

# Stakeholder engagement: code for signing and exchanging property contracts

## Background

Exchange of contracts is probably the most important part of the conveyancing process.

Changes both in the available technology and in the law about electronic documents, coupled with the effect of COVID-19, led many solicitors to use alternatives to ink-signed paper contracts.

Whilst the Law Society and other legal groups have published some guidance on these innovations, the law is not yet clear on all aspects of the use of electronic documents in exchanging contracts.

It has also become more common for deposits to be 'held to order', rather than paid over.

To help address uncertainty in these areas, as well as to replace our Formulae for Exchange, which need modernisation, we have drafted a new Exchange Protocol and are circulating this to key stakeholders in the process for input and feedback.

The draft protocol will enable solicitors involved in each transaction being able to agree not only the text of the contract, but also:

- paper or electronic contracts
- methods of signing
- methods of exchanging
- practical arrangements for handling deposits

While the proposals are for an electronic exchange, we are confident that this can become part of a digital process for the future.

Just like the Formulae for Exchange and the Code for Completion, our aim is that it will be suitable for use in both commercial and residential property transactions.

The purpose of this consultation is to obtain views about the draft protocol as a whole to assist in the next stage of development.

At this stage, we are not asking for textual amendments.

Question	Answer
Name of organisation:	Surrey Law Society
Type of body:	Local Law Society - Membership Organisation
Location:	Surrey
Number of members:	850
Do you think the draft code will be useful in residential transactions, compared with the formulae for exchanging contracts by telephone?	Yes
Do you think the draft code will be useful in residential transactions, compared with the formulae for exchanging contracts by telephone?	duplicate of the above question
If you are a trade, representative organisation or regulator, do you already advise members on exchanging using electronic methods?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, what advice or warnings do you provide?	If yes, specify:
Are there any parts of the current exchange/electronic signature/'held to order' deposit process that you or your members have encountered difficulties with, or confusion over, that are not covered by the draft code?	<input type="checkbox"/> Exchange formulae - uncertainty over which formulae to use <input type="checkbox"/> Not receiving contract executed in the way expected <input type="checkbox"/> Not receiving the expected amount of deposit <input type="checkbox"/> Other (specify):

Which of the current formulae for exchange are you (or your members) currently using?

Formula A

Formula B

Formula C

If so, which type of transaction and in what context?

Specify: Residential Sales and Purchase and in chain transactions

How do you think the draft code would be best implemented across all transactions in a chain?

1. obtain confirmation/undertaking from the other party's solicitors/conveyancer at the outset that they are holding or will hold the necessary undertaking from their related transaction solicitors/conveyancers and such confirmation is obtained by each solicitor/conveyancer in the chain from their related till there is written confirmation that the code will be adopted by all the solicitors/conveyancers in the chain 2. obtain a chain chart with details of each transaction and the conveyancers acting for each party in the chain.

Are you or your members aware of lay clients having access to electronic signing facilities?

Yes

No

Don't know

If yes, what percentage of lay clients approximately?

%

Don't know

Do you provide these or know if your members provide electronic signing facilities for your/their clients' use?

No

Other than through the Conveyancing Quality Scheme, how might the Law Society promote awareness and usage of the code once it is finalised and published?

published in the Law Gazette, Social media like Linked In, Property Section events, webinars and practice notes

Would it be helpful to have a transition period after the release of any new code?

Yes

No

If yes, specify: