

Commercial Property Standard Enquiries

GN/CPSE.1 (version 2.0)

Guidance notes on CPSE.1 General pre-contract enquiries for all commercial property transactions

CPSE.1 enquiries should be raised in every transaction where commercial property is being acquired, whether freehold or leasehold.

These guidance notes:

- Enable the enquiries to be presented in a concise form without the need for illustrative examples.
- Are intended to help the legal advisers, the Buyer and the Seller to understand why individual enquiries are raised, how the enquiry should be answered and what may need to be done depending on the nature of the reply.

The Buyer may wish to keep a set of the guidance notes with the Seller's replies to the enquiries to assist the Buyer in understanding and using the information in the replies both during the period of the Buyer's ownership and later on a subsequent sale of the Property.

The enquiries stand on their own and do not depend on the guidance notes for interpretation.

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GUIDANCE NOTES

BOUNDARIES AND EXTENT

Verifying extent

This enquiry is concerned with verifying the extent of the Property. The questions are aimed at matching the title description of the Property with what appears on the ground as the physical extent of the Property, often marked by features such as walls, trees, ditches and hedges.

The Property will be defined in the title deeds and, if title is registered, the extent of the Property will be shown on the title plan. However, the Land Register is not conclusive as to boundaries and the boundary features may not correspond exactly with the title description. They may:

- Lie wholly within the legal boundaries of the Property in which case the Buyer will need to establish that nobody else has been using the land which lies between the legal boundaries and the boundary features; or
- Lie outside the legal boundaries in which case the Buyer will wish to establish whether the Seller has acquired additional land by 'adverse possession' or long usage. To do this, the Buyer needs to know:
 - For how long any land beyond the legal boundaries has been used as part of the Property.
 - Whether there has been any objection to this use.
 - Who has maintained the boundary features.

Responsibility for boundary features

The Buyer also needs to know who is responsible for maintaining boundary features. The title deeds may not contain information about the ownership of the boundary features or their maintenance, and in the absence of any clear indication the Buyer must find out what the Seller and others have regarded as their responsibilities.

If available, the Seller should include details of:

- What works to boundary features have been carried out.
- What costs have been incurred.
- Who contributed and in what proportions.

Plans

Although it is up to the Buyer to obtain suitable plans, the Seller should supply copies of whatever plans it has in the interests of speeding up the Transaction. It would be helpful if the Seller were to mark all the boundaries on a plan and indicate which belong to the Property using 'T' marks along the inside of the boundary line.

Enquiry 1 If there is any boundary dispute, the Seller should give details here or in response to enquiry 28.

Enquiry 1.5 Examples of what may be included in the reply to this enquiry include: vaults beneath a pavement; overhanging eaves; projecting signs; canopies; and flying freeholds.

Enquiry 1.6 Examples of what might be included in the reply to this enquiry include: storehouses, car parking areas, plant and equipment rooms, and strips of land alongside boundaries which are used although they fall outside the legal title.

Enquiry 1.7 The Buyer needs to establish whether there is any issue of adverse possession by the Seller. Enquiry 1.7 is, therefore, concerned with land or premises which do not actually form part of the Property to which the Seller has paper title, but which the Seller is nevertheless still using or enjoying. The reply to enquiry 1.7 will help identify whether the Buyer will acquire title to additional land by reason of the Seller's adverse possession, as well as whether use or occupation of other property will be needed by the Buyer to enjoy the Property once acquired.

PARTY WALLS

Where a boundary structure is jointly owned by the owners of the properties on either side of it, the structure may be a party structure. The joint owners of a party structure are given some statutory protection to prevent one owner carrying out work to the structure unilaterally without regard to the needs and wishes of the other. The statutory protection is in the Party Wall etc. Act 1996. Prior to the 1996 Act, party walls were governed by the London Building Acts if they were in London; outside London they were usually subject to the common law.

Under the 1996 Act, certain notice procedures must be followed for:

- The construction of a new wall (including the wall of a building) over or up to the boundary.
- Works affecting existing party structures, and
- Excavations within certain distances of neighbouring buildings.

Non-compliance with the legislation may mean that the construction has to be dismantled and the land reinstated. The London Building Acts contained similar notice requirements.

The Seller should give the Buyer copies of all notices, awards and agreements, whether made under the 1996 Act, the London Building Acts or by private agreement, and including any which are the subject of negotiation and settlement.

The Buyer should check all the terms, particularly those relating to payment of compensation, costs, or security. To speed the Transaction, the Seller could anticipate further questions about outstanding payments and arrangements for securing payments.

RIGHTS BENEFITING THE PROPERTY

Generally rights benefiting the Property will pass to the Buyer.

Examples of rights benefiting the Property are rights of way (including those over emergency escape routes), rights of support, rights to light and rights to use conduits serving the Property (e.g. water, drainage and gas pipes, electricity and telephone cables).

Rights may have been granted:

- Formally by deed.
- Informally by agreement but not documented, or
- Informally through long use, with or without the knowledge or consent of the person over whose property the right is exercised.

If the title deeds do not show that the Seller has good title to exercise a right, the Buyer may be able to establish that the right has been granted informally or is in the course of being acquired. To do this the Buyer needs to establish:

- For how long and to what extent the right or purported right has been exercised (and this includes the frequency of exercise and whether the exercise has been over the whole or part of the relevant land or conduits).
- Whether this has been with the knowledge or consent of the person over whose land the right has been exercised.

