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# ENQUIRIES AND HOW TO RESPOND TO THEM IN THE LIGHT OF THE TA6 (5TH EDITION)

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## ABOUT RICHARD SNAPE

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**CONTENTS**

**MISREPRESENTATION GENERALLY**

Misrepresentation is a false statement of fact which at least in part induces another to enter into a contract. Silence, save in exceptional circumstances, such as insurance contracts, will not constitute a misrepresentation but a half-truth will. See e.g. ***Nottingham Patent Brick Company v Butler [1886] 16 QBD 778*** where a solicitor stated that he was not aware of any restrictive covenants not having attempted to find out.

If circumstances change, there will be a duty to notify parties of the change without request. See e.g. ***With v O'Flanagan [1936] Ch 575*** where a dental practice had been profitable was no longer so by the time of sale. A genuine statement of law or opinion as opposed to fact will not be a misrepresentation but the opinion must be genuinely held. See e.g. ***Bisset v Wilkinson [1927]*** A***C 177*** where an opinion as to the sheep holding capacity of a farm was made. The seller had no previous experience of sheep farming and this was held to be a statement of opinion. Contrast ***Smith v Land and House Property Company [1884] 28 ChD 7*** where a tenant was described as being most desirable even though he was one quarter in arrears of rent. This constituted a misrepresentation. More recently, see ***McMeekin v Long [2003] 29 EG 120*** where an enquiry about neighbour disputes was answered by the word "none". In fact there had been a ongoing parking dispute. This was actionable. If the buyer has the opportunity to discover the truth, this does not prevent a misrepresentation; see ***Redgrave v Hurd (1881) 20 Ch 1.*** The fact that the purchaser's conveyancer might discover the truth will not necessarily prevent a claim for misrepresentation.

The explanatory pages to the new TA6 state that "*if you do not know the answer to any question you must say so. If you are unsure of the meaning of any questions or answers please ask your solicitor. Completing this form is not mandatory, but omissions or delays in providing information, may affect the sale"*

**ENQUIRIES GENERALLY**

***Clinicare Limited v Orchard Homes [2004] EWHC 1694***

In response to an enquiry about dry rot, the client replied that he was not aware of any but that the buyer should rely on their own inspection or survey. The buyer then arranged for a survey which revealed major problems in relation to damp, advised that this might have given rise to dry rot and that a further survey was therefore recommended. The buyer went ahead without having had a further survey. The dry rot was subsequently discovered and the sellers were successfully sued.

The court held that knowingly failing to disclose the existence of the dry rot, presumably on instruction from the client, amounted to an actionable misrepresentation. The burden cannot merely be passed on to the buyer and their solicitor by stating that they must rely on their own survey or, presumably, on their own skill and judgment. Where to draw the line is very unclear and this decision may present major difficulties for both solicitors and surveyors and, indeed, their clients. The only thing which may not be construed as a misrepresentation is silence and the buyer's solicitor might not accept this. An impasse between the parties will soon be reached. Furthermore, what does a solicitor do if a seller requires him not to disclose the existence of dry rot, for instance? Will he have to refuse to act as otherwise he may be faced with a conflict of interest? In following instructions the solicitor may be opening himself to a damages claim. There is, finally, less incentive for the buyer to employ his or her own specialists in the knowledge that they might have a cause of action against the seller in any case. This is indeed regrettable.

The case is based on ***Sindall v Cambridgeshire County Council [1994] 1 WLR 1016*** whereby a local authority selling land for development was asked questions about any property rights affecting the land which could not be seen on inspection and replied that they were not aware of any. If they had looked at their records they would have found that sewers have been laid under the land some 40 years previously. This might have been a misrepresentation which would allow Sindall to rescind the contract. However, the Court of Appeal held that the seller had taken all reasonable steps.

***Rosser v Pacifico Limited [2023] EWHC 1018*** The case concerned an apartment which was sold as having two bedrooms. The seller responded to 4.4 of the TA6 enquiries by stating *"was not aware of any breaches of planning permission permissions or work that did not have necessary consents".* The property was in a conservation area and one of the rooms had a Velux window overlooking the highway. There was an Article 4 Direction in place. This constituted a breach of planning permission and the local authority required its removal. The consequence of this was that the room did not constitute a bedroom under building regulations. S.1 of the Misrepresentation Act 1967 states that a person making a misrepresentation will be *"liable to damages… not withstanding that the misrepresentation was not made fraudulently unless he proves that he had reasonable grounds to believe and did believe at the time of the contract was made and the facts represented were true."* The court followed the case of ***Sindall v Cambridgeshire County Council (1993)*** and held that 'not aware' was a representation that reasonable steps had been taken to find out. Moreover, the buyer's conveyancer was under no obligation to find out about breaches. The seller was sued for the difference in value between a one bedroom and a two bedroom flat together with additional stamp duty land tax and the cost of removing their window.

In ***Morgan v Pooley [2010] EWHC 2447*** it was recognised that this liability could be excluded by special condition.

See also ***Morris v Jones [2002] EWCA 1790*** - here a response to an enquiry about damp stated that other than work carried on by a guarantee there was none to the vendor's knowledge but the buyer

should rely on his own survey. The survey found damp but the seller was still liable as he failed to disclose more severe damp which was in his knowledge.

In ***McMeekin v Long [2008]*** a misrepresentation occurred when neighbour a dispute was not disclosed on request damages were assessed at £67,000.

In the American case of ***Stambovsky v Ackley (1991)***, a seller was held to be liable in misrepresentation when they responded to an enquiry about hauntings that they were not aware of any. In fact, they had recently written an article in the Readers Digest about the haunted house.

More importantly, in ***Sykes v Taylor-Rose [2004] EWCA 296*** the standard enquiry of the time as to whether there were any other factors which might influence the purchaser's decision was answered in the negative. To the seller's knowledge there had been a murder committed in the premises previously which they did not disclose. It was held as the question is subjective and it could not be proven that the seller's thought this important, there was no liability.

In ***Doe v Skegg [2006] EWHC 3746*** the client stated they were not in dispute with their neighbours when they had made recent complaints about them. This was held to be a fraudulent misrepresentation.

***First Tower Trustees v CDS (Superstores International) Limited [2018] EWCA Civ 1396*** here the tenant raised enquiry as to whether there were any breaches of environmental law in the premises. The landlord responded in the negative. Subsequently, just before completion the landlord was served with notices in relation to asbestos on the premises. The landlord did not notify the tenant of the change of circumstance. The tenant was faced with nearly £500,000 worth of remediation work and sued the landlord in misrepresentation. The landlord relied on a non-reliance clause whereby the tenant was deemed was not to have relied on any misrepresentations. Exclusion of liability from misrepresentation must be reasonable under s3 Misrepresentation Act 1967. The non-reliance clause was held to be unreasonable.

The Court of Appeal confirmed this decision. It was stated that there would have to be exceptional circumstances for such an exclusion of liability to be valid. There is however, a difference between excluding liability and limited the retainer by stating that no investigations have been made.

**THE CONSUMER PROTECTION FROM UNFAIR TRADING REGULATIONS 2008 AND AMENDMENT REGULATIONS 2014**

The original 2008 Regulations introduced criminal offences with a maximum 2 years prison where a trader makes a misleading statement or a misleading omission to a consumer which to a significant degree causes the latter to enter into a transaction. The 2008 Regulations applied to immovable property, however, the Law Society practice note states that this was not the case until 2014.

On 29th February 2016 the Law Society produced a practice guide on the ***Consumer Protection Regulations***. Although the point is unclear they say that the regulations will apply to solicitors acting for sellers or landlords in residential conveyancing. If this is so then much of the principal of caveat emptor will no longer apply as solicitors will have to disclose factors that are reasonably in their knowledge which may significantly influence a purchaser or tenant in entering into the transaction. The guidance also states that the solicitor must take reasonable steps to find out information which may be within their knowledge. To some extent this seems to resurrect the old part 2 of the Sellers Property Information Form. Also, where this leaves solicitors disclaimers in relation to not having looked at previous files is problematic.

