

Myths creating barriers to a consumer focussed home moving process.

The buyer cannot rely on the questionnaire completed by the seller but provided by the estate agent. So long as the seller completed the questionnaire or the data comes directly from the relevant authority then the buyer, lender, valuer can rely on it as part of their due diligence process to the extent to which it has been provided.

Of course, data provided by the Land Registry on the tenure is more reliable than the seller's memory which is why we get the official documents however when it comes to the TA6 or BASPI we rely on the seller's responses unless it is based on their opinion or of particular importance to the buyer, in which case conveyancers will do more due diligence on that subject eg if the seller says they didn't need planning permission for an extension but the buyer intends to extend further then it is likely that you would check with the local authority or a specialist as part of your due diligence.

Providing information which may be incorrect will increase liability on the seller. The Misrepresentation Act case law indicates that mistaken opinion does not create a liability on the seller unless it was formed through their own fraud eg if they knew that their statement was wrong for example the heating did not work but they stated that it did. *"A statement of opinion may be regarded as a statement of fact if it is false. Thus if it can be shown that the person who expressed the opinion did not hold it or could not, as a reasonable man having knowledge of the facts have honestly held it the statement can be regarded as a statement of fact."*

Sellers won't pay for the Property Pack including searches to be provided.

Consumer research showed that 98% believe the provision of upfront information is good idea, 71% think the seller should pay for it, 23% thought both buyer and seller should pay. 60% said they would pay £300-plus to provide it 40% said they would pay less than £300.

No buyers would bother reading material information summary prepared by a conveyancer.

89% of consumers thought it would benefit buyers or both buyers and sellers if the information was available.

Searches ordered at listing would be "out of date" at exchange of contracts.

9 out of 10 transactions complete within the 6 months referenced by the UKF Handbook as being an acceptable age for searches. Though this is an arbitrary timescale; searches of course are out of date the moment they leave the search company, you will not get an email from the Local Authority if they add another charge the day after they sent you the search – however they will serve notice on the seller and that is why the seller is obliged to notify their buyer of any notices received prior to completion.

The buyer can't use the seller searches. The Search Code means that the search company will be liable to anyone relying on the search who suffers loss, whether buyer, valuer or lender. The search result direct from the authority will have the

same data and indemnity protecting anyone relying on it whether provided to the seller or buyer.

Having to pay would reduce the amount of housing stock coming to market, When Scottish Home Reports were brought in, it didn't stop Scottish property owners putting their homes up for sale – the number of properties coming on to the market before and after the introduction, compared to E&W, has not changed.

It would not make a difference to fall throughs: as a result of the Home Report, the number of failed transactions north of the border is two-thirds less than in England & Wales.

'Buyer Beware' means the seller's lawyer cannot advise sellers upfront if there is a title defect.

The concern being that it might tip off or put off a buyer or might have cost the seller to resolve when the buyer would have proceeded anyway.

Case law, heard on appeal at the High Court in February – **SPS Groundworks and Building Ltd v Mahil** [2022] EWHC 371 (QB) - confirms the seller has a duty to disclose defects, so solicitors really do need to advise sellers on solving defects prior to sale agreed or advising potential buyers of defects prior to offer.

CPRs require that estate agents should disclose all material information that they know about or should know about which would impact the average consumer's transactional decision.

Therefore what "Buyer beware" means is that the seller and estate agent has to disclose defects that would impact the average consumer but if the buyer has something which would particularly impact them eg the ability to park a white van, let or alter the property, then buyer beware applies and their lawyer should carry out due diligence to check what is in the title and what it would mean to their client or their lender.

The seller cannot be expected to know what a buyer might consider material if it would not be material to the average consumer.

Estate Agents don't get any information: Of the PropertyMark members who responded to their survey, 67% get a questionnaire completed for the CPRs and 68% of them send the information with the memorandum of sale and a further 21% will provide it if asked.

You have to have the TA6 to comply with CQS Protocol: The CQS protocol is clear – the best interests of the client takes precedence. It is clearly in the seller's best interests to disclose all defects upfront and the TA6 only asks the legal points and not more opinion on quality. The CQS will not take action for failure to obtain the TA6 where the due diligence is completed through some other form to the best interests of the client.