- Whether there has been any objection to the exercise.
- Whether there are any maintenance obligations associated with the rights or whether anyone has assumed any responsibility for maintenance (for example, in relation to drains or footpaths).
- What costs have been incurred in exercising the rights, how costs are dealt with and the amount of any recent expenditure.

The Seller should supply details of all rights and arrangements benefiting the Property, even where these would be evident to the Seller from an inspection. What is legally required may be different from what happens in practice, which may not be apparent. The Seller should supply copies of all relevant documents and correspondence.

Enquiry 3.2(b) Express reference is made to plans because if the Right is an easement that is not formally documented, the Buyer will need to know the exact position, line or route of the easement. This is necessary to enable the Buyer to check the title to the servient tenement to ascertain whether the burden of the easement has been properly noted on it (without which the easement may not be binding on the owner of the servient tenement).

Enquiry 3.3 If for some reason an easement has been protected by a Unilateral Notice, the Buyer will need to change the identity of the beneficiary of the Unilateral Notice. Where the servient tenement is unregistered and a caution against first registration has been registered to protect the easement, the Buyer may need to change the name and address on the cautions register or, if this is not possible, lodge a new caution in the Buyer's own name. Failure to change the beneficiary's name and address will result in any warning-off notice not being received.

ADVERSE RIGHTS AFFECTING THE PROPERTY

Generally the burden of adverse rights to which the Property is subject will pass to the Buyer.

Examples of adverse rights affecting the Property are rights of way (including emergency escape routes), rights of support, rights to light and rights to use conduits serving the neighbouring premises (e.g. water, drainage and gas pipes, electricity and telephone cables).

Adverse rights may have been granted:

- Formally by deed.
- Informally by agreement but not documented, or
- Informally through long use, with or without the knowledge or consent of the person over whose property the right is exercised.

Please see the notes to enquiry 3 as similar considerations apply.

Public rights may be acquired over property where, for example, an open forecourt forming part of the property is regularly crossed by members of the public. Car parks and private passageways between buildings are similarly vulnerable. It is possible to negative dedication as part of the highway by the display of a notice to that effect. If there are or have been any such signs erected, further enquiry should be made as to the extent of public use, its duration and as to how long the sign has been displayed.

Even if the title deeds are silent on third party rights affecting the Property, the Buyer will still need to establish that no such rights have been created informally or are in the course of being created. This is not confined to the acquisition of rights by private landowners. Public rights may also be in the course of acquisition, as explained in the preceding paragraph.

Enquiry 4.5 This enquiry concerns registered title and overriding interests. The Property may be subject to third party rights and interests, which will not necessarily be apparent from the title

deeds or from any inspection of the Property, but which will still bind the Buyer whether or not the Buyer knows of them.

Land Registry Practice Guide 15 describes the law relating to overriding interests and how it has changed under the Land Registration Act 2002.

Enquiry 4.6 Part I of the Countryside and Rights of Way Act 2000 gives a public right of access to land that comes within the definition of 'access land' in section 1(1) of that Act. Land that is wholly or predominantly mountain, moor, heath or down is defined as 'open country' (so long as it is not improved or semi-improved grassland) but this definition may be extended to include 'coastal land' (within the meaning of section 3 of the Act) in the future.

Open country will qualify as access land if it has been shown on a map of open country issued by the countryside bodies. The countryside bodies will be responsible for deciding the extent of any mountain, moor, heath and down. Land over 600 metres above sea level and registered common land immediately qualifies as access land without any requirement for mapping by the countryside bodies, but the bodies will in due course also include these categories of land on their maps. Access land will also include land which under section 16 is irrevocably dedicated by the owner to public access.

The definition of 'access land' excludes the 13 categories of land listed in Schedule 1 to the Act, defined as 'excepted'. This includes cultivated land, land covered by buildings and land within 20 metres of a dwelling. In particular cases, landowners are entitled to exclude or restrict the public's right to enter access land. The principal exclusion is a right to exclude the public for up to 28 days in any calendar month, on terms that have yet to be prescribed by regulations (as at September, 2002).

The Seller may not know whether the Property has been designated as access land because the designation procedure does not include any requirement for service of a notice on the landowner. The Buyer will, therefore, also need to make its own inspection of the public maps that indicate the extent of access land. These can be inspected at www.countryside.gov.uk/access/mapping for England and www.ccw.gov.uk/mapping/index.cfm for Wales. At the time of publication of the Commercial Property Standard Enquiries (September, 2002), no maps have yet been finalised in either England or Wales.

TITLE POLICIES

Insurance may be available to cover:

- Restrictive covenants where, for example, the nature of the covenant or the identity of the person having the benefit of the covenant is unknown, or
- Lost title deeds (for example, in relation to rights benefiting the Property) or defects in title where the title to the land is unregistered.

Title insurance policies may benefit subsequent owners and mortgagees of the Property as well as the person who originally took out the insurance. The Buyer needs to be satisfied that the level of cover is still adequate. Any increase in the market value of the Property may make the level of cover inadequate, irrespective of any index-linking of the sum insured.

Enquiry 5.2(a) 'Policy documents' generally comprise the policy and schedule showing the level of cover. Copies of any other documents referred to in the policy documents should also be produced (e.g. any opinion of counsel).

Enquiry 5.3 The Seller should include details of any application for insurance that has been refused as this is relevant information that must be disclosed on a future insurance application and may also be useful in making any subsequent re-application.