Much of the information within the solicitors knowledge may be considered confidential in which case the seller would have to give their consent to disclosure. If such consent is not forthcoming the solicitor would have to refuse to act.

Note: If this is correct, then presumably the same would apply to the purchaser's solicitor if they were to find out about, e.g. problems in relation to financing.

Note: In February 2017 the Law Society received Counsel's opinion to the effect that their interpretation of the regulations was correct.

In November 2023 National Trading Standards Estates and Letting Agents Team published their guidance for estate agents on Material Information to comply with the Regulations. This was subsequently incorporated into the TA6 (5th edition) Part 1. However, many of the questions might be thought to be more appropriate for surveyors than for lawyers. Consider for instance 7.1 Building Safety.

*"Are you aware of any defects or hazards at the property that might lead to a fire or a structural failure?"*

Also some questions will clearly need help from the lawyers in advance. Consider restrictive covenants in enquiry 8.4 *"Does your title contain any restrictive covenants affecting the use of the property?"* and also questions on flood risk and coal mine searches.

**THE CONVEYANCING PROTOCOL**

This is compulsory for firms who are a part of the CQS. This will not include licensed conveyancers and the Society of Licensed Conveyancers have stated that they were not consulted on the new forms. Some of the material information questions seem to be incompatible with parts of the current protocol. Firms can always agree not to be bound by the protocol and it does not apply to new builds. Some major points are as follows:

This came into force on August 19th 2019 and replaces the 2011 edition.

1. The leasehold information should be expressed clearly to the client and the protocol envisages that the client should be quite clear about the nature of leasehold and in particular any ground rent increases, potentially with worked examples.

2. For SDLT and Land Transaction Tax, clients should be made aware that tax advice has not been given and in more complexed transactions they should be advised to see an independent tax specialist or accountant or a tax lawyer within the firm.

3. Bank account details should not be sent via email and clients should be told about some of the ways in which conveyancing frauds are perpetrated by the fraudsters.

4. Other provisions include that the purchaser should not raise enquiries about identity unless there is a fraud indicator. Stage 3 states that the purchaser's conveyancer should satisfy themselves that the seller's conveyancer will give the undertakings for completion in The Law Society Code for Completion by Post in which case fraud enquiries need not usually be made unless there is a red flag, such as a property being empty for no obvious reason.

5. There is no need to see original certification (e.g. FENSA) if they can be seen on a website or on a search.

6. The seller's solicitor should ensure that the money is paid into a bank account which has been opened for at least a year. This could cause major problems e.g. on an executor sale.

**The Protocol and Additional Enquiries**

Stage 15 replaces the previous Stage 32 but is similar in content. To quote:

**Seller's Solicitors**

- Obtain the seller's responses to additional enquiries. Explain that if inappropriate enquiries have been raised, answers need not be given.

- Respond to the additional enquiries from the buyer's conveyancer. You do not have to answer inappropriate enquiries.

- The seller should not be required to supply more information than is available in the documents.

- Inform the seller and the estate agent of any matters likely to delay exchange of contracts.

**Buyer's Solicitors**

- **Raise only specific additional enquiries** required to clarify issues arising out of the documents submitted, or which are relevant to the title, existing or planned use, nature or location of the property or which the buyer has expressly requested.
- **Do not raise any additional enquiries** about the state and condition of the building unless arising out of your conveyancing search results, your buyer's own enquiries, inspection or their surveyor's report.

- Indiscriminate use of 'standard' additional enquiries may constitute a breach of this Protocol. If such enquiries are submitted, they are not required to be dealt with by the seller/seller's conveyancer.

