



The Law Society

## **Questions for the seller in residential conveyancing**

A consultation by the Law Society

**This consultation closes on 19 April 2012**

*supporting*  
**solicitors**

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## Executive summary

1. When buying a property the onus is on buyers to satisfy themselves about many aspects of the purchase. Having information at an early stage can minimise expense and disputes.
2. If the buyer is using mortgage finance to fund the purchase the lender will require a Certificate of Title. The lender's solicitor needs to obtain sufficient information in order to provide the lender with this certificate.
3. The buyer/borrower's and lender's solicitor may be able to obtain what is required from the:
  - provisions/warranties in the purchase contract
  - investigation or searching of public records
  - report by a surveyor following the physical inspection of a property
  - replies given by the seller to questions asked by or on behalf of the buyer and the buyer's lender.
4. This consultation looks at the last of these information sources. The aim of the consultation is to obtain views to inform the production of a revised general enquiry form for residential conveyancing.
5. The purchase and sale of a property often takes place between two consumers. It may involve a chain of transactions where the consumer is a seller in one transaction and a buyer in another. For these reasons the Law Society transaction forms aim to strike a fair balance between the interests of the seller and those of the buyer.
6. The Law Society has developed and adapted various enquiry forms over the years. The current main general enquiry form, the Property Information Form (TA6), was last amended substantially to accommodate the Home Information Pack legislation and to incorporate some of the questions most commonly raised by buyers. This legislation was formally abolished in December 2011.
7. This consultation seeks views as to how the enquiry part of the conveyancing process can be improved for buyers, sellers, lenders and others with an interest in this market. The aim is to produce an amended and updated form that could be used to produce the requisite information most efficiently and effectively.

# 1. Introduction

Prospective homebuyers want to know all kinds of information about a property before deciding to buy. This may range from fundamental information about its location, construction and legal title to whether the property is on a bus route, on a busy road, or whether it is in the catchment area of a particular school. Different buyers require different information. The process of conveyancing is, in part, investigative. The basis on which the purchase is made is that of 'caveat emptor' or 'let the buyer beware'. As a result it falls to the buyer to make all appropriate investigations and enquiries before he commits himself to buying a property.

Some information – such as public records - is easily available for buyers to find out for themselves. Other information may be obtained by inspecting the property and having a survey carried out. However, some information may only, or most conveniently, be available from the seller.

The buyer may ask questions of the estate agent or seller during inspection of the property. Under the contract the buyer is usually not permitted to rely on these verbal replies for the purposes of seeking remedies if the answer is subsequently found to be incorrect.

This consultation focuses only on one part of the investigative process: the enquiries made by the buyer of the seller in writing.

The questions raised usually include information relating to boundaries, disputes, notices, relationships with neighbours, planning matters and other matters about which the seller would normally be expected to have information and which may be important to a prospective buyer. There are liability, delay and cost implications when many and varied questions are raised.

Some answers to enquiries may be sufficiently important to dissuade a buyer from proceeding with the purchase. Others may result in a renegotiation of the price agreed, subject to contract. Yet others may assist the practicalities of moving or provide helpful, but not critical, information. Because of the potential importance of the seller's replies to enquiries from prospective buyers, the Law Society has, for more than twenty years, advocated providing such information to buyers in a standard form and at an early stage in the transaction.

The timing of searches and enquiries is important because if the buyer discovers something negative about the property before contracts have been exchanged, he is entitled to withdraw from the purchase, usually without significant consequence. By contrast, if the buyer wishes to withdraw from the purchase after contracts have been exchanged, he may be found to be in breach of contract and subject to more serious financial and other consequences.

## **2. Aims and scope of this consultation**

The consultation seeks the views of solicitors and others as to how the enquiry part of the conveyancing process can be improved for buyers, sellers, lenders and others with an interest in this market. The consultation relates specifically to the content of the following forms:

- TA6 Property Information Form 2nd edition (Annex A)
- TA10 Fittings and Contents Form 2nd edition (Annex B)

This consultation does not extend to leasehold (TA7) or new build (TA8) enquiries.

The Office of Fair Trading is currently developing guidance in relation to the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) for use in this market but this consultation does not make specific reference to these regulations.

Because Conveyancing Quality Scheme (CQS) firms have a broadly mandatory obligation to use the protocol and, following from that, forms TA6 and TA10, CQS members in particular, are encouraged to participate by responding to this consultation.