ACCESS TO NEIGHBOURING LAND

It is often difficult or impossible for an owner or occupier to carry out repairs, alterations or other works to its own premises without going onto neighbouring land. If access is necessary but neighbours cannot agree arrangements, an application may be made to the court for an order giving access under the Access to Neighbouring Land Act 1992.

The Buyer will want details of all requests for access made and permissions given, whether made informally or by the court, including any applications and permissions relating to conduits (e.g. for unblocking drains or laying cables) so that it is aware of any potential difficulties that are likely to arise.

ACCESS TO AND FROM THE PROPERTY

Enquiry 7.1 The Buyer needs to be satisfied that there are adequate rights of access to the Property. If access is direct to a public highway, no additional rights of way will be necessary and the Buyer will need to check only that there are no outstanding maintenance charges in respect of the highway (see enquiry 13).

Local authority enquiries should reveal whether roadways and footpaths are public highways, and therefore maintainable at public expense. They are unlikely, however, to reveal whether the public highway directly abuts the boundary of the Property and it may not be possible for the Buyer to establish this from an inspection.

Following *Gooden v Northamptonshire County Council* [2001] 49 EG 116 (CS) if adoption of a road or footpath is crucial to a buyer's proposed use or development of the property, it is prudent not to rely solely on information obtained from local authority searches and enquiries, which may be unreliable. Further independent checks should be made, for example, of adjoining landowners.

Enquiry 7.2 Access may be controlled by a third party (e.g. by means of a locked gate). Enquiries should be made as to availability of keys, times when the barrier is attended by an operator and access arrangements when the barrier is not attended.

PHYSICAL CONDITION

A survey or inspection may not reveal past or intermittent defects and not everything can be inspected, for example, hidden structure and conduits. For this reason, the Seller is asked about the condition of the Property and, in answering, may be willing to give full details even where it considers that a defect or problem would be apparent on an inspection or would be revealed by a survey or has been treated or resolved. The Seller may of course (as with any enquiry) decline to give an answer. The Buyer can deduce what it wishes from any such refusal. If, however, the Seller does provide an answer, it may be liable for misrepresentation if the answer is not complete or is misleading in some way.

Enquiry 8.1(a) An inherent defect (sometimes referred to as a latent defect) is one that exists because of some fault or limitation in the construction or design of the building or the materials used to construct it. It may not be apparent on completion of the construction of the building, but may become apparent with time or because an intervening event triggers symptoms of the defect.

Enquiry 8.1(c) The Seller should include in any reply information about all defective conduits affecting the Property, whether or not they form part of the Property.

Enquiry 8.2 This enquiry focuses on the present construction of the Property, which includes the original construction, any subsequent alteration or addition to it and fixtures, plant, equipment or conduits which serve the Property, whether or not they form part of it.

It has been common practice in pre-contract enquiries to ask the Seller to list what were referred to as 'deleterious materials' used in the construction of the Property. This practice has been

criticised for concentrating attention on the materials themselves rather than on the way in which they have been used. A substance on its own or used in a particular manner may present no risk but used in a different way, or in conjunction with another material, may be unstable or hazardous.

In May 1997, Ove Arup & Partners, in conjunction with the British Council of Offices and the British Property Federation, launched a guide entitled 'Good Practice in the Selection of Construction Materials' providing guidance on good practice for the selection of materials in construction. The preamble explains the need to adopt a new approach to dealing with such materials so that, rather than prohibiting the use of certain materials automatically, good practice is followed in their selection to ensure that they are used appropriately. Adopting this approach, the enquiries do not list particular materials.

The function of enquiries is to ascertain whether a potential problem exists. Whether there is an actual problem will be a matter for appropriately qualified consultants, having regard to British, European and International Standards and Codes of Practice.

Enquiry 8.3 This enquiry is concerned with materials that have already been removed from the Property. The Buyer should be concerned that any removal of asbestos, for example, has been done in accordance with relevant codes of practice.

Enquiry 8.4 If the reply to this enquiry indicates that buildings have been erected on the Property or that any extensions or major alterations have been carried out within the previous 12 years, the Buyer may wish to raise further specific enquiries. To avoid delay the Seller may consider volunteering details and any relevant information without specifically being asked to do so.

Enquiry 8.6 'Plant and equipment' may include security, access and alarm systems, lifts, escalators, CCTV, building management systems, air conditioning and heating systems. 'Reports' may include reports that take the form of answers to formal questionnaires and may relate to construction, alteration, maintenance, repair, replacement, treatment or improvements. The Buyer is primarily concerned with current state and condition but maintenance reports may be the only practical source of information. The Buyer will be interested in all guarantees, warranties and insurance policies under which it may be able to claim in the event of a defect.

CONTENTS

The Buyer and the Seller need to agree what items will be left at the Property on completion of the Transaction and what items will be removed, and any effect this may have on the price.

This enquiry is to clarify what the Buyer expects to receive and what the Seller must do to give vacant possession of the Property. The general rule, unless the parties agree otherwise, is that:

- Fixtures remain in the Property and pass to the Buyer.
- Chattels do not pass and the Seller is legally obliged to remove them prior to completion.

The distinction between fixtures and chattels can be difficult to determine, which is why the enquiries avoid these terms in favour of 'item'. The courts have evolved tests by reference to the degree and purpose of annexation to the property. Generally if something has been fixed to a property so that it is difficult to remove without causing damage and was fixed to improve that property permanently, it will be a fixture. Rather than rely on this imprecise test, however, it is prudent for the parties to come to a clear agreement.

In the case of telecommunications links and equipment, replies should clearly set out what will be removed, what will remain, and what is the undertaker's property.

Enquiries 9.1 and 9.2 It is particularly important that the parties agree whether fixed plant is to be removed on completion or is to remain in the Property. Fixed plant tends to be heavy, difficult to move and expensive and generally will play a significant part in the business or use

of the Property. It may not be clear whether it should be treated as a fixture or a chattel, and any misunderstanding between the parties as to whether it stays in the Property on completion or is removed may have serious consequences.

Enquiry 9.3(b) Examples of third party claims which may affect items that the Seller is proposing to leave at the Property following completion include credit or conditional sale agreements, hire and hire purchase agreements, finance and leasing agreements. Some of these may contain title retention clauses, which would mean that the Seller does not own the item in question. In relation to such items there may be some overlap with enquiry 9.4.

Enquiry 9.4 Items which will remain in the Property but which will belong to a third party include telecommunication masts, advertising hoardings, metering equipment and street signs fixed to exterior walls.

UTILITIES AND SERVICES

Enquiry 10.1 Utilities and services may include:

- Water.
- Drainage of foul and surface water.
- Gas.
- Oil
- Electricity.
- District heating schemes.
- Telecommunications.
- Cable and satellite communications systems.

Enquiry 10.2 Although usual for a property to be connected to mains utilities (such as water, drainage, gas and electricity), this is not always so. Also, there may be more than one source of the utility supply. Water may come from a mains supply and a well or be drawn directly from a river or lake. Electricity may come from a private generator instead of or in addition to the mains supply.

If conduits do not run directly from a highway maintainable at public expense, details of the rights to use the conduits should be given in reply to enquiry 3.

Enquiry 10.3 and 10.4 Although the Buyer will not generally be concerned to see supply contracts for mains utilities, it will need to see copies of all supply contracts and consents which either will continue to affect the Property after completion or which it may wish to take over. An example would be a water abstraction licence. Details of all contracts and licences are requested so that the Buyer can decide what may be of interest.

FIRE CERTIFICATES AND MEANS OF ESCAPE

Fire safety is dealt with under several statutory regimes. The age and use of the Property and the number of occupiers determine which requirements apply. The following require a fire certificate:

- Hotels and boarding houses with sleeping accommodation for more than six people (whether guests or staff), or where there is sleeping accommodation above first floor or below ground floor levels.
- Premises at which highly flammable substances covered by the Fire Certificates (Special Premises) Regulations 1976 are manufactured or stored.
- Factories, offices, shops and railway premises where more than 20 people work of whom ten work somewhere other than on the ground floor.

- Buildings in multiple occupation containing two or more individual factory, office, shop or railway units and where more than 20 people work of whom ten work somewhere other than on the ground floor.

Regardless of any requirement for a fire certificate, the Fire Precautions (Workplace) Regulations 1997 may apply to protect employees in non-domestic premises used for the purposes of an employer's business.

The burden of compliance with fire requirements generally rests with the occupier but, if the building is in multiple occupation, the owner of the building may also be liable. An owner for these purposes is the person who receives rent for the building and may include a trustee and/or a managing agent.

Enquiry 11.1 A breach of fire regulations may be punishable as a criminal offence with a fine and/or a term of imprisonment.

Enquiry 11.2 A breach of fire certificate requirements may result in the cancellation of the certificate, which in turn may lead to a breach of fire regulations.

Without a letter to the fire officer authorising the fire officer to correspond directly with the Buyer, the fire officer may refuse to correspond with anyone other than the Seller in relation to the Property.

Enquiry 11.6 A fire certificate, if there is one, will specify the means of escape and may impose obligations to maintain an escape route and keep it free from obstruction. It is deemed to be a requirement of a fire certificate that the means of escape will be kept in accordance with the specification in the fire certificate. The means of escape may be direct from the Property or may be over adjoining premises, in which case the Seller should give full details of any rights or agreements with the owners of the adjoining premises.

Enquiry 11.7 Fire certificates are issued by the Fire and Civil Defence Authority for the area in which the Property is situated. Consideration must be given when answering this enquiry to other regulatory bodies such as licensing bodies for cinemas, pubs, theatres and sports grounds and to Building Regulation requirements.

Enquiry 11.8 It is an offence to carry out any material alterations to premises for which there is a current fire certificate without the prior approval of the Fire Authority. 'Material' means any alteration that, in case of fire, could render the means of escape from the premises inadequate given the use of the premises for which the fire certificate was issued. A letter of consent should be obtained prior to making any alterations.

PLANNING AND BUILDING REGULATIONS

Planning law is contained in a number of statutes and subordinate legislation, principally the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990 and the Planning (Consequential Provisions) Act 1990.

Planning permission is required for 'development', which encompasses either of two elements:

- Building works on the land or to buildings (which includes building, engineering, mining, demolition and other operations on, in, over or under a property), or
- A material change of use of the land or buildings.

A planning permission authorising the construction of a building will at the same time authorise its use.

Enquiry 12.1 The importance of establishing that building regulation consent was obtained, where required, and that works were carried out in accordance with the approved plans, was illustrated in *Cottingham v Attey Bower & Jones* [2000] EGCS 48 (ChD).

Building Regulations completion certificates were introduced into the Buildings Regulations in 1991. The production by the Seller of a completion certificate will be evidence (but not conclusive evidence) that works were carried out in accordance with Building Regulations.

Enquiry 12.2 A planning permission must generally be implemented within five years from the date of its grant.

Enquiries 12.3, 12.4, 12.5 Established use certificates are no longer granted. Since 27 July, 1992, the equivalent is a certificate of lawfulness of existing use or development (CLEUD) or a certificate of lawfulness of proposed use or development (CLOPUD) (sections 191 and 192, Town and Country Planning Act 1990). Existing established use certificates are still valid and can be relied upon, however, and so their existence is still relevant for the Buyer. There is a procedure for converting an established use certificate into a CLEUD.

A CLEUD or a CLOPUD will establish that:

- An existing use is or a proposed use would be lawful.
- Any operations that have been carried out or which are proposed, in, on, over or under the land are, or will be, lawful.
- Any other matter that constitutes a breach of condition or limitation subject to which planning permission has been granted, is lawful.

A use, an operation or a breach of condition or limitation will be lawful if:

- No enforcement action can be taken in respect of it, and
- The use or development or the breach does not contravene any of the requirements of any enforcement notice in force.

The power to issue enforcement notices is subject to time limits (section 171B, Town and Country Planning Act 1990).

- Four years: No enforcement action can be taken after four years where the breach of planning control relates to building, engineering, mining or other operations in, on or over land.
- Four years: No enforcement action can be taken after four years where the breach of planning control relates to the change of use of any building to use as a single dwelling-house.
- Ten years: No enforcement action can be taken after ten years where the breach of planning control relates to anything else.

Enquiry 12.4 The existing buildings on the Property may be authorised by means of an express planning permission, or by a CLEUD or by virtue of the Town and Country Planning (Use Classes) Order 1987 (as amended) or the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

Enquiry 12.5 and 12.6 The existing use of the Property may be authorised by means of an express planning permission, under a CLEUD or under the Town and Country Planning (Use Classes) Order 1987 (as amended) or the Town and Country Planning (General Permitted Development) Order 1995 (as amended). The Property may have a single use or a single use with an ancillary use. Where one use is ancillary to another (for example, storage associated with a shop) a separate permission for the ancillary use will not generally be required. It is possible for the Property to have more than one use where the further uses are not ancillary but are main uses in their own right as, for example, a shop at ground level with a flat above. Separate permissions are required for each main use but each main use may still have its own ancillary uses.

Enquiries 12.7, 12.8 and 12.9 Where planning consent is required for a development (whether building works or a change of use), the local planning authority can take enforcement action if the development is carried out without planning consent. There are time limits for enforcement action. No enforcement action can be brought in relation to building works after four years have passed following substantial completion of the building works. Where the development is a change of use (other than a change of use to a single dwelling house), no enforcement action can be brought after ten years from the date of the breach. Works that need to be considered include both external works to any buildings, and also works with the curtilage of the building.

Where, however, a building is listed under the Planning (Listed Buildings and Conservation Areas) Act 1990, there is no time limit for enforcement action in respect of a breach. A breach of listed building control can be enforced against an owner no matter when or by whom the breach was committed. A practical problem may arise because when a property is listed, the listing may fail to record the state and extent of the listing, making it difficult for buyers, sellers and local authorities to establish whether any breach has occurred.

Enquiry 12.10 Third parties may challenge the grant of a consent or a certificate either by judicial review or by appeal in the courts under procedures provided in the Planning Acts.

Enquiry 12.12 Outline planning permissions are permissions for the construction of a building that are granted in principle, subject to certain 'reserved matters'. The outline planning permission cannot be implemented until the reserved matters have been approved.

STATUTORY AGREEMENTS AND INFRASTRUCTURE

The Buyer will make a local authority and local land charges search. The results should disclose agreements and notices relating to roads, drains, public health matters and repair obligations. The following are examples of the types of agreement and notice about which the Buyer will need information:

- Agreements under section 38 of the Highways Act 1980

These impose obligations on a developer to make up roads and footpaths to a standard required by the local highway authority and to maintain them for a specified period. The road or footpath is then adopted by the highway authority and maintained at public expense. Normally the agreement is supported by a bond to pay for completion of the works if the developer fails to carry them out. Section 38 agreements do not run with the land so, if the Seller is party to one, the Buyer may need to take an assignment of it otherwise the highway authority may close the road which may affect access to the Property.

A local highway authority may agree or resolve to make up roadways or footpaths at the cost of owners of premises fronting the roadway. Full details will be required so that the Buyer is aware of potential liabilities.

- Agreements under section 104 of the Water Industry Act 1991

These impose obligations in relation to sewers similar to those relating to roads under section 38 above.

- Planning obligations under section 106 of the Town and Country Planning Act 1990

These may require a landowner to carry out specified works or impose restrictions on the development or use of land or require money to be paid to a local planning authority. Such obligations are normally entered into as part of negotiations for planning permission and may provide for the making up and adoption of roads and footpaths.

The local authority search may not disclose all relevant agreements and notices.

Enquiry 13.1 Examples of the types of agreement to which this enquiry relates include:

- Agreements relating to the construction and adoption of roads, footpaths, drains and sewers.
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- Agreements relating to the laying of gas pipes, electricity and telecommunications cables, wires and other equipment including transformer substations.
- Water abstraction licences.

Enquiry 13.2 This enquiry covers, for example, obligations on the Seller to enter into any highway, water or sewerage agreements or a section 106 planning agreement.

Enquiry 13.3 Examples of what might be included in the reply to this enquiry include a road closure order, a diversion order, a traffic flow order which, if implemented, might affect access to the Property or the ability to park near or deliver to the Property or a food hygiene order, of particular relevance if the Property is a restaurant or hotel.