The seller's conveyancer does not need to obtain the seller's answers to any enquiry seeking opinion rather than fact.

**TA6 ENQUIRIES (5TH EDITION)**

Controversially, these were introduced on March 25th 2024. They become compulsory for CQS members on June 25th 2024. They are designed to help estate agents provide material information to purchasers following the guidance from National Trading Standards Estates and Lettings Agents Team in November 2023. Enquiries are 32 pages long and include links to guidance notes. They are divided into part one to aid estate agents and part two more general questions. The TA7 leasehold information forms were also changed as information on Ground rents and the type of lease are now in the TA6. Some of the changes include:

- **Property details**: including the Unique Property Reference Number (UPRN) and council tax band of the property.
- **Tenure, ownership and charges**: whether the property is freehold, leasehold, shared ownership, or commonhold; and details of the costs, such as ground rent and service charges.
- **Parking**: including the cost of parking permits and whether the property has electric vehicle (EV) charging.
- **Building safety**: providing details of any defects or hazards at the property and whether essential works have been recommended and carried out.
- **Restrictive covenants** that affect the use of the property.
- **Flood risk and coastal erosion**: to establish what the flood risk is for the area around the property, whether any defences have been installed, and if the property is near the coast, whether there is any known risk of coastal erosion.
- **Accessibility**: the adaptations or features that have been made to provide easier access to, and within, the property.
- **Coalfield or mining area**: identifying if the property is impacted by any past or present mining activity.
- **Solar panels**: providing details about the installation that a buyer/lender will need to know.
- **Services connected**: these now include air and ground heat pumps.
- **Drainage and sewerage**: additional questions about where the sewerage system discharges to and whether it has an infiltration system.
- **Japanese knotweed**: refinement of the question to incorporate the area adjacent to or abutting the property.

**SOLAR PANELS**

Solar panels have caused some concern. 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 20 to 25 year lease of roof space is granted, sometimes without consent of the lender in breach of the mortgage terms and conditions - see later. 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 previous 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.

Note: Mortgage companies will require there to be a break clause if they go into possession. The lease is at a peppercorn rent but as the tenant occupied for the purpose of a business section 23 Landlord and Tenant Act 1954 will apply unless the lease was initially contracted out on its creation. See mortgagee part 2 requirements in relation to reporting to the lender.

**TA6 5th Edition states the following**

Have solar panels been installed at the property?
Solar panels include any solar photovoltaic (PV) system

(a) Which year were the solar panels installed?

(b) Do you own the solar panels outright?

(c) Has a long lease of the roof / air space been granted to a solar panel provider? A typical long lease may last 20 to 25 years.

(d) Do you have a maintenance agreement in place for the solar panels?

(e) Is there a battery for storing solar power?

(f) Do the solar photovoltaic (PV) cells feed into the National Grid?

(g) Is there a Feed-in Tariff (FIT) or Smart Export Guarantee (SEG) in place?

(h) Please provide a copy of the electricity bill showing the credit paid for the generation.

(i) Please provide details of the procedure for assigning the benefit of the FIT or SEG agreement on completion of the purchase to the purchaser.

(j) Are the panels installed so they are not above the highest part of the roof (excluding the chimney) and project no more than 200mm from the roof slope or wall surface?

(k) Please provide a copy of the building regulations completions certificate or compliance certificate for the installation of the panels and generator.

(l) Is the roof of the property sufficient to meet the requirements of the additional weight of the PV cells installed?

**JAPANESE KNOTWEED**

Japanese knotweed is a notifiable substance. It is illegal to cause it to be propagated in the wild under the Wildlife and Countryside Act 1981. The Local Authority can issue remediation notices and charge for its removal. The residential enquiries, The TA6 (5th edition) raises enquiry as to whether the property or an area adjacent to or abutting the boundary is affected by Japanese Knotweed. It allows the responses of yes, no or don't know. No would be a statement of fact and potentially actionable. Don't know may be a representation that attempts have been made to investigate. Moreover, the property may be affected by Japanese knotweed if it is within the neighbourhood. It is suggested that responses should make clear that there has been no attempt to find out. The presence of knotweed is also required in response to the CPSE enquiries sections 8 and 15 as it constitutes a contaminated substance and an infestation.