## **3. Balancing the interests of buyer and seller**

The structure of the residential conveyancing transaction is different from many others. Most consumer transactions take place between a business and a consumer and, while this may be the case in relation to new build or refurbished properties, it is not the case in the sale of most homes. The sale of homes generally takes place between two consumers.

While there are some sales and purchases that take place between two consumers such as the sale of second hand cars and goods the sale and/or purchase of a home has a more marked impact on individual lives and finances than these other consumer to consumer dealings. The sale and purchase of a home generally takes place relatively infrequently, resulting in consumers being less familiar with the purchase and sale process.

The transaction is also unusual because in a chain of transactions, consumers may be both a buyer and a seller simultaneously.

As a result of this unusual backdrop the Law Society has always aimed to strike a fair balance between buyers and sellers in the enquiry forms. One of the benefits of this is that where sellers are also buyers they will encounter the forms in both capacities and hopefully feel that the form is fair for both. The standardisation of the questions also benefits solicitors who become familiar with their structure and content.

## **4. Costs**

Enquiries asked by solicitors on behalf of buyers and lenders have a cost implication. Buyers' and lenders' solicitors generally raise standard enquiries plus any additional enquiries that the title, other documentation and the specific requirements of the buyer and/or lender, necessitate.

The seller's solicitors do not know whether a vast array of additional enquiries will be raised at the point that costs are discussed or an estimate or 'fixed fee' quote is given. If large numbers of additional enquiries are raised this impacts on costs for the clients, or, because most transactions are carried out on a 'fixed fee' basis, for the solicitor.

Some firms wish to extend the service that they provide to buyers by requesting more information than the buyer may want. While it is understood that these firms are attempting to provide a bespoke service, if the seller's solicitor is operating an entirely different business model tensions can arise. This can have an impact on both process and costs. Many firms are quoting charges on the basis of fixed fees. The quote may be prepared on the basis of use of the standard enquiries plus a few specific additional enquiries. If they then receive a long form of additional enquiries their pricing model may not fully take account of this.

The reason for mandating the use of Form TA6 for CQS members is the aim to strike a balance between obtaining the following information without asking so many questions that it causes difficulties and delay:

- information about what the lender requires (in terms of completing the Certificate on Title) – [more details](#)
- information that deals with matters of title
- information on what the buyer wants to know

## **5. The buyer's obligations**

### **5.1 Let the buyer beware (caveat emptor)**

The legal basis on which the sale of a home takes place is *caveat emptor* (let the buyer beware). This means that the buyer needs to make investigations about the property before exchanging contracts to purchase. Broadly this is on the basis that the buyer will take subject to matters that he didn't know about if he failed to search or make enquiry – subject to certain exceptions as set out below.

### **5.2 Investigation**

The enquiries that the buyer needs to make fall into the following categories:

1. survey
2. inspection
3. searches
4. enquiries of the seller

#### **5.2.1 Survey**

Much physical information about the property should be obtained from a structural survey commissioned by the buyer. By condition 3.2 of the fifth edition of the Standard Conditions of Sale (Law Society and Oyez, 2011) the buyer 'accepts the property in the physical state it is in at the date of the contract'.

### **5.2.2 Inspection**

Buyers are generally advised to inspect the property or have it inspected on their behalf.

### **5.2.3 Searches**

Searches include those made of the Land Registry, local authority and other authorities.

Under condition 3.1.4 Standard Conditions of Sale the buyer agrees to '...bear the cost of complying with any outstanding public requirement and ...indemnify the seller against any liabilities resulting from a public requirement'. He will want therefore to ascertain what these may be. They may include any notice, order or proposal given or made by a body acting on statutory authority. These include matters revealed by enquiries raised of the local authority, for example a public right of way affecting the land.

### **5.2.4 Enquiries of the seller**

Enquiries need to be made of the seller because there are some matters that the buyer will wish to know about before agreeing to buy the property, which are not matters of public record and cannot be the subject of a search. In some cases, the only person who will have the information required is the seller.

The relationship between written answers given to formal enquiries and the provisions of the Standard Conditions of Sale are of particular importance to the transaction.

The fifth edition of the Standard Conditions of Sale contains a Special Condition 6:

#### **Representations**

*Neither party can rely on any representation made by the other, unless made in writing by the other or his conveyancer, but this does not exclude liability for fraud or recklessness.*

Because the sellers are giving answers in writing, it is important to make sure that contractual warranties are accurate. It is considered that the seller, who has lived at



the property, should properly be able to answer all these questions without restricting the ability of the buyer to rely on the answers given.

