

## Future Digital Conveyancing Protocol

In 2023, the Material Information Guidance from National Trading Standards (NTS) will identify the information to be included in property adverts; Qualified Electronic Signatures enabling digital signatures of digital dispositions at HM Land Registry enable digital Transfers and mortgages; and the creation of the Office for Digital Identities and Attributes will govern the delivery of Digital Identity to tackle the five million frauds estimated to have taken place in 2021.

The intention of the Future Digital Conveyancing Protocol is to commend to conveyancers the adoption of Upfront Information and digital solutions to improve the home moving process for all.

### Future Digital Conveyancing Protocol

This protocol is for the sale and purchase of a home for an owner-occupier and should be read in conjunction with the Law Society Conveyancing Protocol. The processes described are aimed to deliver efficiency but should not be considered a home-moving 'checklist' as each transaction and client is different.

While not a requirement of membership, it is recommended that all CA members, and indeed any conveyancing lawyer, adopt this Protocol wherever possible to provide the best possible home-moving experience for their client and those home-movers and stakeholders in any related chain of transactions.

#### **General aim**

The aim of this Protocol is to exploit the benefits of digital services and the NTS Estate and Letting Agent Team project to deliver material information and the early collection of the documents which will need to be reviewed to identify that information.

This will deliver clarity to all home-movers as well as stakeholders in the chain of transactions, and enable them all to embrace technological development in the residential property sale process as it becomes available. Proactive and transparent activity reduces the stress of the home-moving process even where the nature of the transaction might mean delay is unavoidable.

The recommendations contained in this Protocol are intended to deliver improvements in the efficiency and safety of the home-moving process for all involved. By collaborating and sharing information as soon as possible the consumer experience can be improved.

Utilising chain-view technology, the conveyancing lawyer can keep their clients up-to-date on the progress of the entire chain and identify where a transaction fails and, therefore, the party impacted will have to vacate, or the chain will have to wait until a replacement transaction is agreed.

A conveyancing lawyer must act in the best interest of their clients, whether a home-mover or a lender or both, and this will take precedence.

## **Why adopt the Future Digital Conveyancing Protocol?**

This Protocol sets out to exploit the benefits delivered to conveyancers through the improvement in technologies and the digitation of data used in the home-moving process. It is intended to help conveyancer's from cutting down on the time spent chasing and collating property information, to focusing on providing advice of the impact of that information on the client.

Since the financial crisis of 2008 the view and risk appetite of lenders has meant there are many property titles which may not be considered to be in the best interest of an eventual buyer or their lender but there may be actions which a proactive seller's conveyancing lawyer can take to improve the saleability of the property prior to a buyer being found.

This Protocol therefore seeks to ensure the sellers of the property receive advice (including advice on proactive corrective action) as soon as they begin to market their property, or before, to enable them to realise the full value of their property. This will improve conversion rates, reduce transactions which fail and should reduce the time from point of sale allowing a greater turnover of transactions improving conveyancer firm's profitability.

The Consumer Protection From Unfair Trading Regulations 2008 require the person marketing the property to provide all material information which they know, or should know, about the property to any potential buyer. Material information is anything which would impact the average consumer's transactional decision, therefore the information gathered is likely to be much wider than the information traditionally provided in the conveyancing process.

There is a common law requirement on the seller to disclose all defects prior to contract, so it is in the best interests of the seller to either solve the defects that would impact the average buyer or ensure they are disclosed to them during the marketing of the property.

The Home Buying and Selling Group (HBSG) has produced a Buying and Selling Property Information (BASPI) dataset which includes all the information material to the buyer but which is also relevant to the mortgage adviser, lender and their valuer.

The selling client will have provided a lot of this information, and therefore it will form part of the contract under the Standard Conditions of Sale (5<sup>th</sup> Edition), or the buyer client and lending client is likely to have been given the information and based their offer on it. It is therefore, in the conveyancer's, and client's, best interests to ensure they have the information also and can assess its impact on the client, and highlight to them where they will need to instruct an expert to advise on information which is not of a legal nature or within the conveyancer's expertise, for example, tax, structure, geology etc.

### **Application of this Protocol**

If acting solely for the lender, conveyancers should:

- Follow such parts of the Protocol as they apply to that retainer; and
- Take all action as is necessary to enable both the buyer's conveyancing lawyer and the seller's conveyancing lawyer to comply with the timescales.

Even where one party does not agree to adopt the Protocol, that does not prevent the use of this Protocol by the other party.

### **Conveyancing Association's Technical Protocol**

By adopting the Conveyancing Association Protocol the conveyancer will commit to adopt [the Conveyancing Association Technical Protocol](#), so far as it applies, to support their regulator's requirements, act in the best interest of their client and comply with the rule of law while providing a consumer-centric customer experience.

#### **Know your Customer**

Recognise this extends further than identifying your client and evidencing their identity, anti-money laundering and establishing whether they are on a sanctions list; it also includes identifying any vulnerabilities which need to be taken into account in the provision of the service to them and, in the case of a buyer, their intended use and enjoyment of the property so conveyancers can ensure their advice includes issues which might impact plans and highlight what issues with the title might mean.

#### **Preventing Fraud**

Fraud, including inter-familial fraud, can be prevented by identifying the client utilising digital identity which complies with the Government Department of Science Innovation and Technology (previously DCMS) Digital Identity Trust Framework and the HM Land Registry [Safe Harbour Standard](#). Identifying the client using digital identity methodology wherever possible will reduce the fraud risk to the firm and the transaction. As it develops the DSIT D-ID process will enable the consumer to share their certified identity with stakeholders in the home-moving process safely via the Digital Identity Service Provider.

Money due to a client should only be transmitted to an account, details of which have been verified as belonging to the client, ideally at the outset of a transaction.

To prevent account redirection fraud, conveyancers should notify clients they will not change their bank account during the transaction. Consider adopting a system to allow the client to check they have the correct bank details for the firm.

For further cyber and fraud safety measures review the [Conveyancing Association Cyber Fraud and Fraud Protocol](#).

To improve the customer experience, and compliance with anti-money laundering regulations, an open-banking source of funds tool can be used to identify the client's source of funds.

#### **Property Pack: Material Information on Marketing**

<sup>1</sup>Anyone marketing a property must disclose the material information which they are aware of, or should be aware of, about the property.

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<sup>1</sup> Consumer Protection from Unfair Trading Regulations 2008 requires all material information the agent is aware of, or should be aware of, and would impact the average buyer's transactional decision should be disclosed.

It is also in the best interests of the seller of the property to collate all information any buyer's conveyancing lawyer would review as part of their due diligence process, as this will prevent missing or conflicting information being provided which would result in additional enquiries and post-valuation queries, and therefore delay the process.

The quicker the seller is made aware and provides the information, the more clarity can be delivered, creating less conflicts of interest or missing information which result in additional enquiries, delaying the process and waste to the conveyancing lawyer.

### **Information and prescribed documents to be collated**

The following contains 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 their intended use and enjoyment of the property, and their conveyancing lawyer will review on that basis as part of the legal process.

Where data is provided, conveyancers should check the provenance of the data and whether the provider has complied with the Property Data Trust Framework.

1. [Energy Performance Certificate less than 10 years old](#)
2. **Completed Buying and Selling Property Information dataset (BASPI)**  
or equivalent questionnaires which contain:
  - a. Material facts disclosure identifying facts affecting the average buyer's transactional decision (Propertymark PIQ or equivalent); and
  - b. The remainder of the conveyancing information required from the seller (Law Society TA6 or equivalent).
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 available from HM Land Registry.
  - b. Unregistered land: Index Map Search, epitome of Title and the relevant documents referred to in the epitome documents, for example, Lease or documents containing rights, restrictions or covenants.
4. **Applicable shared amenity information (for example, LPE1/FME1)**  
If the cost to obtain the LPE1 or FME1 is unreasonably high then, until a buyer is found, provide the following information which is included in the BASPI from the seller's knowledge.
  - Number of years remaining on the lease (if leasehold).
  - Current Ground Rent (if leasehold).
  - Does the rent increase? If so, when and by how much?
  - Amount of current annual service charge/estate rentcharge/maintenance contribution.
  - Have any notices of large expenditure been received? If so, provide details.
  - What additional fees are payable on sale or letting of the property?

### **5. Local Authority Search**

The buyer's conveyancing lawyer will need to consider the type of local search provided by the seller and that it is within the timescale required by their lender.

- **Searches obtained from the Local Authority**

If the search is produced by the Local Authority, then the protections for the buyer and their lender will be the same as if they had ordered the search themselves as they will be relying on the same data which is public data and carries an indemnity if it is incorrect.

- **Searches produced by a personal search provider**

If the search is produced by a personal search provider, then the buyer's conveyancing lawyer will need to check:

- That the mortgage instructions allow them to accept personal searches; *and*
- That the search provider confirms that the local search:
  - provides protection for the buyer, conveyancing lawyer and mortgage lender relying on it;
  - accurately reports the most up-to-date available information and risks associated with the property from the sources consulted;
  - provides complete search results based on a search of all legitimate, commercially and readily-available sources (i.e. a physical examination of public records; a response from an official entitled to provide the information; our own current records; or commercially available data);
  - makes clear to customers in advance: what sources of information are commercially and readily available; what additional sources of information may be obtained, identifying any additional cost or time delay involved; where required information is unobtainable;
  - states clearly in the search report what sources of information have been searched; and
  - ensures all data and information is handled with integrity, in accordance with data protection legislation and protecting copyright and intellectual property rights.

## 6. Drainage and Water Search

## 7. Environmental Information

- Contaminated land.
- Flooding within the last 5 years and coastal erosion.
- Radon gas or other health effects.
- Mining.
- Man-made and natural ground stability.

## 8. Locality-dependent searches

Searches which apply because of the location of the property, for example, waterways, brine pumping, fracking, Williamson's tunnels. etc.

## 8. Seller has been digitally identified and their relationship to the property verified

## Acting for the Seller

**Recommendation 1:** Upon receipt of instructions from the seller, identify them to the HMLR [Safe Harbour Standard](#) and complete all other anti-money laundering checks. Establish whether the client has access to a smart phone to be able to sign digitally and be identified digitally. If the property is not already on the market, help summarise the material information required for the estate agent to comply with CPRs.

If the property is already on the market ask the seller, or their estate agent, to provide the material information which they have identified and the prescribed documents from which the data has been taken:

- Where they have already collated some or all of the information identified above, obtain copies of it; or
- Where information has not yet been collated or is missing, collate all the information identified above.

**Recommendation 2:** Review the data and, if applicable, arrange for the seller to complete any applicable Leasehold or Commonhold Information Form and submit the Leasehold Property Enquiries Form (LPE1) to the Lease Administrator or Freehold Management Enquiries (FME1) to the property manager. If the LPE1/FME1 supplier fees are unreasonable, these can be sent when a buyer is found, as long as the seller provides the material information for the marketing of the property.

The seller's conveyancing lawyer should check through all of the information collated and advise the seller what general issues there are with the information, which might be material to the average buyer, or any issues which would cause concern to the average conveyancing lawyer or their client (whether buyer or lender) during the home-moving process, and will impact the seller's ability to sell for full value on the open market. This will be based on the rule of law and the average lending policy of the major lenders.

The seller's conveyancing lawyer should advise the seller whether, in their opinion, there is anything which the seller can do to solve these issues.

The lawyer is free, and encouraged, to take instructions to proactively remedy any issues at an early stage and obtain missing information or explain any conflicting information.

While advice should be given to the seller on resolutions to general issues, the eventual buyer's 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 their conveyancing lawyer will review and advise on as part of the legal process under caveat emptor.

## Costs

When providing material information or advice on items which are revealed by the prescribed documents, which will result in additional work, the estimate of the additional costs involved should be made to the client to meet the conveyancer's regulatory requirements for transparency of costs, expenses and referral fees.

**Recommendation 3:** Resolve issues as agreed with the client; while there is no obligation on the seller to resolve the issues, the average buyer's transactional decision will be impacted by them and may affect the amount which they are willing to pay for the property.

**Recommendation 4:** Provide a summary to the agent marketing the property indicating any material information which might impact the average buyer's transactional decision, and which must be linked to the advertisement of the property.

**Recommendation 5:** Should a potential buyer's conveyancing lawyer require a full copy of a prescribed document, forward the same to them electronically upon receipt of a written request.

**Recommendation 6:** On sale agreed, ask the seller to complete (or update) the Fixtures, Fittings and Contents Form as soon as possible, and issue a contract pack on receipt of the buyer's conveyancing lawyer's details including a draft TR1, preferably created through the HMLR digital registration service.

