

Sector-specific guidance: Conveyancers

‘Conveyancers’ are legal executives, licensed conveyancers and solicitors.

This sector-specific guidance accompanies the pan-industry guidance: [Re-opening the Home Moving Market Safely](#) and the related [government guidance](#).

This guidance is applicable to both England and Wales, but the regulations and guidance relating to the re-opening of the market issued by the UK government and referred to in this guidance apply only in England.

The regulations and guidance currently applicable to Wales relating to the housing market are set out in section 10 below.

This guidance applies to owner-occupied homes and to second hand, rather than new-build, homes.

Introduction

Coronavirus (COVID-19) is having an impact across the home moving industry.

Buyers and sellers will find the process very different from the way it was before the government took steps to restrict transactions. They may need support to help them understand the changes to the buying and selling process.

Provide clients with an electronic copy of, or a link to, the [pan-industry consumer guidance](#) if they have not received this from the estate agent or other property professional.

Clients may also find it useful to see the general government guidance on [how to buy](#) and [how to sell](#).

The impact of COVID-19 is causing significant uncertainty not only for buyers and sellers but also for conveyancers.

The position will probably continue to be uncertain for some time as the UK government monitors the effect of the changes it’s introducing and amends its guidance in accordance with the results.

The purpose of this sector-specific guidance is to provide conveyancers with information to enable sales and purchases to be carried out while maintaining safety as social distancing measures are eased or increased in line with government guidance.

This document has been developed collaboratively by the residential conveyancing sector and their professional and membership organisations.

It expands on the [latest UK government guidance](#) which says:

“Conveyancers can open for business and can take on new instructions. They should make sure their clients are aware of the differences in completing transactions during this period.

- *Conveyancers should aim to conduct as much of their business remotely as possible.*
- *Where client meetings need to take place, measures should be put in place to ensure appropriate social distancing and hygiene measures.*
- *Conveyancers should do what they can to promote flexibility making provisions for the risks presented by coronavirus, for example when advising their clients who are ready to move not to exchange contracts on an occupied property unless they have made explicit provision for the risks presented by the virus.*
- *Conveyancers should prioritise support for anyone who is clinically vulnerable or shielding, or with symptoms of coronavirus or self-isolating to agree a new date to move.”*

This sector-specific guidance for conveyancers has been endorsed by:



**The Society of
Licensed Conveyancers**

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Be flexible and pragmatic and use common sense to enable buyers and sellers to achieve what they want. Communicate more.

Update your advice to clients as the guidance from government evolves.

1. At the start

At the beginning of every sale and purchase instruction:

- be vigilant: check for fraud warning signs. There's an increased risk of fraud in this changed environment, especially where conveyancers are working from home
- carry out a full fraud risk assessment and an anti-money laundering (AML) risk assessment for the transaction. Remember a transaction may be low risk for one but high risk for the other
- check the client understands how the process will work up until completion
- establish with the other side what's acceptable in terms of electronic or digital procedures and what will be required in terms of documentation
- point out the risks, assess the clients' appetite for risk, set out the options and likely consequences of each option, establish whether they want to proceed and, if they do, how they want to do this
- explain the risk of completion not taking place because of the presence of COVID-19 and how the provisions of the contract will apply and affect them if completion cannot take place when scheduled
- establish the details of any chain so that attempts can be made to settle any variations to the contract across the whole chain

2. Meeting with clients

Use virtual, electronic and/or telephone options to discuss issues with clients wherever possible. If a client must visit the office, consider taking the following precautions:

- meet with them by appointment only
- actively discourage people from making drop-in visits
- change the [physical layout of the office as necessary to protect clients and staff](#)
- ask clients to clean their hands when they arrive: provide sanitiser or access to a sink, soap and paper towels
- install a screen at the reception desk
- make provision in your waiting area to enable visitors to socially distance from each other: consider the use of floor markings using tape or similar. If this is not possible, arrange appointments with adequate intervals

- establish a procedure for the use of any lift so that visitors and staff can comply with social distancing requirements
- hold meetings outdoors or in well-ventilated rooms whenever possible

3. Initial instructions

Make sure that clients understand that:

- they'll need to remain flexible and patient as the matter progresses. They may need to put matters on hold at short notice. Although attempts will be made to make some provision for this in the contract, it's not possible to provide for every situation
- once contracts have been exchanged, they will have entered into a binding legal contract and if they fail to complete the purchase or sale, they may incur serious financial penalties
- as the government increases testing, more people who are asymptomatic may have to self-isolate, meaning that they may not be able to complete their move
- new restrictions may be imposed by UK and/or Welsh government which might prevent completion taking place
- regulations may be introduced by the UK or Welsh government at any time
- if they were hospitalised as a result of COVID-19, the contract would not be frustrated, and they would still be obliged to complete
- they may be moving into a property where one of the occupants has had COVID-19 or may be suffering from COVID-19 symptoms

Discuss with clients the risks associated with these issues and how they can be addressed.

4. ID requirements

4.1. ID to comply with anti-money laundering (AML) obligations

- Continue to carry out due diligence under the Money Laundering Regulations. These have not been suspended
- If there's no face-to-face contact, continue to comply with the enhanced due diligence (EDD) requirements as set out in the [Legal Sector Affinity Group guidance for the legal sector](#)
- Comply with the Legal Sector Affinity Group's more detailed [guidance on dealing with anti-money laundering compliance during the coronavirus pandemic](#)
- Use electronic ID – the [Financial Action Task Force Guidance on electronic ID](#) provides some information about verification services

- Even if there's face-to-face interaction and paper ID documents are provided, consider using electronic ID in addition as the best forms of this are more reliable

4.2. ID for lenders

Continue to comply with obligations as set out in the UK Finance Mortgage Lenders Handbook and in the BSA Mortgage Instructions.

4.3. ID for HM Land Registry (HMLR)

HMLR has introduced some temporary changes to their requirements to make it easier to [verify identity for land transactions](#). Full details on these changes, including the conditions that must be satisfied, are available in [Practice Guide 67A](#).

HMLR will now not reject applications where identity evidence is not provided. They will raise a requisition so that applications do not lose their priority.

This does not reduce the responsibility to ensure that adequate steps have been taken to verify identify.

Continue to comply with the [previous HMLR ID obligations](#) as far as possible.

5. Undertakings

Only give undertakings that can be performed. Performance may be more difficult in the new circumstances.

Amend the usual undertakings given in conveyancing transactions to suit the circumstances of the transaction as necessary.

For example, the current circumstances may prevent the conveyancer from complying with standard undertakings given under the [Law Society Formulae for Exchange](#) and [Code for Completion](#) paragraphs 12 and 13.

Subject to the circumstances, it's unlikely to be necessary to amend the standard undertakings relating to monies or discharge of charges.

Make sure that you carefully record any variations agreed to the standard undertakings.

6. Lenders

Encourage clients to check the status of mortgage offers.

The lender may want to review the client's financial position as changes are made to furloughing provisions etc.

Some lenders may be prepared to lend less in relation to value.

7. Exchanging contracts and Code for Completion

- Consider the impact of the changed circumstances on the transaction
- Establish exactly how exchange will take place
- Establish exactly how and when completion will take place taking account of social distancing
- Be careful not to effect an exchange of contracts if you do not intend to do this.

Exchange of emails may constitute a valid exchange of contracts (see *Neocleous v Rees [2019] EWHC 2462 (Ch)*) under section 2 of the Law of Property (Miscellaneous Provisions) Act 1989

- Establish whether standard conditions in the [Standard Conditions of Sale](#) need to be amended in the contract; for example condition 1.3 in relation to 'Notices and documents'
- Agreeing the completion date needs thought – the date needs to accommodate:
 - the circumstances of the transaction
 - a second wave of COVID-19 that could result in the parties not being able to move
 - provision for [deferring completion with a longstop date](#)
- Agree with the other side how the formula for exchange being used needs to be changed to reflect the particular transaction
- Make changes in writing and record the agreement with the other side
- If exchange of contracts is to take place under one of the [formulae for exchange](#), the formula may need to be amended to agree before exchange, for example, how the contracts will be or have been signed:
 - by the solicitor with written authority from the client/consumer
 - wet ink signature from client/consumer
 - PDF in accordance with the [practice note on virtual signings](#)
 - by third party digital signature provider
- that, for example, once holding the clients' contract with wet ink signature or electronic signature, it will be scanned and emailed to effect exchange. The undertakings may need to be altered to confirm that the original documents will be sent when it's reasonably possible

8. Before agreeing completion dates

- Ask clients to check they will have enough time to transfer monies, as online banking limits might mean there are restrictions on the amount they can transfer on one day (sometimes £10,000)
- Ask clients to check with their removers and the other party that the property will be vacated before the buyer and their removers arrive. It's not possible to guarantee this but having the conversation may alert everyone to the additional time that may be required
- Suggest clients check the terms and conditions of their contract with removers. Some may include penalty payments for late cancellations and some have hourly, rather than fixed, rates after certain times in the day have passed
- Consider asking any mortgage lender and the client to confirm that funds will be paid into the client account by close of business on the working day before the completion date with the aim of reducing delays on the completion date. Some lenders are taking longer to release funds
- Where possible, agree a mechanism with the other party's conveyancer for monies to be transferred through the chain of transactions on undertakings before completion with co-ordinated funds and keys release, to provide as much certainty as possible for the time of the completion. This will enable removers to plan and conduct a safe move for clients

Simultaneous exchange and completion

Some firms recommend to clients that they should exchange contracts simultaneously with completion.

This solves some problems – for example, the risk of completion not happening is reduced – but creates others: for example, if there's a chain, all transactions would need to agree simultaneous exchange and completion which may be difficult and may not always be suitable

Some firms suggest that encouraging clients to agree a date for exchange and completion a week or so in advance, enables them to start packing up and booking removers for a fixed future date.

There are obviously still risks with this approach and some removers may not make a booking unless contracts have been exchanged.

The risks need to be assessed against the risks of having a short time between exchange and completion.

Short period between exchange and completion

Keeping the period between exchange and completion short might provide a compromise.

A practical approach might be to limit the period between exchange and completion to five working days, having submitted the certificate on title and obtained clear final searches ahead of exchange; but these matters are all for negotiation once the client has provided instructions.

Even having a short period of time between exchange and completion does not eliminate the possibility that someone may become ill or receive a test result in this time and not be able to move. The transaction may need to be paused at short notice.

Remember where a client is buying and selling simultaneously any bespoke provisions should usually apply throughout the chain. Risk should be apportioned fairly.

The aim is to provide the same solution and let the risk fall in the same place across the chain. It's acknowledged that this may be difficult to negotiate.

9. Executing documents

9.1. Wet ink signatures

Where clients are able to execute documents:

- with a wet ink signature
- with witnesses who are physically present and who use wet ink signatures
- where steps can be taken to avoid transmission during appointments, for example, encouraging hand washing and not sharing pens and other objects, especially with vulnerable people
- where this can be carried out safely and in England in accordance with the [Health Protection \(Coronavirus, Restrictions\) \(England\) Regulations](#) as amended by the [Health Protection \(Coronavirus, Restrictions\) \(England\) \(Amendment\) \(No. 2\) Regulations](#) or in Wales in accordance with the [Health Protection \(Coronavirus Restrictions\) \(Wales\) Regulations 2020](#)
- where physical delivery of the document can be effected (for example, by post)

this can continue.

Where clients report that they're unable to have a document signed or witnessed complying with these requirements, there are alternate methods of execution:

9.2 'Mercury' style execution

HMLR is temporarily [accepting the 'Mercury' signing approach for deeds](#) and has updated [Practice Guide 8 Execution of Deeds](#).

For land registration purposes, a signature page will need to be signed in pen and witnessed in person (not by a video call). The signature will then need to be captured, with a scanner or a camera, to produce a PDF, JPEG or other suitable copy of the signed signature page.

Each party sends a single email to their conveyancer to which is attached the final agreed copy of the document and the copy of the signed signature page

HMLR require the conveyancer to certify the resulting transfer/document/deed as a true copy of the original in the usual way as the final step in the process

The 'Mercury' style execution should only be used if the procedures set out in [Practice Guide 8](#) and the [practice note on virtual signings](#) are followed in their entirety

9.3 Electronic signatures

9.3.1. Electronic signatures generally

See the [practice note on electronic signatures](#).

- Use electronic signatures as necessary in the present circumstances rather than wet ink signatures. Make sure they are electronically dated correctly, for example, with the date of the contract
- Electronic signatures can be used for contracts to sell/buy/agreements for lease and other documents under hand
- Electronic signatures can be used for deeds but only if any witnesses are physically present when the signatory applies the electronic signature

9.3.2 HMLR and electronic signatures

- HMLR do not categorise 'Mercury' style signatures as electronic signatures, as they involve scanned manuscript signatures
- As set out in 9.2 above, HMLR are currently registering transfers and other dispositions effected by deeds that have been executed using 'Mercury' style signatures
- HMLR can enter a notice in respect of a contract that has been electronically signed – a notice does not guarantee the validity of the purchaser's interest
- HMLR will not register a disposition purported to be effected by a deed that has been electronically signed
- HMLR will, however, register an electronic disposition in the form of a digital mortgage complying with [Notice 1 made under rule 54C of the Land Registration Rules 2003](#): this is not a deed

9.4 Witnessing

All physical presence witnessing must be conducted in accordance with [social distancing requirements](#).

10.4.1. Principles of witnessing

- The usual principles continue to apply: a party to a deed can never be a witness, there must be no conflict of interest, they should be independent and not benefit directly or indirectly from the contents of the deed
- If there's to be any deviation from usual procedures on witnessing, check with HMLR requirements or individual lender requirements
- If extreme measures are being considered – such as family members being asked to witness – make sure that clients are aware of the risks, warn the other side that this may occur in advance so that they have the opportunity to object, ensure that lenders accept the position before they are requested to advance monies and obtain full details of capacity age and confirmation that they do not stand to benefit, in any way, however remote, from the contents of the deed

9.4.2 Wet-ink signatures

Witnesses must be physically present when the document is signed.

The video solutions proposed in other jurisdictions or for wills do not apply for HMLR purposes in England and Wales.

Note: For HMLR purposes, witnesses must be physically present when the document is signed

9.4.3. Electronic signatures

Witnesses to electronic signatures must be physically present when the signatory electronically signs on the third-party equipment or device.

Note: HMLR will not register a disposition purported to be effected by a deed that has been electronically signed.

It's suggested that witnesses are requested to sign statements confirming that they were physically present when the document was executed.

10. Transactions in Wales

This guidance is designed to assist with [re-opening the home moving market safely](#). Regulations to do this have only been made in relation to England.

The regulations relating to Wales have not yet been amended to start to re-open the market.

For the position in Wales on moving to a new house until the regulations are amended, see:

- Regulation 8(2)(h) and (5)(d)(i) of the [Health Protection \(Coronavirus Restrictions\) \(Wales\) Regulations 2020](#) as amended;
- the [Welsh government coronavirus regulations FAQs](#), which includes the question 'Can I move house?'
- other [guidance on the principal Regulations](#)
- the statutory requirement in Wales is to [take all reasonable measures](#) to make sure that two metres is maintained between people on premises (regulation 6A of the regulations). This could be minimising the level of interaction to what's essential, reducing the number of people in attendance and so forth

Conveyancers checklist

- Note carefully that client confidentiality obligations continue to apply even though some or all staff may be working remotely
- Be aware that there are increased fraud risks in this new environment
- Contact clients/consumers by use of email, video conferencing platforms, telephone etc.
- Searches should be available as usual from most local authorities and providers – check the availability and discuss with the client if there are any difficulties
- Check that you have the capacity to do the work before you accept instructions
- Check to see if the clients' lender has changed its requirements during the transaction (such as their loan-to-value requirements)
- SDLT, CGT and LTT payment dates have not been amended and tax should be paid by the due dates
- Companies House and HMRC are continuing to provide services
- HMLR are continuing to provide essential services that support transactions
- Time limits for making applications for registrations at HMLR and at Companies House (for company charges) have not changed. Continue to comply with the existing time limits.

While every effort has been made to ensure the accuracy of the information provided it does not constitute legal advice for any particular transaction and cannot be relied on. No legal liability is accepted by the organisations or individuals involved in preparing this information.

The government has said it will continue to amend its guidance to reflect the situation as more is known about the effect of the virus. Reference should always be to the latest government guidance.

If there's anything that's incorrect in this information, email details to property@lawsociety.org.uk.