## **6. The seller's obligations**

### **6.1 Does the seller have to respond?**

Enquiries are raised to obtain information that the seller is not bound by law to disclose. The corollary of this is that sellers are not obliged to respond to enquiries. They could refuse to answer. However, this would be unusual and may serve to raise suspicions in the buyer. It could slow the transaction down, cause the buyer to withdraw or may mean that the buyer's solicitor would need to take specific instructions from the lender as to whether they were prepared to proceed in such circumstances.

Depending on whether there is a buyer's or seller's market the relative negotiating strengths of the parties may determine how, when and whether sellers respond.

In certain situations, such as a sale by executors, or a sale by a mortgagee in possession, the seller may not be in a position to answer most enquiries and will refrain from doing so, but the price will usually take account of this. In these circumstances the buyer is likely to make his decision to buy knowing that he is unlikely to receive such replies. In repossession sales, buyers may at the very least require a warranty that the lender has received no notices and is not involved in any disputes. If the seller will not provide this, instructions may be required from any lender advancing money for the purchase. It may not be possible to give an unqualified certificate of title in such situations.

### **6.2 The seller's duty of disclosure**

There is no general duty on the seller to ensure that the buyer is provided with all relevant information about the property. The seller's duty of disclosure is limited to certain matters affecting the *title* to the property, mainly latent incumbrances and defects in his title.

The seller's duty of disclosure stems from the contract.

The seller is not totally absolved from providing information to the buyer under the principle of *caveat emptor*.

Matters that fall outside the duty of disclosure are explained further in the *Conveyancing Handbook* 18th edition (Silverman, F. (ed., 2011) and summarised briefly below.

- (a) matters known to the buyer
- (b) matters apparent on inspection
- (c) physical defects
- (d) planning matters

Condition 3 of the fifth edition of the Standard Conditions of Sale provides in 'Matters affecting the property' the basis on which the property is sold:

3.1.1 *The seller is selling the property free from incumbrances, other than those mentioned in condition 3.1.2.*

3.1.2 *The incumbrances subject to which the property is sold are:*

- (a) *those specified in the contract*
- (b) *those discoverable by inspection of the property before the date of the contract*
- (c) *those the seller does not and could not reasonably know about*
- (d) *those, other than mortgages, which the buyer knows about*
- (e) *entries made before the date of contract in any public register except those maintained by the Land Registry or its Land Charges Department or by Companies House*
- (f) *public requirements.*

3.1.1. *After the contract is made, the seller is to give the buyer written details without delay of any new public requirement and of anything in writing which he learns about concerning a matter covered by condition 3.1.2.*

The buyer may have the right to rescind the contract and/or claim damages if the seller does not tell the buyer about incumbrances that do not come within the definition in Standard Conditions of Sale condition 3.1.2.

Easements and some other incumbrances that affect the property can often be discovered by inspection. If they can, they are obvious and do not have to be expressly disclosed. However, arguments can arise as to whether or not a particular matter was discoverable by inspection. Therefore, to reduce the scope for disagreement, it is usual to set them out expressly in the contract, together with any that could not be so identified.

## **6.3 Liability for misrepresentation**

Liability for misrepresentation is determined by the relationship between the representations made in replies to enquiries, the representation clause in the Standard Conditions of Sale contract - Special condition 6, and any attempt to limit liability.

An incorrect reply to pre-contract enquiries may result in the seller being liable for misrepresentation. This may be the case where it can be shown that the seller made an untrue statement of fact, on which the buyer relied when entering into the contract, and as a result of which, he suffered loss.

There are three forms of misrepresentation - fraudulent, negligent and innocent - and the remedies vary accordingly.

## **7. Buyer's solicitors' obligations**

### **7.1 Regulatory obligations**

A solicitor is under a professional duty to act in the best interests of his client<sup>1</sup> and where he acts for both lender and borrower, he will owe a duty to them both.

Failure to carry out appropriate searches and enquiries may result in the buyer bringing a negligence claim against the solicitor if he has suffered loss as a result (see *Cooper v. Stephenson*<sup>2</sup>). Furthermore, a failure on the solicitor's part to properly check the seller's replies, 'may amount to both inadequate professional service and professional negligence' (see *McMeekin v Long*<sup>3</sup>).

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<sup>1</sup> Principle 4, *SRA Handbook* (Solicitors Regulation Authority, 2011)

<sup>2</sup> [1752] 21 LJQB 292

<sup>3</sup> [2003] All ER (D) 124 (Jan); [2003] 29 EG 120

## 7.2 Lender's requirements

The solicitor has a duty<sup>4</sup> to keep the lender informed of any matters (as disclosed during the investigations and revealed in replies to enquiries) that are likely to affect the value of the property and /or the lender's decision to lend to the borrower on the terms agreed.

