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HOW TO RESPOND TO THE NEW RESIDENTIAL ENQUIRIES

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ABOUT RICHARD SNAPE

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OUTCOME FOCUSED TRAINING INFORMATION

Lecture is aimed at: Property professionals and fee earners involved in both contentious and non-contentious property work

Learning Outcome: To give an increased knowledge of the subject matter. To update on current issues, case law and statutory provisions and to be able to apply the knowledge gained in the better provision of a service to the client.

Satisfying Competency Statement Section: B – Technical Legal Practice

For further information please see <http://www.sra.org.uk/competence>

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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. Note, the TA6 6th edition uses the phrase, "are you aware of any" on numerous occasions. It might be asked how this fits in with the above

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] AC 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 an ongoing parking dispute. This was actionable. The judge went on to say that both the seller's and the buyer's conveyancer may be liable if they don't take reasonable steps to check that the seller's responses are correct. This may be a problem if upfront information is required in the future especially if there is a large gap between marketing and a potential buyer been found.

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.

There is frequent reference to the 21 pages of explanatory notes. These must be provided to the client. There is a section on Important Things to Remember which states that if you do not know an answer you must say so and if you are unsure, you must consult the explanatory notes. In addition, it states that if something is wrong or has changed, you should consult your solicitor. It is also suggested that it must be expressly made clear that if circumstances change, the seller must notify the fact immediately.

Thankfully, unlike the 5th edition, it is made clear that neither the seller's or buyer's solicitor is responsible for checking the physical state or condition of the property.

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.2(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 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 (AS OF APRIL 6TH 2025, THE DIGITAL MARKETS, COMPETITION AND CONSUMERS ACT 2024)

The original 2008 Regulations introduced criminal offences with a maximum 2 year 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 but only short leases. The 2014 Regulations apply to all immovable property. The 2024 Act does not require a misleading statement or omission to cause a consumer to enter into a transaction. Enforcement will be through the Competition and Markets Authority and not the local authority. Fines have been increased to up to 10% of worldwide profits.

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 principle 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 solicitor's 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.

On May 9th, 2025, National Trading Standards Estates and Letting Agents Team withdrew a previous guidance on material information. On May 12th, 2025, The Law Society asked urgently for information on its replacement as this is required before the new TA6 6th Edition could be piloted. In October 2025 National Trading Standards started consulting on new material information. We are still waiting for the results. Once known The Law Society intends to work on a new upfront Material Information Form which will be voluntary.

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. The Protocol may be amended if the law changes (see later), if the client expressly instructs you or if necessary due to the nature of the transaction.

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 complex 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 6TH EDITION

After being piloted in the Summer, these were published on October 13th, 2025. Previously, if on the CQS, the 4th, 5th or 6th editions could be used but the 6th addition became compulsory on March 30th, 2026. Sections on Tenure, Building Safety Construction Materials, Restrictive Covenants, Coastal Erosion, Coalfield and Mining Area have been dropped.

There was also meant to be a voluntary Material Information form to be filled in prior to marketing. This has been put on hold due to NTSELAT withdrawing its guidance, see above.

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 stated 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?

TA6 6th Edition states the following

Has a solar power system for generating electricity, hot water or heating been installed at the property?

- a) Is the system used only to provide hot water or heating and not to generate electricity?
- b) Which year was the system installed? (YYYY)
- c) Do you own the system outright?
- d) Has a long lease of the roof or air space been granted to a solar power system provider? A typical long lease may last 20 to 25 years. If yes, supply a copy of the lease.
- e) Do you have a maintenance agreement in place for the system? If yes, supply a copy of the agreement
- f) Is there a battery for storing solar power? If yes, provide the make, model and storage capacity in kWh of the battery
- g) Does the system feed into the National Grid?
If yes:
 - i. is there a Feed-in Tariff (FIT) or Smart Export Guarantee (SEG) in place?
 - ii. supply a copy of the agreement
 - iii. provide a copy of the electricity bill showing the credit paid for the generation
 - iv. provide details of the procedure for assigning the benefit of the FIT or SEG agreement on completion of the purchase to the buyer.
- h) Provide a copy of the building regulations completion certificate or compliance certificate (e.g. MCS) for the installation of the system.

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 ill-fated TA6 (5th edition) raised enquiry as to whether the property or an area adjacent to or abutting the boundary is affected by Japanese Knotweed. This is now in the explanatory notes. It allows the responses of yes, no or not known. 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. The Guidance to TA6 (6th edition) states that a property might be affected by Japanese knotweed if it is within three metres of the boundary. It is suggested that responses should make clear that there has been no attempt to find out. The 6th edition has gone back to the words "Is the property affected by Japanese Knotweed" although the explanatory notes make clear that property might be affected by Knotweed if it is within 3 metres of the boundary.

Davies v Bridgend County Borough Council [2024] UKSC 15. Here Japanese knotweed was already present on a cycle path owned by the council adjoining Davies' land when he bought the property in 2004. Rhizomes were growing underneath Davies' land but there was no structural damage. The council should have known of the problems by 2013 but did not take steps to eradicate the knotweed until 2018. The Supreme Court reversed the Court of Appeal decision and held that although the council had been liable in tort there was no resulting residual loss due to the fact that the presence of knotweed predated the council's liability.

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.

BUILDING SAFETY ACT 2022

This applies to England only. In Wales, The Building Safety (Wales) Act 2026 does not include Leaseholder Protections.

On October 13th, 2025, a new TA7 5th edition was published. This must be if on the CQS. The section on qualifying leasehold for the Leaseholder Protections have been dropped as, in theory. This can be found out from the Leaseholder Deed of Certificate. It does ask however:

11.1 of the TA7 5th edition: Are you aware of the existence or suspected existence in the building of cladding or any defects that may create a building safety risk?

There is also a section on whether there is a relevant building:

11.3 of the TA7 5th Edition: Is the property within a relevant building (11 metres or more in height or at least 5 storeys and contains at least 2 dwellings) and is not leaseholder-owned?

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. In the case of ***Waite v Kedai (2023)***, the first measurement of the building was stated to be 17.57 metres, the second measurement was 17.97 metres with a margin of error of 30 centimetres. It was later decided that a roof terrace was the top of the building. This caused it to be well beyond 18 metres in height. As a consequence of this case the RICS told members not to state the height of the building. In the first-tier tribunal decision of ***Smoke House and Curing House, 18 Remus Road, London E3 2NF***, it was decided that a roof terrace constituted a storey thus making the property a higher-risk building which would need to be registered and also have the regulator oversee any building work. This conflicts with the Government guidance which states that a storey must be fully enclosed although this seems to be wrong. On October 4th, 2024, the Ministry of Housing and the Building Safety Regulator stated that the guidance should still be followed unless they say otherwise. On May 28th, 2025, they confirmed this statement but also announced that they were in consultation to introducing amending Regulations to clarify the issue. On June 5th, 2025, the Upper Tribunal gave their judgment on Smoke House in the case of ***Monier Road Limited v Blomfield***. They stated that the tribunal had no jurisdiction to decide on the height but did not say whether the tribunal was right or wrong.

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.

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 4.2 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.

Consider the CPSE enquiries 14.6 to 14.9 where it is envisaged that details of any PRS (Private Rented Sector) exemption and any information provided for the exemption should be disclosed.

It is suggested that similar enquires should be made in relation to residential properties when buying subject to a sitting tenant.

The same would apply to whether there is a relevant building under the Leaseholder Protections.

Note: The Building Safety Act questions only apply to England and not Wales. This is not made obvious in the form.

BOUNDARY AGREEMENTS

White v Alder [2025] EWCA 392 the Court of Appeal accepted that a boundary agreement which had been made between predecessors of the two neighbours would bind the current owners even though they had no knowledge of the agreement. It did not transfer land and did not need to comply with S.2 Law of Property (Miscellaneous Provisions) Act (1989).

The Court followed **Neilson v Poole (1969) 20P&CR909**. An agreement which sets boundaries as opposed to transferring land does not have to comply s.2. They also reversed the decision **in Gibson v New [2021] EWHC811** and stated that such an agreement would bind subsequent purchasers. Leave to appeal was refused.

In **Bishop v Jacques (2025)**, the Upper Tribunal recognised that a boundary agreement was binding in relation to a larger piece of land of 4 metres times 30 metres.

CPSE Enquiries CPSE1 Version 4.2 s.1.4

Please supply details or a copy of any agreement for the maintenance of any of the Boundary Features or for the demarcation of any boundary.

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 2m³ 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.

As of 1st January 2015 large septic tanks discharging more than 2m³ 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 General Binding Rules were amended on October 2nd 2023.

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 6th edition states:

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

- a) a septic tank?
- b) a sewage treatment plant?
- c) a cesspool?

11.7 If your answer is yes to any question in 11.6(a)–(c), answer question 11.7 below

- a) when did the discharge commence? (MM/YYYY)
- b) when was the system installed? (MM/YYYY)
- c) when was the sewerage system last replaced or upgraded? (MM/YYYY)
- d) if a cesspool, when was the container last emptied? (MM/YYYY)
- e) if the property is served by a sewage treatment plant, when was the treatment plant last serviced? (MM/YYYY)
- f) does the sewerage system discharge to the ground or to surface water?
- g) if the sewerage system discharges to the ground, does it have an infiltration system?
- h) is the use of the sewerage system shared with other properties?
If yes, give details about how many properties share the system, the arrangements for jointly managing it and how the costs are shared:
- i) is any part of the sewerage system, or the access to it, outside the boundary of the property?
If yes, supply a plan showing the location of the system and how access is obtained.
- j) If you have a permit or documents relating to any of your answers to questions 11.7(a)-(i), supply a copy

Rather than go through these questions, it is suggested that a specialist drainage report is commissioned.

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