The mortgagee must be told of the existence of knotweed, although valuation reports may pick this up. The mortgage offer may be withdrawn unless the knotweed can be controlled by experts before reaching any building.

Note: Under the Anti-social Behaviour Crime and Policing Act 2014 local authorities may serve community protection notices on property owners who fail to control their knotweed. In 2019 Bristol City Council became the first local authority to prosecute for a breach of a community protection notice. The recipient was fined £18,000.

***Williams & Waistell v Network Rail Infrastructure Ltd [2018] EWCA Civ 1514.*** Here Network Rail Infrastructure Ltd were successfully sued in nuisance for not removing knotweed growing on neighbouring land to dwellings owned by Williams & Waistell. Damages were assessed at £10,000 plus £5,000 towards remedial costs.

The Court of Appeal have now confirmed the first instance decision but on different grounds. Loss of value cannot be claimed as this is pure economic loss. However, damages were available for lost development potential and possible future damage to property.

***Davies v Bridgend County Borough Council [2023] EWCA 80***. In spite of the above the Court of Appeal held that the ongoing existence of Japanese Knotweed would give rise to a nuisance and damages were available. This case was heard by the Supreme Court on February 27th 2024. We are awaiting the judgment.

***Ryb v Conway Consultants, June 2019***. In this case a surveyor was successfully sued for not spotting Japanese Knotweed in a residential garden in North London. He should have taken photographs and made a record of the knotweed. The claimant successfully argued that he would not have bought the property or would have wanted a reduced price if he had known. Damages were assessed at £50,000.00.

In ***Downing v Henderson (2023)*** a seller was sued for £32,000 for stating that there was no Knotweed. In this case they seem to have known about the existence of knotweed.

In 2020 a case was settled where the purchaser was suing the seller for 23% of the value of the property.

On 23 March 2022 the RICS produced new guidance on Japanese knotweed. Previously, it was stated that knotweed could be a problem if within 7 metres of a boundary. This has now been reduced to 3 metres. The new guidance also states that save in exceptional circumstances knotweed

is unlikely to have an impact on value. Ultimately, however, the decision will be that of the mortgage company.

**MANAGEMENT ENQUIRIES**

**The LPE1 Form**

On 10 October 2013 the Law Society together with the British Property Federation, RICS and various other bodies introduced the LPE1 Leasehold Flat Management Enquiries. The hope is that this will lead to standardisation in relation to flat management enquiries and to managing agents charging less money for information. The enquiry forms are extensive and up-to-date and deal with matters below, such as fire safety risk assessments, houses in multiple occupation, service charges consultation and asbestos risk assessments for premises which were built or converted prior to 2001. They are not standard Protocol enquiries and not automatically used by Conveyancing Quality Scheme Members.

On 1st October 2015 the second edition of the LPE1 was produced with some additional enquiries. There is also now an LPE2 Buyers Leasehold Information Summary which is one page providing financial information in relation to cost of notices, deeds of covenant, service charge and ground rent to be provided to the purchaser.

On 22nd November 2021 the 3rd Edition of the LPE1 was produced, primarily to deal with the new Fire Safety Act 2021.

On January 9th 2023 the fourth Edition of the LPE1 was published to deal with the Leaseholder Protections under the Building Safety Act 2022.

**The Fire Safety Act 2021**

The Act finally received the Royal Assent on 29 April 2021. The Act clarifies the Regulatory Reform (Fire Safety) Order 2005 and makes clear that a fire safety risk assessment where there are at least two sets of dwellings in a building must include the exterior, structure, external doors and windows, internal doors which open into the common parts, balconies and other external fixtures. Non-compliance may result in prosecution of the responsible person, ie. the landlord, and buildings insurance may be vitiated. The House of Commons successfully rejected a House of Lords amendment whereby the cost of the assessment and any works would not be added to service charge.