**Recommendation 7:** Respond to any additional enquiries, specific to the property or the buyer's intended use and enjoyment or their lender's instructions, at the earliest opportunity.

**Recommendation 8:** Utilise digital signature and qualified electronic signature technology, when available, to get the contract signed and TR1 executed by the client.

**Recommendation 9:** Keep the client, and other stakeholders in the chain, updated on the actions taken, the next action to be taken and when it will take place.

**Recommendation 10:** Where the property has any financial charges, ensure the conveyancer has redemption figures for all charges. At the earliest possible stage, and before exchange of contracts, provide the seller with a financial statement to ensure the seller is aware of the likely amount of the proceeds of sale. Where funds will be due from the seller, highlight to them there may be daily limits on how much their bank will allow them to transfer electronically so they should establish how long they will need to transfer sufficient funds in time for exchange and completion

**Recommendation 11:** Exchange contracts using the electronic formula for exchange whereby, where the Law Society telephone formulae for exchange require a 'telephone call, fax or telex', these should be replaced by an email or communication through a previously agreed secure portal.

**Recommendation 12:** Ensure the client transmits any funds due to arrive with the conveyancer at the latest the working day before completion. Prepare for completion the working day before the completion date. If completion monies are transmitted to the seller's conveyancing lawyer the day before completion by the buyer's conveyancing lawyer, to hold the same to the order of and on trust for the buyer until legal completion.

## Acting for the Buyer

**Recommendation 1:** Receive instructions from the buyer, identify them to the HMLR [Safe Harbour Standard](#) and complete all other anti-money laundering checks to identify and establish their source of funds. Establish whether the client has access to a smart phone to be able to sign digitally and be identified digitally.

Ask them for:

- The material information on which they have based their offer;
- Their intended use and enjoyment of the property, for example, letting, altering, running a business, etc.

## Costs

When providing material information or advice on items which are revealed by the prescribed documents which will result in additional work, the estimate of the additional costs involved should be made to the client to meet the conveyancer's regulatory requirements for transparency of costs, expenses, and referral fees.

**Recommendation 2:** To enable the client to make an advised transactional decision, review the material information summary with the advertisement of the property, asking for full copies of any of the prescribed documents required to identify what the material information means to their planned use and enjoyment.

**Recommendation 3:** Upon receipt of the memorandum for sale from the selling agent, ask the estate agent to provide any material information relating to the property under CPRs. Identify the seller's lawyers and request the contact pack including the prescribed documents from them, as soon as possible, highlighting the client's position with regard to any related or linked transactions, and requesting the draft TR1 is preferably created through the HM Land Registry digital registration service to enable digital execution using qualified electronic signatures.

**Recommendation 4:** At the earliest opportunity upon receipt of the contract pack, raise any additional enquiries specific to the property or the buyer's specific instructions or intended use and enjoyment, or their lender's instructions. Avoid enquiries which are already answered in the material information but undertake any additional due diligence required in respect of the buyer's planned use under caveat emptor, and the lender's lending policy.

**Recommendation 5:** Provide the client with a report on the title at the earliest opportunity, outlining anything revealed and what it would mean to their intended use and enjoyment of the property as notified by the conveyancing firm to them.

**Recommendation 6:** Utilise digital signatures and qualified electronic signature technology, when available, to get the contract signed and TR1 executed by the client.

**Recommendation 7:** Keep the client, and other stakeholders in the chain, updated on the actions taken, the next action to be taken and when it will take place.

**Recommendation 8:** Provide the client with a draft financial statement as soon as possible to ensure they are aware of the likely amount which will be required to complete, before exchange of contracts, and highlight to them there may be daily limits on how much their



bank will allow them to transfer electronically so they will need to establish how long they will need to transfer sufficient funds in time for exchange and completion.

**Recommendation 9:** Exchange contracts using the electronic formula for exchange whereby, where the Law Society telephone formulae for exchange require a 'telephone call, fax or telex', these should be replaced by an email or communication through a previously agreed secure portal.

**Recommendation 10:** Ensure the client and their lender transmit funds to arrive with the conveyancer, at the latest, the working day before completion. Prepare for completion the working day before the completion date.

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These materials are not intended to be relied upon as specific legal advice.

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