Enquiry 13.4 Some agreements, such as section 106 and section 38 agreements, cannot be registered by the local authority until they have been completed. Until registered they will not be disclosed by a local authority search but will still constitute overriding interests (see enquiry 4). If the Seller is aware of anything which is not yet, but will be, registered it should be disclosed here, unless it has already been disclosed in reply to enquiry 13.1. There are some matters which are not required to be registered as a local land charge, for example, planning contravention notices and notices of intention to adopt a highway.

Enquiry 13.6 The local authority or other public or private bodies, such as English Partnerships, can make financial grants. These are generally made to promote development and improvement and may be subject to repayment obligations in certain circumstances. The Buyer needs to know what grants have been made, by whom, for how much and the terms of the grant and in particular will need to know about repayment obligations so that appropriate provisions can be made in the contract.

STATUTORY AND OTHER LIABILITIES

Enquiry 14 addresses potential liabilities in connection with the Property and concentrates mainly on statutory liabilities.

Liability under statute may be strict, which means that the person responsible for the breach will be liable regardless of the state of their knowledge about the breach. This is often the case with health and safety legislation, which is designed to protect the welfare of employees and occupiers of premises.

Liability may, in other cases, depend on the state of knowledge of the person responsible for the breach.

Statute will provide who is responsible for compliance. Liability may rest with the occupier and/or the owner. The owner may be defined to include the landlord, any superior landlord and/or the freeholder. Some legislation, such as fire regulations, extends the meaning of owner to include anyone in receipt of rents and so may include a trustee of the landlord or a managing agent.

Enquiry 14.1 The enquiry is wide and addresses all legislation that may affect the Property. Depending on the nature of the Property and its use, particular consideration should be given to the Occupiers' Liability Acts 1957 and 1984, the Defective Premises Act 1972, health and safety legislation (including the Shops Act 1950, the Factories Acts, the Offices, Shops and Railway Premises Act 1963 and the Health and Safety at Work etc. Act 1974), and liquor and gambling licensing. To the extent not covered elsewhere, the reply should cover breaches of building regulations, breaches of fire regulations, gas safety legislation, highway and drainage obligations, section 106 agreements, planning control, waste storage and management, hazardous substances, advertising control, bye-laws relating to trading and advertisement control.

Enquiry 14.2 This enquiry is not limited to statutory matters. It does not cover works to be carried out to anything other than the Property and so will not include section 38 highway

agreements or section 106 agreements unless the land over which the works are to be carried out is included within the definition of the Property.

Enquiry 14.3 This enquiry is designed to catch such things as liquor licences, betting and gaming licences, water abstraction licences and any other activity controlled by law.

Enquiry 14.4 Subject to specific exceptions, the Construction (Design and Management) Regulations 1994 (which came into force on 31 March, 1995), apply to all construction work, which includes demolition, construction, alteration, fitting-out, commissioning, repair, maintenance and decoration. Their objective is to improve management, information and co-ordination of work on site. The Regulations do not apply to small construction projects where the number of people working on the project at any one time is/was not expected to exceed four and the project is/was not expected to last longer than 30 days. The Health and Safety file for the project should contain all health and safety related information necessary for the proper maintenance, repair, alteration, decoration and demolition of the building. The Buyer needs the information requested as it could have an impact on the Buyer's ability or method of doing works or on the value of the Property and its marketability.

ENVIRONMENTAL

The primary objectives of the environmental legislation are:

- Protection of the environment from pollution.
- Remediation of existing contamination.
- Prevention of future contamination.
- Better management of natural resources and promotion of sustainable development.

Enquiry 15 is a general enquiry about environmental issues, aimed at sites with no known environmental problems. More specific questions can be raised if the Buyer's requirements, or the state of the Property, demand.

The fundamental principle of the environmental legislation is that 'the polluter pays'. The definition of polluter is wide so that it can include parties who have not been directly responsible for the contamination, including a subsequent owner of the land. This is particularly important since Part IIA of the Environmental Protection Act 1990, dealing with contaminated land, came into force on 1 April, 2000.

These enquiries are intended to alert the Buyer to any matter which may need further investigation so the Buyer can be fully aware of what environmental liabilities it may inherit as a result of the Transaction. The cost of remedying damage caused by contamination may be significantly more than the value of the Property and this can make it difficult to identify any arbitrary value below which it can be said that any form of environmental investigation is unnecessary.

The following are examples of the types of hazard with which these enquiries are concerned:

- Pollution and protection of the environment.
- Health and safety.
- Emissions and releases.
- Disposal of industrial, commercial or household waste.
- Discharges of radioactive waste or chemical or other pollutants or contaminants or toxic or hazardous substances.
- Manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of any discharges or waste materials.
- Control of noise and noise emissions.

- Water pollution, including pollution by trade and sewage effluent.

Enquiry 15.2 If any authorisations are disclosed then the Buyer should consider asking for confirmation that:

- The authorisations have not been breached.
- No upgrade of plant or equipment and no capital expenditure is needed before authorisations can be complied with.
- No notice or other communication has been received from an enforcement authority which may materially affect the terms of such authorisations or their continued validity.

Enquiry 15.4 This enquiry focuses on whether the Property has been subject to potentially contaminative uses or whether there is any hazardous material in the Property. It has been deliberately framed widely to avoid the Seller having to form a view on whether or not information given is indicative of a contaminative use.

Enquiry 15.5 The reply should cover both statutory notices and complaints from neighbours.

Enquiry 15.6 The enquiry does not expressly ask for sight of transfer notes relating to waste (which might be numerous) but if there were a concern as to whether waste was being disposed of properly, these could be requested.