The Act came into force in Wales on 1 October 2021 and in England 16 May 2022. On 22 November 2021, the LPE 1 forms changed, partly to reflect this.

Note: it is unclear, but the new legislation refers to two sets of domestic premises which seems to imply that buildings without common parts will require a fire safety risk assessment.

On October 1st 2023 S.156 of the Building Safety Act 2022 came into force and amended the Fire Safety Order 2005. It is suggested that enquiry may be made as to whether any fire safety risk assessment complies with the new provisions.

**LEASEHOLDER PROTECTIONS**

TA7 4th edition repeats the questions in the third edition as follows:

10.1 Have any remediation works on the building been proposed or carried out?

10.2 Is the lease of the property a qualifying lease?

10.3 Is there a Leaseholder Deed of Certificate for the property?
If Yes:

(a) Did the seller (the current leaseholder) complete the deed of certificate or was it completed by a previous leaseholder?

10.4 Has the freeholder / landlord been notified of the intention to sell?

10.5 Has the seller received a Landlord's Certificate and the accompanying evidence?

It may be asked whether the client can categorically state that they are a qualifying leaseholder as the definitions are so complex and it is the status of the leaseholder on February 14th 2022 which matters and not necessarily the seller.

**BUILDING SAFETY ACT 2022**

**Higher-Risk Residential Buildings**

The Act has also introduced the Building Safety Regulator who will be a part of the Health and Safety Executive. They will have a general role in relation to building safety, but will also be responsible for building control in high risk residential buildings. In England a high risk residential building is one with at least two dwellings which is at 18 metres or more in height or, if less than 18 metres, which has 7 or more storeys. Such a building will have an accountable person who has a legal estate in possession in the common parts or is responsible for repair of the common parts. This will include any Right to Manage Company and any Residents Management Company if there is more than one accountable person then there will be a principal accountable person. A residents' panel must be constituted and the accountable person must listen to health and safety complaints. They will have to produce reports to the Regulator and keep records in relation to health and safety and report any fire safety or structural safety problems that have occurred. Originally, there was meant to be a Building Safety Manager who would be an intermediary between the building safety regulator and the accountable person. This was dropped due to cost. Also, the original Bill provided for a building safety charge whereby any costs could be charged to the long leaseholders. This was also dropped and any charges will now be covered by the service charge.

The accountable person will have access rights to individual flats on giving at least 48 hours' notice. If there is more than one accountable person, there will be a principal accountable person. They will have an interest in possession of the structure and exterior or be responsible for repair and maintenance of the structure or exterior of the building. There are also offences if anyone removes or disturbs a relevant safety item. Any high-risk buildings must be registered with the Building Safety Regulator. This came into force in England on April 6th 2023 and the principal accountable person will have to register the building with the Regulator by October 1st 2023. Guidance suggests that the registration must be approved by the Regulator and key building information provided by this date. The Regulator will then have to approve the registration.

Safety case report summarising major fire and structural hazards and risk management is mandatory for higher-risk buildings. Organisations must also establish a mandatory occurrence reporting system detailing communications with other accountable persons, arrangements for reporting to the Regulator and summaries of incidents.

In England, the provisions came into force on April 6th 2023**. The Building Safety (Registration of Higher-Risk Buildings and Review of Decisions) (England) Regulations** were introduced into parliament on March 9th 2023. There will be a registration fee of £251 which must be paid on the application. For new builds then the accountable person will commit a criminal offence if they allow anyone into residential occupation before completion certificates are available. This will include adding new residential units and doing work that results in the building becoming Higher-Risk. The principal accountable person will have to register the building with the Regulator within six months otherwise they will commit a criminal offence.

