

Has the Law Society responded to PLAG?

Statement on behalf of the Law Society Council:

The Home Buying and Selling Process

For many members of the public, conveyancing solicitors are the face of the legal profession. They play a vital role in helping clients navigate the process for buying and selling their homes.

It is a key part of the Law Society's role to promote, protect and support those solicitors and their colleagues.

Providing that service to our members requires us to support not only the current home buying and selling process, but to navigate long-term changes to the process, driven by wider market forces.

There are three major drivers of change to the home buying and selling process, being government policy, advances in technology and the actions of other market participants including new entrants.

Neither the Law Society, nor our members individually or in other groupings can own or control the overall process.

The government since 2018 has been clear in requiring that all parts of the industry collaborate to drive change for the benefit of consumers.

We use our seat at the table with government, and our engagement with other participants, to highlight issues and show where change is needed, and where it is not.

In keeping with that approach, we continue to engage with the Home Buying and Selling Council (HBSC) and the Digital Property Market Steering Group. These are broad industry coalitions, the former having around 150 participants, including 34 other professional bodies as well as government, and industry.

As recognised by the HBSC, the participation of the Law Society is without prejudice to its representative and commercial functions.

Participating in these groups does not associate the Law Society with the views and aspirations expressed by other participants but provides an opportunity to represent our members and influence change. To leave could set others free to set the long-term agenda and leave our profession as mere responders to it.

Material Information and NTSELAT

The requirement for “Material Information” or “MI” to be provided in the context of the buying and selling process is a statutory one and has been in place since the Consumer Protection from Unfair Trading Regulations 2008 came into force.

The requirement has recently been given more prominence with the publication of guidance on MI by National Trading Standards Estate and Letting Agency Team (NTSELAT), in November 2023. We recognise that there are many differing views on that guidance, but we do not see the argument that its publication was outside the powers of NTSELAT, the legislation or case law.

Other market players have already responded to the introduction of the NTSELAT guidance. Changes have been made to the estate agents Property Information Questionnaire (PIQ), the Buying and Selling Property Information (BASPI) and to the Rightmove portal.

Irrespective of the actions of solicitors, other market players are responding to change and opportunity, underlining the need for solicitors not only to be present and heard, but to adapt their approaches where appropriate.

The recent changes to form TA6 aim to ensure that the solicitor profession does not lose step with the wider market. They support the policy aim of creating a better experience for consumers. We acknowledge that it will take time for market participants to establish new norms for producing the required information and managing the cost and risk associated with doing so. The Law Society is here to ensure the collective voice of solicitors is heard in that process.

Liability risks for solicitors

Concerns have been expressed that revisions to TA6 might increase solicitors’ liability. Based on specialist advice, we believe these concerns are unfounded, and have published guidance to reassure the profession, which we will continue to update as needed.

Concerns about liability are not new and we sought advice from specialist counsel when producing our February 2016 practice note about the Consumer Protection Regulations (CPR). We have recently taken updated advice on the issue from specialist counsel, which supports the position set out in the guidance we have recently published.

In summary, we explained in those resources that solicitors should not face additional liability as a direct consequence of the amendments to the TA Forms, under either consumer law, tort or the law of contract provided they are used with due diligence.

Similarly, we do not believe that the nature of client risk for misrepresentation is different under the new version of the form or that risks are increased materially in practice.

As stated above, we will update our guidance on liability risks as needed, informed by what we learn as we listen to the experience and views of the profession.

Consultation on the TA6

We recognise that an overriding theme of the statement supporting the motion relates to consultation on changes to the TA6.

We also recognise that if we are to support our conveyancing members in promoting positive change to the home buying and selling process, we need to bring them with us on changes we ourselves introduce. Whilst recent changes to the TA6 were developed in line with our established approach and governance structures we can see that more engagement with practitioners was and is needed to ensure that the new edition of TA6 has wider support within its user community.

For that reason, we announced on 14 June our decision to extend the period of parallel running of the current and new editions of form TA6, for a further period until 15 January 2025. So, while further consultation is taking place, those firms that have invested resource in being ready to use the new edition can do so, whilst those firms that wish to continue using the current edition pending further consultation will not be in breach of the CQS protocol.

We look forward to engaging with conveyancing members across the country over the next six months to discuss these issues. We will publish our consultation and listening plans very shortly.