## 7.3 Law Society Conveyancing Protocol

The *Guide to the Law Society Conveyancing Protocol* (Law Society, 2011) reiterates previous protocol practice on the subject of enquiries:

### Enquiries

*The buyer's solicitor should raise only those specific additional enquiries that are required to clarify issues arising out of the documents submitted or which are relevant to the particular nature or location of the property or which the buyer has expressly requested.*

*They should resist raising any additional enquiry including those about the state and condition of the building which is capable of being ascertained by the buyer's own enquiries or survey or personal inspection.*

*It is preferred practice for the buyer's solicitor to ensure that the buyer is aware of the limitations of replies to enquiries and the warranties that should properly be sought.*

The *Law Society Conveyancing Protocol* (Law Society, 2011) contains obligations for the buyer's solicitor relating to additional enquiries at step 32:

*"Raise only those specific additional enquiries required to clarify issues arising out of the documents submitted, or which are relevant to the particular nature or location of the property, or which the buyer has expressly requested.*

*Resist raising any additional enquiries, including those about the state and condition of the building, that have answers which are capable of being*

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<sup>4</sup> CML Lenders Handbook, para.5.3.1; BSA Mortgage Instructions, para.D.10.

*ascertained by the buyer's own enquiries, survey or personal inspection. Such enquiries should not usually be raised.*

*Indiscriminate use of 'standard' additional enquiries may constitute a breach of this Protocol."*

## **8. Seller's solicitors' obligations**

### **8.1 Law Society Conveyancing Protocol**

Under Law Society Conveyancing Protocol, step 9 (in the section relating to the pre-preparation of documents) the seller's solicitor has obligations to:

send to the seller a Property Information Form and a Fittings and Contents Form 'with a warning that these documents' may require later re-verification'; and; explain to the seller the nature of the questions in the forms and ask for documentation such as planning permissions, building regulation consents, plans, completion certificates and any guarantees'.

Step 13 of the protocol requires that the seller's solicitor to 'check replies to enquiries and endeavour to obtain missing documentation'.

Under *Law Society Conveyancing Protocol*, Step 32, the seller's solicitor has obligations to:

- *obtain the seller's responses to additional enquiries;*
- *explain that if inappropriate enquiries have been raised, answers need not be given;*
- *inform the buyers solicitor that answers will not be given to inappropriate enquiries.*

Also under step 32, the buyer's solicitor is warned that the seller's solicitor has no obligation to deal with 'inappropriate enquiries', particularly the indiscriminate submission of 'standard' additional enquiries and 'nor does the seller's solicitor need to obtain the seller's answers to any enquiry seeking opinion rather than fact'.

**Question 1** Do you think that changes need to be made to the Law Society Conveyancing Protocol in relation to enquiries?

If yes, please indicate which stage of the protocol and set out the suggested change.

## **9. The Property Information Form (TA6)**

### **9.1 Background to the Property Information Form**

The Law Society's current standard form of preliminary enquiry is TA6 Property Information Form 2nd edition (2009, see Annex A). This is the latest version of a form first published in 1990 as part of a series of TransAction forms to support the Law Society's National Conveyancing Protocol.

### **9.2 Principles governing inclusion of enquiries on a Property Information Form**

The Law Society's first Property Information Form adopted, broadly, the principles and recommendations of the Law Commission (Conveyancing Standing Committee of the Law Commission, 1988). These were that standard preliminary enquiries should not:

1. deal with matters which only affect a small number of houses
2. ask for information which is more easily, and often more reliably, found elsewhere
3. ask about matters which can be satisfactorily be discussed and settled personally between the seller and the buyer
4. be used as a substitute for inspecting the house, for which the purchaser may wish to employ an expert
5. be used as a way to supplement the terms of the contract

The Law Commission said that every effort should be made to frame preliminary enquiries so that they ask for information on questions of fact. It is true that enquiries that call upon a seller to express an opinion, or exercise a value judgment, are inherently unsatisfactory because they are likely to lead to misunderstandings.

In addition an expression of opinion cannot be relied upon in the same way as a factual response, because it is only factual responses that may amount to a 'representation'.

Many of the forms of 'additional' and 'further additional' enquiries that are in current use include questions that ask sellers for opinion rather than fact.

The Law Commission thought that matters which can be ascertained by a layman (eg whether central heating is installed or whether a cold water tank is insulated) should be noted by the purchaser himself. It thought that relatively trivial matters, such as whether there is television interference, should be ascertained in discussion between the parties in person.

The forms produced by the Law Society in 1990 were based on the Law Commission's recommendations and were therefore largely restricted to those legal questions that related to title and matters required to satisfy lenders. As a result, they were relatively short.

The forms did not include questions relating to the fabric of the property that could be established by inspection and survey. Even though the Law Commission suggested that no questions should be asked to which the answer was a matter of public record or could be obtained from other sources, this recommendation was not fully adopted. It was felt, for example, that asking the seller about planning permissions was legitimate because the seller may have made the application for such permission and may have direct knowledge and could provide copies relatively easily. Local planning authorities now make this information available online so the need for such questions may have diminished.

As a matter of practice firms increasingly added their own enquiries, some legal and some client focused. Many different sets of additional enquiries developed - they increased in length and the benefits of consistency were reduced.

When the latest version of Form TA6 was revised to accommodate the Home Information Pack legislation, the form was expanded to incorporate the subject matter of some of the most commonly asked additional questions. While this made the standard form longer, its introduction, at least initially, reduced the number of incidences where many different forms were used for additional enquiries.

We are not certain that the use of very long additional forms of enquiries before contract assists buyers, sellers, lenders or solicitors:

often many additional enquiries repeat those included in the standard form  
others are irrelevant to the particular transaction  
others ask for opinions rather than factual responses

The risks both of asking and omitting questions should be considered both when acting for buyers and sellers. It may be that adopting one position or another will increase the potential for disputes to arise.

**Question 2.** Do you agree or disagree with the following statements about the principles on which standard preliminary enquiries should be based:

Standard preliminary enquiries should not:

- (1) deal with matters which only affect a small number of houses; *for example, questions about whether the property is connected to the main drainage system*
- (2) ask for information which is more easily, and often more reliably, found elsewhere
- (3) ask about matters which can satisfactorily be discussed and settled personally between the seller and the buyer
- (4) be used as a substitute for inspecting the house, for which the purchaser may wish to employ an expert
- (5) be used as a way to supplement the terms of the contract

**Question 3.** Do you agree or disagree with the following statement: every effort should be made to frame preliminary enquiries so that they ask for information that requires a factual response and not an opinion.

**Question 4.** If you agree to some or all of these principles being used to limit the scope of the enquiries, would you agree not to add additional enquiries that breached the principles you agree with (except where they arose directly from title documents, the property itself or the clients wishes/requirements)?



### **9.3 Purpose of the Property Information Form**

Form TA6 is designed for completion by the seller to disclose information about the property which will be of interest to a buyer before entering a contract. Its purpose is to reduce the number of standard enquiries which are relevant to every transaction.

A benefit of having standard documentation for use in England and Wales is that wherever consumers are moving, if they are moving within England and Wales, the same documentation can be used. While it appears that there are still some strong local markets, many transactions are dealt with by firms who are not local to the property and having a national form provides consistency.

Practitioners are then aware of the content and process that is expected and the likely timing and level of work involved. This should also assist in providing estimates or quotes for conveyancing work. Consumers who are both selling and buying will also see that they are responding to and being asked similar questions in respect of both transactions.

The form is prefaced with short general notes to both the seller and buyer. The Law Society considers it useful for both the seller and the buyer to see the notes. These notes are, inevitably, more concise than they would be were they to be produced as a separate document.

The aim is also to provide questions that can be easily understood by the seller and the buyer. There are currently no separate explanatory notes for specific questions so that it isn't too onerous for consumers to complete the forms. Where notes were considered to be necessary these have been added to the form as part of the question. Many of the notes in the body of TA6 do not explain the meaning of the enquiries (except briefly in relation to radon and flooding) but they are intended to provide assistance in responding.

It is acknowledged that there may be risks in inserting too many notes in this way. Increasing the length and detail of the form may reduce the willingness of buyers and sellers to fully engage with it.

## 9.4 Structure of the Property Information Form

The Property Information Form TA6 2nd edition comprises:

- space to enter details of the property
- space to enter details of the seller
- space to enter details of the solicitor acting for the seller
- definitions of terms
- notes for the seller and for the buyer
- enquiries of the seller and space for replies (with some notes to explain terms in the enquiries or direct the seller to do something)
- space to enter details of suppliers (eg electricity); and
- space for the seller to sign and date the form

The aim was to provide the most straightforward questions to produce the necessary answers. This is not always easy to achieve when the questions include some complex legal concepts.

The information towards the end of the form relating to utility services is set out in a tabular format.

Unlike the Seller's Property Information Form (4th edition, 2004) Form TA6 does not divide questions into those directed to the seller and those to the seller's solicitor. All of the questions are directed to the seller. This does not affect the implications of the decision made by the Court of Appeal in *William Sindall plc v. Cambridgeshire CC*<sup>5</sup>

**Question 5.** Should the Form TA6:

- a. be the shortest it can be while providing the requisite information
- b. be the most comprehensive it can be (to include questions that many purchasers wish to know the answers to even if the information is available elsewhere)
- c. a compromise between a and b?

**Question 6.** Do you think the existing Form TA6 represents an effective balance between the competing interests of buyers and sellers?

If no do you think the balance lies in favour of buyers or sellers?

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<sup>5</sup> [1994] 1 WLR 1016

If no are there any particular questions that do not achieve this?

**Question 7.** Form TA6 aims to produce a balance between buyers and sellers, in the interests of balance, are there some questions that should be specifically raised by buyers that should not form part of a standard form ?

If yes, please provide a list of topics or examples of the sorts of questions that might be used in these circumstances.

**Question 8.** Where the information requested is also available from public records that are capable of being searched should such information be excluded from the Form TA6 ?

If Yes do you think questions about planning permissions and building regulation consents should be included in the Form TA6?

**Question 9.** Would it be useful to provide an explanation relating to the TA6 questions for:

- the buyers' solicitors
- the sellers' solicitors
- the lenders' solicitors
- all solicitors

(answers are not exclusive)

**Question 10.** Would it be useful to provide an explanation relating to the TA6 questions for:

- sellers
- buyers
- both

**Question 11.** In the light of the Court of Appeal decision in *William Sindall plc v. Cambridgeshire CC*<sup>6</sup> should any of the questions be for the solicitor to answer? Please provide reasons for your response.

**Question 12.** Should the seller's solicitor be required to sign the main enquiry form to confirm that they have reviewed the seller's replies to enquiries?

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<sup>6</sup> [1994] 1 WLR 1016

**Question 13.** Should the seller be invited to sign and date the responses?

**Question 14.** Is there information that might more usefully be dealt with directly by the buyer and /or the estate agents?

If yes what sort of information might be dealt with in this way? If yes could solicitors' terms and conditions properly say that it is expected that the buyer will obtain this information themselves?

**Question 15.** If you were to be persuaded to give up your own additional enquiry form which question/s would you be most reluctant to let go?  
Please set out in full or attach.

## **10. Specific enquiries in the Property Information Form**

**Property Information Form (TA6)** requests information about:

- boundaries and boundary features (ie fences, walls, hedges etc)
- disputes and complaints by neighbouring owners/occupiers
- notices and proposals
- alterations, planning and building control
- guarantees and warranties
- council tax;
- environmental matters (including flooding)
- formal and informal arrangements (eg relating to access or shared use)
- details of any occupiers
- transaction information (eg use of deposit for related transaction)
- services (including electricity, central heating, drainage and sewerage)
- connection to utilities and services

**Below is some commentary in relation to some existing questions and proposed changes as a result of changes in the law and other matters:**

**Q 2. Disputes and complaints by neighbouring owners/occupiers**

This is one of the questions sellers find difficult to respond to – they are not certain how much detail they ought or need to provide. Noise from neighbours or elsewhere is another related issue that creates difficulties.

**Q 4. Planning matters**

New questions are required in relation to the Community Infrastructure Levy.

New questions will be required as a result of the Localism Act 2011 although there may be some debate as to which most warrant inclusion in a standard form – questions about assets of community value, knowledge of planning or building regulations breaches and changes to the competent persons scheme etc.

**Q 6. Council Tax**

There is a note to buyers warning them that the Council Tax banding may change if the seller has carried out work to the property since the property was allocated its Council Tax banding. As it is now some time since a Council Tax re-banding exercise was undertaken it is probably even more useful for buyers to be given this information here.

**Q 7. Environmental matters**

**Q 7.1 Flooding**

The current flood risk question is short. The issue of flood risk is now a serious matter in property purchase.

The current Flood Insurance 'Statement of Principles' that was drawn up by government and the Association of British Insurers (ABI) under which insurers agreed to continue to provide flood risk insurance for existing customers, including those at high risk (1 in 75 year flood risk probability), ends in June 2013 and the impact on both buyers and sellers could be marked. The impact could arise from June 2012 as most domestic insurance policies are written on an annual basis.

Striking a fair balance between seller and buyer in relation to flooding matters is a particularly difficult issue.

On 31 January 2012 the ABI published an [analysis highlighting the constituencies with the highest flood risk](#).

They estimate that as many as up to 200,000 high risk households may face difficulties obtaining insurance after June 2013. These properties will become much more difficult to sell and offer as security.

Q 7.2 and 7.3 ask questions in relation to radon.

It has been suggested to us that an initial question is asked about the presence of radioactive Radon gas. It is suggested that if the answer to such an initial question is 'yes' then a series of further questions should be asked. This sort of procedure could be carried out in relation to many topics of enquiry and would create difficulties and delays in practice. The current TA6 questions often build in further questions using " if the answer is 'yes' " format but there has been an attempt to keep such further questions to a minimum.

Q 7.4 and 7.5 ask for copies of the EPC and for new homes the sustainability certificate. This information will be available on a [central register](#).

These questions will need to be updated and when the 'Green Deal' regulations are concluded under the Energy Act 2011 it is likely that additional questions will be required to establish whether properties are subject to 'Green Deal' arrangements.

The incidence of Japanese knotweed seems to be increasing in certain areas and these properties could become unmortgageable for some lenders; however, developments are being made in the methods of control. This issue may be revealed on survey or valuation. This could be an instance where a question need not be set out on the form as a standard question but used in areas where it is known to be present.

[See Environment Agency information](#)

Q 8. Formal and informal arrangements

The Financial Services Authority (FSA) has published a [consumer warning on its website](#) regarding lease options and exchange with delayed completion contracts.

The focus of the warning is to alert the public to the risks associated with 'unregulated' sale and rent back 'look alike' schemes. There is probably no need to ask questions to ascertain whether any such scheme has been entered into by the seller because this is unlikely to produce a useful response on the basis that the seller thinks a disposal has already taken place.

Solar panels have also caused some concerns. Those that are simply bought and put on the property are one issue but the matter of particular concern to buyers and lenders is where a 25 year lease of roof space is granted, sometimes without consent of the lender in breach of the mortgage terms and conditions. If those buying a property assume that any solar panels on the property are owned outright by the seller would this issue be sufficiently identified by the existing questions in Form TA6, the entries on the title register and those in the Fittings and Contents Form? Such panels are more likely to be fixtures rather than fittings.

Q. 12 Services electricity, central heating, drainage and sewerage

12.2 (b)

Central heating boiler question needs to be updated in relation to servicing.

Q. 13 Connection to utilities and services

The septic tank question needs to be updated to take account of the licensing of septic tank provisions by the Environment Agency. Consent was originally required from January 2012 but implementation has been put back.

A questions will need to be included as to whether the seller has opted out of the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011.

A question will need to be included on whether the seller or any predecessor has built over an adopted drain and further questions that flow from this – for example whether there is any 'build over' agreement etc.

The liberalisation of the energy supplier market meant that a variety of possible suppliers existed and the only person who had this information, which could change from day to day, was the seller. Similarly the increase in services such as cable, additional TV contracts and broadband were matters that were only easily available from the seller.

The advent of more developed web services relating to these suppliers and the increase in the use of wi-fi may make enquiries about these services less necessary perhaps.

If everyone has 'switched over' to HD/ digital television these questions will no longer be required.

### **Planning**

**Question 16.** Some firms add a series of specific additional enquiries in relation to the construction of conservatories. Are these necessary in addition to the existing question about conservatories?

If yes, because not every property has a conservatory, should such questions form part of Form TA6?

### **Flooding**

**Question 17.** Given the increased awareness of the risks of groundwater flooding in addition to surface water flooding, and the imminent changes to insurance cover for flood risk, should the existing question be expanded and strengthened?

Are you confident that you can explain the rationale for this to your seller client if their property is affected?

**Question 18.** Are you confident that you can explain the rationale for this to your seller client if their property is affected?

### **Overriding interests**

See Land Registry [Practice Guide 15 'Overriding interests and their disclosure'](#).

**Question 19.** Following the changed requirements of Land Registry in relation to overriding interests some firms are using a separate 'overriding interest questionnaire'. Are additional questions necessary?

If yes what is the most succinct manner in which the requisite information can be ascertained ? ( please give examples of questions)

### **Ownership and dealings**

**Question 20.** Even though this information might be available from the entries at LR, should questions be raised as to how long the seller has owned the property (to comply with CML Lenders Handbook and BSA Mortgage Instructions provisions)?



