensure that they are reasonable and acceptable to a mortgage lender during the full term of the mortgage.

⁴⁰ Building Safety Act 2022 Part 2 Section 119(2)(c) requires the lease to be granted before 14 February 2022 for the leaseholder to qualify for leaseholder protections, for a relevant building at least 11 meters or five storeys in height, subject to the other provisions of the Act.

⁴¹ CQS: Stage A

⁴² Commonhold & Leasehold Reform Act 2002 Para 1 Schedule 11

⁴³ Proxima GR Properties Ltd v Dr Thomas D McGhee [2014] UKUT 0059 (LC)

⁴⁴ Spencer Wade v Orchidbase Ltd [2014]

⁴⁵ The Landlord & Tenant (Covenants) Act 1995

		<p>Where there are complicated calculations, you should run the calculation for any rent reviews during the following 50 years and report the likely increases to the client and, if they appear to be outside of the norm, report to the lender.</p> <p>Any onerous term should be reported to the client and the Lender with an explanation as to what this will mean to them. Check whether the developer has undertaken to remove onerous clauses.⁴⁶</p> <p>New Build Leases and Estate Rentcharges Any escalating ground rents or rentcharges outside of the norm should be negotiated with reference to the current lending policy adopted by major lenders such as Nationwide. E.g. minimum term of 125 years for a flat and 250 for a house, no newbuild leasehold houses where there are no shared amenities and rent reviews must be reasonable and not cause the rent to be above the Housing Act 1988 level e.g. £250 for outside London and £1,000 within London, during the mortgage term. NB Renters Reform Bill will remove long leases from being an Assured Shorthold Tenancy when it becomes Law.</p> <p>Existing Lease Terms Advise clients on the risk of onerous lease terms and those terms which would not be acceptable to major lenders. E.g. Nationwide will accept, without referral, ground rents less than or equal to 0.1% or with rent review periods not more frequently than 10 years or ground rent escalations less than or equal to RPI.</p>
<p>6.4 Leasehold</p>	<p>Assisting with leaseholder communications</p>	<p>Where more than one administrator is involved in the administration of a lease, as a courtesy, serve notice on all administrators to ensure that your client receives the appropriate demands in a timely fashion. Where notice is duplicated note that this is by way of courtesy and therefore no further notice fee is being paid.</p>
<p>7.1 Estate Rentcharges</p>	<p>Onerous Terms</p>	<p>Advise clients of terms which may be considered onerous and would not be accepted by major lenders. E.g. Nationwide require estate rentcharges over £500 per annum to be referred for approval.</p> <p>Check the financial impact of estate Rentcharge review clauses and where there are complicated calculations you should run the calculation for any rentcharge reviews during the following 50 years and report the likely increases to the client and, if they appear to be outside of the norm, report to the lender.</p>

⁴⁶ [CMA Leasehold Report](#)

<p>7.2 Estate Rentcharges</p>	<p>Exclusion of remedies</p>	<p>Ensure that the drafting of rentcharges excludes the remedies to enter or lease the property to recover arrears whether demanded or not.</p> <p>Direct the rentcharge owner, or those drafting a new rentcharge, to the government's announcement in 2017⁴⁷ and ensure that any new rentcharge excludes s.121 and does not expressly grant additional rights which would subsist after s.121 is repealed.</p> <p>Where possible include the right of the property owner to be consulted on major expenditure and a requirement for administration fees to be reasonable as proposed by the government announcement.</p>
<p>8. Fraud Avoidance</p>	<p>General</p>	<p>Implement the CA Cyber Protocol</p>
<p>8. Fraud Avoidance</p>	<p>Seller ID Fraud</p>	<p>Identify any property which is high-risk and apply enhanced due diligence to establish that the known information about the owner corresponds with the person with whom you are dealing⁴⁸.</p> <p>High-risk property would include:</p> <ul style="list-style-type: none"> • Vacant or tenanted • Unmortgaged • Where the seller does not occupy • The seller is a sole owner • The seller has owned it for some time
<p>8. Fraud Avoidance</p>	<p>Protecting the sale proceeds</p>	<p>Verify the account to which the proceeds of sale will be sent whether that is to a seller's conveyancer or the seller's personal bank account.</p>

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/670204/Tackling Unfair Practices - gov response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/670204/Tackling_Unfair_Practices_-_gov_response.pdf)

⁴⁸ P & P Property Limited v OWC LLP and Crownvent Ltd t/a Winkworth [2016] EWHC 2276, Purrusing v A'Court & Co (a firm) & Anor [2016] EWHC 789 (Ch)