



Material Information questions

We have collated the questions raised in our discussions with agents and solicitors:

1. How should we display the material information if the portals don't yet have the facility?

Material information is defined as "information which the average consumer needs, according to the context, to take an informed transactional decision" under the consumer protection regulations.

This information should include any positive or negative elements that may influence the average consumers decision.

listings should material information be included on:

- i. All residential property listings should include material information, including those on property portals, property agent websites, third-party websites, and printed material.
- ii. Where space is limited in the advert, reference should be made to how the consumer may access the information.
- iii. Part A material information should be included on the first page of listings. Parts B and C are not required to be included on the first page of listings but should still be prominent and accessible. For online listings, Parts B and C information should be no more than one click away from the main listing.

2. Do we need to put all the restrictive covenants into our details even if some are arguably not enforceable?

Property professionals' considerations:

Transparency and Disclosure:

It's in the best interest of both the seller and the estate agent to be transparent about any known restrictive covenants. Disclosing this information upfront helps potential buyers make informed decisions.

Enforceability:

While some restrictive covenants may be arguable in terms of enforceability, it's essential to recognise that the interpretation and enforcement of these covenants can depend on various factors, including changes in laws and court decisions. What may seem unenforceable today could be subject to legal changes in the future.

Legal Advice:

Estate agents should encourage sellers to seek legal advice regarding the restrictive covenants associated with their properties. Legal professionals can provide insights into the enforceability of these covenants and guide sellers on the appropriate disclosures.

Potential Buyer Concerns:

Even if a restrictive covenant may be considered unenforceable, it could still be relevant to potential buyers. Some buyers may have concerns about the potential legal complications or challenges associated with a property, even if the likelihood of enforcement is low.

Negotiation and Terms:

If there are restrictive covenants that may impact the use of the property, it's advisable to discuss these issues during the negotiation process. Buyers may request specific terms or conditions in the contract to address any concerns related to restrictive covenants.

Documentary Evidence:

Include any relevant documentary evidence related to restrictive covenants in the property information questionnaires (PIQ). This can help establish transparency and provide a clear record of the information provided to potential buyers.

While estate agents are not legal experts, they play a crucial role in facilitating transparent transactions. Encouraging sellers to seek legal advice and providing accurate and complete information to potential buyers can help mitigate potential issues and contribute to a smoother real estate transaction. Additionally, complying with legal and ethical standards in the industry is important for maintaining a positive reputation and building trust with clients.

Not all restrictive covenants are shown on the title register and there is a need for a proper legal interpretation in some cases to understand how they may impact on the property. How much work do solicitors have to do to ensure the material information is complete and accurate?

- 3. How as agents can we practically provide, what may be very lengthy information, if it is available at the point of marketing? There isn't sufficient provision to do this on the portals.**

Property Details:

Create a comprehensive property information pack that includes all relevant details, including lengthy or complex information about restrictive covenants. Provide a link or offer to send the Property information pack to potential buyers upon request.

Dedicated Property Website or Landing Page:

Develop a dedicated website or landing page for each property, where you can provide extensive information, including details about restrictive covenants. Include the link to this page in your property listings.

Summary Highlights on Portals:

While property portals may have limitations on the amount of information you can provide, include a summary or key highlights related to restrictive covenants in the property listings. This can pique the interest of potential buyers, prompting them to seek more information.

Direct Communication:

Encourage potential buyers to reach out directly for more information. Provide contact details or a contact form on your listings, so interested parties can inquire about specific details, including any lengthy information.

Legal Consultation:

Clearly advise potential buyers to seek legal advice regarding restrictive covenants. This way, they can get a more in-depth understanding of the legal implications associated with the property.

Collaboration with Legal Professionals:

Collaborate with legal professionals to create concise summaries or guides regarding restrictive covenants.

4. Can we rely on the information provided by the vendor or if there has been a previous agent can we rely on their listing/information, and do they have to tell us the reason any sales fell through?

- **Vendor Provided Information:**

Estate agents commonly gather information about a property from the vendor. This includes details about the property's features, condition, and any relevant documentation (e.g., planning permissions, certificates).

While agents rely on this information, they should take reasonable steps to verify its accuracy. This may involve cross-checking details, conducting property inspections, and consulting legal professionals if necessary.

- **Previous Agent's Listing:**

If there has been a previous listing by another agent, an estate agent may reference that information for insights into the property. However, they should not solely rely on it without independently verifying crucial details.

- Agents should exercise due diligence to ensure the accuracy of information, as discrepancies may exist between listings or property conditions may have changed.

- **Disclosures About Previous Sales:**

If there were previous sales that fell through, agents may inquire about the reasons for the failures. However, sellers are not always obligated to disclose specific details, and there may be privacy or legal considerations.

Sellers are generally expected to provide accurate information about the property, but they may not be required to disclose every detail about previous sales unless specifically asked by the agent.

- **Reasons for Sales Falling Through:**

While estate agents may seek information about why previous sales fell through, sellers may not always be forthcoming with the details. Some reasons for sales falling through may involve personal or financial matters that the seller prefers to keep private.

It's crucial for estate agents to:

Act professionally by verifying information to the best of their ability.

Encourage open communication with sellers to gather accurate and complete details about the property.

Provide clear and transparent information to potential buyers based on the available information.

5. Who's going to police all of this, there are nearly 10,000 listings on Rightmove for Cornwall?

The enforcement of compliance regarding material information for estate agents is enforced by Trading Standards. Trading Standards work to ensure that Property professional businesses, including estate agents, adhere to laws and regulations designed to protect consumers and maintain fair trading practices.

The following are general principles Trading Standards - enforce compliance:

1. Inspections and Audits:

Trading standards conduct inspections and audits of estate agent offices to ensure they are complying with relevant laws and regulations. This includes a review of documentation, contracts, marketing materials, and procedures related to the disclosure of material information.

2. Education and Guidance:

Trading standards provide education and guidance to estate agents regarding legal requirements. This could involve training sessions, workshops, or the distribution of informational materials to help agents understand their obligations and responsibilities.

3. Complaint Investigations:

Trading standards investigate complaints made by consumers or other businesses. If a complainant believes that an estate agent has not provided accurate or complete material information, Trading Standards will carry out an investigation.

4. Court Proceedings

In cases of serious or repeated offences, Trading Standards may take legal action against estate agents through court proceedings. This can lead to prosecution case, involving fines, or other measures deemed appropriate by the court.

6. How is an agent supposed to assess building construction without expert structural knowledge? Is a best guess good enough or should we be instructing surveyors on every property?

Assessing building construction without expert structural knowledge can be challenging for estate agents and **making a "best guess" is not advisable**. It is generally in the best interest of both the estate agent and potential buyers to seek professional guidance when it comes to evaluating the structural aspects of a property. Here are some considerations:

1. Professional Expertise:

Estate agents typically lack the specialised knowledge required to assess the structural integrity of a building. Professional surveyors and structural engineers are trained to evaluate construction quality and identify potential issues.

Estate agents have a legal responsibility to provide accurate information to potential buyers. Guessing or providing incomplete information about the structural condition of a property can lead to offences under CPR legislation.

2. Transparency with Clients:

It is crucial for estate agents to be transparent with clients (both buyers and sellers) about their limitations in assessing structural aspects. Encourage clients to obtain a professional survey or structural inspection for a more thorough and reliable evaluation.

3. Recommendation of Surveyors:

Estate agents can play a valuable role by recommending or advising clients to hire qualified surveyors or structural engineers. This ensures that clients receive expert assessments of the property's construction and potential issues.

4. Educational Role:

Estate agents can educate clients about the importance of structural assessments and the benefits of obtaining professional advice. Providing resources or information on the potential risks of not conducting a survey can be beneficial.

5. Including Caveats in Listings:

In property listings, estate agents can include appropriate caveats regarding the need for a professional survey. This communicates to potential buyers that the estate agent recommends further assessment for a comprehensive understanding of the property's condition.

6. Disclosure of Known Issues:

If there are known structural issues with a property, estate agents should disclose this information to potential buyers. However, it is essential to recommend a professional assessment for a detailed understanding of the issues.

While estate agents may not be experts in structural assessments, they can add significant value to the real estate transaction process by guiding clients toward appropriate professionals. Encouraging clients to invest in a thorough survey can help prevent potential issues and contribute to a smoother transaction. Additionally, it helps estate agents maintain a high level of professionalism and ethical conduct in their business practices.

7. If I have been an agent in a town for 20 years, can I rely on my local knowledge to answer the Part C questions on mining, flooding etc?

While your local knowledge gained over 20 years as an estate agent in a specific town can be valuable, it is important to recognise the limitations when answering questions related to specific issues such as mining, flooding, and other environmental concerns. Here are some considerations:

1. Local Knowledge:

Your extensive local knowledge can certainly provide insights into the general characteristics of the area, historical trends, and common issues. This information can be valuable in giving potential buyers a broad understanding of the locality.

2. Limitations of Local Knowledge:

However, relying solely on local knowledge might not be sufficient when dealing with more technical and specialised aspects, such as the geological implications of mining or flood risk assessments. Detailed and up-to-date information in these areas may require input from experts and official sources.

3. Legal Obligations:

Estate agents have legal obligations to provide accurate and reliable information to clients, there may be specific requirements for disclosing information related to environmental factors and property risks. Relying solely on personal experience might not fulfil these obligations.

4. Consulting Experts:

For questions related to mining, flooding, or other environmental concerns, it is advisable to consult with relevant experts. Geologists, environmental consultants, and surveyors may provide more detailed and accurate information based on thorough assessments.