## **Insolvency**

**Question 21.** Whilst there are difficulties in relation to situations where it may be better for buyers to buy without notice, should questions be asked in relation to insolvency matters?

## **11. Fittings and Contents Form (TA10):**

This form sets out those items that are or are not to be included in the sale and if the Protocol is adopted the form is annexed to the contract. If it is not adopted the form is still often annexed to the contract. It is possible for further sums to be charged for items in addition to the purchase price. This form aims to clarify to buyers and sellers what items are included in the sale.

It sets out:

- fittings and contents included in the sale
- fittings and contents not included in the sale
- fittings and contents not included but for sale at an extra cost (to be specified by the seller)
- the seller's obligation to make good any damage caused by the removal of any fixtures

Another aspect of matters relating to these items is the reasonableness of the price for stamp duty land tax purposes. To agree a figure that is not just and reasonable for the purposes of saving stamp duty land tax is a criminal offence: [see more information](#).

### **TA 10 Fixtures and Fittings**

**Question 22.** What changes would you make to the Fittings and Contents Form? Please give details

**Question 23.** Do your clients find the Fittings and Contents Form sufficiently easy to use?

**Question 24.** Does the box system [of 'tick' for included, 'cross' for not included and 'insertion of a price' if can be included at an additional price] work without undue difficulty in practice?

**Question 25.** Do you prefer the previous edition of the Fittings and Contents Form?

**Question 26.** Should a question be included on the form that asks whether all of the items included are the unencumbered property of the seller?

**Question 27.** The form currently gives a direction to the seller that he should make good any damage if items are being removed. Does this operate satisfactorily in practice? If no, is there anything that can be done in terms of the form to address this?

**Question 28.** In place of the direction referred to in Question 27 would it be preferable in terms of practicality (reducing incidence of disputes or making it easier to resolve disputes) to include a question that asks that if items are being removed whether the seller will be 'reasonably careful' in doing so?

## **12. Additional property information (TA11)(Annex C)**

Form TA11 Additional property information was published in 2007 (see Annex C) together with the TA6. Form TA11 was withdrawn in 2009 when the second edition of TA6 Property Information Form was published. Parts of TA11 were incorporated in TA6. A more concise version of some of the questions was used. Some of the more detailed parts were not inserted.

Question 1.2 asks whether there has been any change in any information given previously. This question can help to remind sellers of the obligations set out in the notes to the TA6 which state: "if you later become aware of any information which would alter any replies you have given you must inform your solicitor immediately. This is as important as giving the right answers in the first place."

Even though responses may be given some time before exchange of contracts they are treated as continuing representations until exchange of contracts and failure to notify any change before exchange may constitute a misrepresentation.

## TA11

**Question 29.** Are there any questions in TA11 not covered by TA6 Property Information Form 2nd edition, which should be incorporated in a new standard form? If yes, please specify the subsections from the form attached at Annex C.

For example TA11 Q10 should this question be reinstated in Form TA6?

"10.1 Have there been any transfers of the whole or part of the property in the last five years? If yes were these transfers of the property:

(a) other than for full market value

(b) by way of gift

10.2 If yes to any part of 10.1 please give details"

## 13. How to respond to this consultation

The deadline for responses is 19 April 2012. You will need to complete two forms:

- [consultation questionnaire](#) (MS Word)
- [your details](#) (MS Word)

### Submitting an electronic form

Download the consultation questionnaire and the 'your details' form above - save the files locally - before and after completing them.

Return your completed forms as email attachments to [consultationresponse@lawsociety.org.uk](mailto:consultationresponse@lawsociety.org.uk).

### Submitting a printed form

If you wish to submit your response by post, please follow the steps above. Then, print your completed forms and send them to:

Questions for the seller consultation  
Legal Policy Directorate  
The Law Society  
113 Chancery Lane,  
London, WC2A 1PL  
DX 56 London/Chancery Lane

## **Send us an email or letter**

If you prefer not to use our forms, you can put your comments or concerns in an email or letter. Send your email to [consultationresponse@lawsociety.org.uk](mailto:consultationresponse@lawsociety.org.uk), or post your letter to the address provided above.

Please ensure that, in your email or letter, you identify yourself and state on whose behalf you are responding (unless you are responding anonymously), and state clearly if you wish us to treat any part or aspect of your response as confidential.

## **Deadline for this consultation**

Responses must be received by 17:00 on 19 April 2012.