There are also **Higher-Risk Buildings (Key Building Information) (England) Regulations 2023**. Within 28 days of an application the principal accountable person must provide details as to use of the occupied building, any attachments or outbuildings, details of materials used, information about structure, storeys and staircases, energy supply and storage and emergency evacuation plans.

There are also **Higher-Risk Buildings (Descriptions and Supplementary Provisions) (England) Regulations 2023** which were laid in front of Parliament on March 6th 2023. A Higher-Risk Building is one which is 18 metres or more in height or has seven or more storeys. Any floor where the ceiling is below ground level will not be included, nor will any top floor which only includes rooftop plant and machinery. The measurement will be from the lowest part of the ground floor to the finished floor of the top floor. A mezzanine floor will be ignored if it is less than 50% in size of the largest storey vertically above or below it. A separate structure will be treated as being the same building if it can be accessed to another part which has a residential unit. This will not apply if the access is only intended for exceptional use for emergencies or maintenance.

There are also **Building Safety Act 2022 (Consequential Amendments etc) Regulations 2023** which intend to pass building control in higher-risk buildings to the building safety regulator.

Five further sets of regulations came into force in England on October 1st 2023. These mainly affect construction law and not conveyancing but the regulator is now the primary body in relation to building control of higher-risk. If the building work was commenced prior to October 1st the developer has six months to complete and will be in the old regime as long as they do so.

Although the legislation will apply to Wales, the ability to decide on the height of the building has been delegated to the Welsh Government where the consultation came to an end on May 12th 2023. The proposal is that a higher-risk building will have the same definition as in England but may only need to include one dwelling. In November 2023 the Welsh Government announced that the legislation on Higher-risk Buildings would only apply to the design and construction stage and not to occupation.

S.112 of the Act implies various terms into a residential lease. The Landlord must co-operate in relation to building safety and the Tenant must also co-operate, allow access at a reasonable time on giving 48 hours notice, allow works to be done on the premises, and any building safety costs can be added to the service charge. Law Society Guidance suggests that this should be made clear to the leaseholders and also the fact that they will be liable in relation to a residents management company.

The CPSE 1 enquiries now have questions in relation to higher-risk buildings (see below). One problem is that registration of a higher-risk building does not seem to be possible after October 1st 2023. It is suggested that enquiry must be made as to whether registration has occurred for an existing building and whether the Regulator has accepted the application whenever purchasing the reversion of an existing higher-risk building. It is also suggested that there should be an enquiry for new higher-risk buildings as to whether anybody has been allowed into residential occupation prior to the provision of a building control certificate. Enquiry should also be made as to the height of the building and when the building was completed. The register of Higer-risk buildings became available to the public on February 8th 2024 and can be found on the Health and Safety Executive website.

Separately, although there are provisions that leaseholders of residential units must on 48 hours notice allow accountable persons to inspect the premises, there is no such provision in relation to commercial units. It is suggested that in future commercial leases include clauses allowing the accountable person to inspect premises on giving notice, to inspect documents related to health and safety and requiring the leaseholder to notify the accountable person of any health and safety issues.

This would include leases, for instance, of roof space to communications operators. It is suggested that enquiry must be made in relation to higher-risk buildings in residential conveyancing. This might be based on the CPSE Enquiries for commercial properties although enquiry 15.5 and 15.6 will not be relevant until later this year and 15.7 is not relevant to residential premises.

**CPSE 1 Enquiries Version 4.0 Enquiry 15**

**15.1** Is the Building (or will it be, when fully built and occupied) a "higher-risk" building as defined by section 65 of the BSA?

If the answer is yes, then please answer enquiries 15.2 to 15.7. If the answer is no, then please go to enquiry 16.1 below.

**15.2** Who is or are accountable person(s) in relation to the common parts of the Building? Which one of them is the principal accountable person?

**15.3** Are you aware of any breach of, alleged breach of or any claim under the BSA, or any regulations made under it, in relation to the Building?