5. Disclosures and Due Diligence:

When asked about potential risks such as mining or flooding, it is crucial to disclose any known information and advise clients to conduct their own due diligence. Encourage buyers to seek professional assessments or reports to obtain a comprehensive understanding of any risks associated with the property.

6. Official Reports and Records:

Utilise official reports and records related to environmental factors. Local authorities, environmental agencies, or geological surveys may provide data that supplements your local knowledge and ensures a more comprehensive picture.

7. Continuous Learning:

Keep abreast of changes in regulations, local planning policies, and environmental considerations. Attend relevant training sessions or workshops to stay informed about evolving issues that may impact property transactions.

In summary, while your experience as a long-term estate agent in a town is valuable, it is essential to approach questions about specific environmental concerns with caution. Collaborating with experts, advising clients to seek professional assessments, and staying informed about official reports and regulations will help you provide a more thorough and reliable service to your clients while meeting legal and ethical standards.

- 8. The property I own has 22 “modern” restrictive covenants on it. I am sure the majority of my neighbours don’t know that their homes are subject to the same covenants which range from not having a caravan on the drive to not being allowed to keep a rooster! The covenants do not show up on standard land registry checks.**

If your property has 22 restrictive covenants, and you believe that many of your neighbours might not be aware of these covenants, it's essential to take appropriate steps to inform them and ensure compliance. Here are some recommendations:

1. Review Covenants:

Examine the specific details of each covenant to fully understand the restrictions they impose. Note any restrictions that might be relevant to neighbours’ property.

2. Consult Legal Advice:

Seek legal advice from a solicitor or legal professional who specialises in property law. They can provide guidance on the enforceability of the covenants and the best course of action to ensure compliance.

3. Contact Neighbours:

If you believe that your neighbours may not be aware of the covenants, consider reaching out to them informally. Share information about the covenants, their implications, and how they may affect the use of their properties.

9. if we know of the covenants, do we need to list all 22. If we do not need to do this, could we simply put on all sales details the property maybe subject to restrictive covenants?

1. Legal Obligations:

Estate agents are bound by CPR legalisation to disclose material information that may affect a buyer's decision.

2. Clear Communication:

Clearly communicate to potential buyers that there are restrictive covenants in place and that they should seek further details to understand the nature of these covenants. This can be done through written communication, property viewings, and other interactions.

3. Updates to Sales Details - Due Diligence

Keep sales details updated if there are changes to the information about restrictive covenants. If there are updates or amendments to the covenants, ensure that this information is accurately reflected in property sale file and property particulars.

10. if the owner doesn't know of them and a simple search doesn't show them up how liable are we?

When an estate agent encounters a situation where the property owner is unaware of restrictive covenants, and a standard land search doesn't reveal them, it's important to maintain a thorough and transparent record on the property file. Here are some key considerations for what the estate agent should document:

1. Communication with the Property Owner:

Record all communication with the property owner regarding the property and any discussions about restrictions or covenants. Note the owner's statements about their knowledge of the property. **(Update Agents - Property file)**

2. Searches Conducted:

Clearly document the types of searches that were conducted on the property. Specify whether these were standard land searches and note any limitations or exclusions in the search reports.

3. Disclosure Discussions:

If discussions were held with the property owner about potential restrictive covenants or the lack thereof, document the details of these conversations. Include any advice provided by the estate agent regarding the importance of due diligence and further investigation.

4. Due Diligence Recommendations:

If the estate agent recommended that the property owner conduct additional due diligence, such as obtaining a professional survey or seeking legal advice, document these recommendations.

5. Property Information questionnaire (PIQ):

Compile a property information questionnaire that includes all relevant information about the property. This can include documentation related to searches, owner disclosures, and any other pertinent details.

6. Written Confirmations:

If the property owner provides written confirmation that they are unaware of any restrictive covenants, include these statements in the Agent's property case file.

11. will agents not local to the area be given greater latitude than resident agents who will have greater knowledge?

Due Diligence:

Due diligence is expected from all estate agents, regardless of their location. Agents are expected to exercise reasonable care, skill, and diligence in researching and disclosing material information about a property.

12. if an owner declines to put a property for sale with an agent because they say the known restrictive covenants need to be mentioned on the sales details and they put it with another agent who lists it without mention of the covenants what action should the first agent take?

1. Document Communication:

Maintain clear records of all communication with the property owner, including discussions about the restrictive covenants and their impact on the sales details. Document any recommendations or advice provided by the agent regarding disclosure.

2. Notification to Trading Standards

If the actions of the second agent raise serious concerns about compliance notify Trading Standards and professional associations. **(All complaints to Trading Standards are confidential)**

Answers provided by John Tutchier – Cornwall Trading Standards - if you require any further advice and support, please e-mail: john.tutchier@cornwall.gov.uk

Link to contact BRS advice : <https://www.cornwall.gov.uk/business-trading-and-licences/business-regulatory-support/contact-us/>