**15.4** Please provide a copy of the entry relating to the Building in the register kept under section 78 of the BSA.

**15.5** Please provide a copy of the most recent building assessment certificate (if any) relating to the Building.

**15.6** Please (a) confirm that the following documents have been compiled and kept up to date; (b) advise where and when they can be inspected; and (c) (where the Buyer will become an accountable person in respect of the Building) confirm that the originals will be handed over on completion:

(i) all safety case reports (section 85)
(ii) all prescribed information (section 88(1))
(iii) all prescribed documents (section 88(2))
(iv) the residents' engagement strategy (section 91)
(v) any request made under section 92, and any information provided in response to such request
(vi) any relevant complaints (section 93)
(vii) any contravention notices (section 96)
(viii) any outstanding requests to enter (section 97).

Note: section references above are to the BSA.

**15.7** Please give the name and contact details of a senior individual within the Seller who deals with BSA issues in relation to the Building; and confirm that the Buyer may make contact with that person in order to obtain information about BSA issues in relation to the Building.

**APPENDIX**
**SEPTIC TANKS**

Septic tanks and treatment plants will always need building regulations. For a new installation then it is expected that the sewer be connected to a public sewer if there is a public sewer within 30 metres.

As of 1 January 2012 in Wales, all tanks must be registered with Natural Resource Wales with an exemption or permit.

In England most domestic tanks will not need to be registered. However, there are three exceptions.

If the tank is within 50 metres of a drinking supply such as a well or borehole; where there is a discharge of more than $2m^3$ a day or where the discharge is within a Zone 1 ground water protection zone. The Environment Agency will advise over the telephone whether the latter is the case. In Wales registration should occur as soon as possible, but the Environment Agency will accept registrations until 30 June 2012. The Welsh Assembly intends to send leaflets to anyone with a septic tank. In England and Wales the cost of a discharge permit is temporarily set at £125.

Note: Regardless of registration, maintenance records should be kept in relation to the tank and TA6 Enquiries ask for these to be provided to the buyer.

Note: That implementation of these provisions in England was put on hold in August 2011. However, they came into force in Wales on 1 January 2012.

On 9th October 2014 the Environment Agency announced results of their consultation and draft regulations will be produced for implementation on 1st January 2015. As of 1st January 2015 large septic tanks discharging more than $2m^3$ of waste a day will need to be registered with a discharge permit costing £125. Small tanks will not need to be registered with an exemption but will need a discharge permit if in a zone 1 water protection zone area or within 50m of a drinking supply or if the discharge is above the low water mark. Tanks in areas of outstanding natural beauty will now not need to be registered. None registration is a criminal offence although the Environment Agency intend to be lenient and educate property owners rather than prosecute.

The provisions came into force in England on 1st January 2015. New tanks in designated areas will need to be registered and obtain a permit but not existing tanks. The number of designated areas has been reduced. Larger tanks will still require a permit.

The above provisions are contained in the General Binding Rules. In addition, if a septic tank flows into a water course as opposed to a drainage field, this must be replaced on a sale of the property and by January 2020 at the latest. A treatment plant will not need to be replaced.

On November 8th 2019 the Environment Agency produced new guidance. This is nearly the same as previous guidance but there is no reference to January 1st 2020.

The TA6 (5th edition) states the following:

22.5 Is the property connected to mains:

(a) foul water drainage?

(b) surface water drainage?

22.6 Is sewerage for any part of the property provided by:

(a) a septic tank?

(b) a sewage treatment plant?

(c) cesspool?

22.7 When was the system installed?

22.8 When was the sewerage system last replaced or upgraded?

22.9 If a cesspool, when was the container last emptied?

22.10 If the property is served by a sewage treatment plant, when was the treatment plant last serviced?

22.11 Does the sewerage system discharge to the ground or to surface water?

22.12 If the sewerage system discharges to the ground, does it have an infiltration system?

22.13 Is the use of the sewerage system shared with other properties? If Yes, how many properties share the system?

22.14 Is any part of the sewerage system, or the access to it, outside the boundary of the property?

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