Enquiry 15.7 The reply to this should reveal matters such as migrating contamination, dust, noise and other forms of nuisance.

OCCUPIERS AND EMPLOYEES

Enquiry 16 is concerned with the rights, statutory or otherwise, of anyone who will remain in occupation of the Property following completion of the Transaction.

Occupiers may have specific rights of occupation which need to be addressed as part of the Transaction and where there are leases and licences conferring these occupational rights, the Buyer may need to raise additional enquiries (e.g. CPSE.2, CPSE.3 and CPSE.4).

Occupiers may have rights which go beyond those set out in a formal lease or licence and these rights may be protected as overriding interests, information about which should have been included in reply to enquiry 4.

There may be people in occupation who are employed to work at the Property and they may have rights as employees under the Transfer of Undertakings (Protection of Employment) Regulations 1981 ('TUPE') (see enquiry 16.5).

Enquiry 16.1 Where the Seller is a company, firm or partnership or some other corporate body, the Seller is not required to give the names of all shareholders, partners or employees but should give details of any other body in occupation including a company in the same group. The Seller should explain whether occupation is by virtue of lease or licence or whether there is no formal right to occupy, in which case the Seller should give details of the length of occupation, any payments received in respect of it and any objections made to it.

Enquiry 16.3 Whether the Property is vacant, and the period during which it has been vacant, may be relevant for a number of reasons. For example, it may have an impact on the validity of insurance cover, affect liability to pay business rates and may put the Buyer on notice that squatters may be in occupation.

Enquiry 16.4 The purpose of TUPE is to protect the jobs and terms and conditions of employment of employees where the undertaking by, or in respect of which, they are employed is transferred. TUPE applies to any transaction considered to be the transfer of an economic entity and can include the transfer of premises as part of a business sale and transfers of investment properties such as shopping centres or office buildings.

TUPE applies to staff employed in respect of the business or property which is being sold and extends to managers, managing agents, caretakers, cleaners, maintenance staff and security guards employed in respect of buildings which may otherwise be empty.

All employees employed in the undertaking automatically transfer to the Buyer on their existing terms and conditions (save for pension schemes) and their employment is treated as being continuous for purposes of claims for redundancy or unfair dismissal. Any dismissals connected with the transfer are automatically considered to be unfair.

Under TUPE, the Buyer takes on all rights, liabilities and responsibilities for anything done by the Seller in respect of the employee and may therefore inherit liability for unfair dismissals, claims in relation to sex discrimination and any failure to pay wages or bonuses which arise before the time of the transfer.

TUPE may also apply to contracted-out services provided under contracts for services (such as security or cleaning contractors). Employees of contractors may be protected if, after completion of the Transaction, the services are to be provided by another contractor or where the contract is to be terminated and the services provided in-house.

INSURANCE

Enquiry 17 concerns buildings insurance as opposed to contents insurance or title insurance. The convention is that once contracts are exchanged, the Buyer takes over the risk in the Property and must therefore insure from that date. In transactions where there is no contract, the Buyer will usually assume the risk on completion.

The information which will be given in reply to this enquiry is likely, therefore, to be of interest where the Buyer is to rely on the Seller's insurance between exchange of contracts and completion or where the existing insurance arrangements will remain in place following completion of the Transaction. This might be so where, for example, the sale is between related companies and the insurance is dealt with under a group company policy, or where the Property is leasehold and the landlord insures.

Where the Buyer is to rely on the Seller's insurance between exchange of contracts and completion, the contract may need to cover noting the Buyer's interest on the policy and the Buyer will need to be clear as to exactly what the cover includes (e.g. loss of rent).

Where the insurance arrangements will remain in place following completion of the Transaction, the Buyer will need full details of the insurance cover effected to check that cover is satisfactory, particularly in relation to the adequacy of the sum insured and whether this is index-linked, the adequacy of insured risks and acceptability of any exclusions. It will also be concerned to check that the policy complies with the requirements of any relevant lease or mortgage, whether the policy is and will continue in force and that the proposed use of the Property will not render the policy void or voidable.

The Buyer will need to check who has the benefit of the insurance policy and ensure that its own interest is adequately protected.

Enquiry 17.3 The types of insurance referred to here may include public liability and employers' liability insurance and insurance for specific items of machinery or equipment.

Enquiry 17.6 Circumstances which may make the policy void or voidable include non-payment of premiums and failure to give all relevant information to the insurance company.

RATES AND OTHER OUTGOINGS

The Buyer will need to know its liability for periodic payments following completion of the Transaction. The main liabilities are likely to be business rates and water and sewerage charges, but there may be others.

Enquiry 18.1 The rateable value of the Property is the value attributed to it for the purpose of calculating the local authority business rates payable on it. This information will be on the rating assessment of the Property and on the rate demands received from the local authority but can also be obtained from the local authority.

Enquiry 18.2 Whether or not the Property is separately assessed is important because if it is assessed as part of other premises that are not included in the Transaction, it may have to be reassessed following completion of the Transaction.

Enquiry 18.3 Local rating lists, which were compiled initially on 1 April, 1990, are revised on every fifth anniversary of that date, most recently on 1 April, 2000. A revaluation will be made on each date the list is revised. To enable the valuation officers to prepare the list, notice may be served on an occupier or owner of a property requiring information about that property. Any correspondence passing between the owner or occupiers of the property and the valuation officer regarding a revaluation should be disclosed in response to this enquiry, including copies of all relevant proposals, notices, returns and appeals.

Enquiry 18.4 The rateable value of a property may be revised at any time due to a material change in circumstances. An owner or occupier of a property can at any time apply to the valuation officer requesting an alteration to the rateable value shown in the rating list or an alteration to any other statement made in the rating list about the property. The valuation officer may also propose an alteration if there have been any alterations or improvement works, works to extend or enlarge the property or a change of use of the property. Copies of all relevant correspondence and documentation should be produced including all proposals, notices, returns and appeals.

Enquiry 18.5 The amount payable for uniform business rates, water rates, sewerage and drainage charges can be obtained from the local authority and the water supply company. If the Property forms part of other premises for which there is only one assessment for business rates and for water, sewerage and drainage rates, that fact should be disclosed in this reply. Local authorities and water companies have a financial year that runs from 1 April of each calendar year. Accordingly, reference to the current year in this enquiry will mean the financial year that started on the most recent 1 April.

Enquiry 18.6 If a property is vacant, the owner or occupier may be entitled to empty rate relief for a period of three months following the date on which the property becomes vacant. After that three-month period, empty rates are charged. If the property has been left vacant for any period of time and relief has been claimed for that period, full details should be provided. If the property is currently vacant, the date on which the property was vacated should also be provided. Exemption from local authority rates may be given to certain qualifying premises in designated enterprise zones.

Enquiry 18.7 Transitional charging arrangements are concerned with phasing in new rates bills when they are significantly above or below the previous year's bills.

Enquiry 18.8 Examples of the types of periodic charges envisaged by this enquiry include payments in respect of private water supplies, private sewers and private access routes to the Property, rent tithe agreements and chancel repairs. The reply is not expected to include details of rent and service charges payable under a lease of the Property.

CAPITAL ALLOWANCES

A deduction from profits can be claimed for certain types of capital expenditure under the Capital Allowances Act 2001. The deduction is called a capital allowance. Some expenditure, such as that on assets used for scientific research or situated in an enterprise zone, may be written off in full in the year in which it is incurred. Most capital expenditure, however, is written off over a number of years. The most common capital allowances are those in respect of plant and machinery, and on certain 'industrial' buildings, which expression generally relates to

buildings or structures used for manufacturing and processing together with some types of storage and also includes hotels built after April 1978 with ten or more bedrooms and certain statutory and other undertakings.

Note that where the Transaction involves the seller paying for or carrying out works to the Property for a buyer as an inducement, the buyer's capital allowances entitlement may be affected.

Enquiry 19.1 If the Seller is holding the Property as a trader as part of trading stock, because, for example, the Seller is a developer or dealer, it will not have been able to claim capital allowances as any expenditure incurred will not have been on capital account. However the remaining enquiries in enquiry 19 should still be answered as there may be relevant information relating to an earlier owner of the Property.

Enquiry 19.2 Expenditure on the construction of a building in an enterprise zone qualifies for an allowance equal to 100% of the cost. Subsequent buyers may also be entitled to this allowance, if the enterprise zone is not more than twenty-two years old, and the building is either unused, or has been used for less than two years.

Enquiry 19.3 An allowance is available in respect of 'industrial' buildings, as defined in the legislation.

When a building that is classified for these purposes as being 'industrial' is acquired second-hand but within twenty-five years after its first use, the allowance is generally calculated by writing-off the original cost (or the current consideration, if lower) over the remainder of this twenty-five year life. The allowance is given not only in respect of the original construction of the building, but also in respect of subsequent alterations and enhancements. Each addition is regarded for the purposes of allowances as a new building, with its own twenty-five year life. This enquiry therefore asks for information not only about the original construction of the Property but also in relation to alterations made to it.

The Buyer must acquire the 'relevant interest' in the Property to be entitled to make a claim for industrial buildings allowances attached to that relevant interest. If the interest acquired is not a relevant interest as defined in section 286 of the CAA 2001, the Buyer has no entitlement to industrial buildings allowances. The 'relevant interest' is generally the interest held by the person who incurred the expenditure at the time of construction of the building. However, it can be an interest that is subordinate to that interest, if the Property has been subject to an election pursuant to section 290 of the CAA 2001.

Enquiry 19.4 An allowance of 100% of cost is given in respect of expenditure on assets (including buildings), which are for scientific research under the Capital Allowances Act 1990, or research and development under CAA 2001. The allowance is not available to a subsequent buyer of the Property but a previous claim for scientific research allowances may affect the Buyer's entitlement to claim the allowance on fixtures.

If the answer to this enquiry is 'yes', the Buyer will need to make further specialist enquiries about this expenditure.

Enquiry 19.5 The Buyer may be entitled to claim capital allowances on any fixed plant and machinery within the Property. The amount on which such a claim may be based may be an apportionment of the total consideration, but in many cases there are limiting factors. In particular, the amount of the claim may be limited where the Seller has itself claimed allowances.

If the answer to enquiry 19.5 is 'no', the Buyer should request details of the previous owner and ask whether the contract between the former owner and the Seller allocated any sum to machinery and plant.

The original qualifying expenditure in most cases will be the maximum allowable amount upon which the Buyer can claim allowances on those assets for which a capital allowances claim has been made. It may be possible, however, to increase the Seller's claim and there may also be assets within the Property upon which a claim has not previously been made.

Where assets are subject to a sale and leaseback or similar arrangements, the amount of the Buyer's claim may be similarly restricted.

Enquiry 19.6 The Seller is still entitled to make a claim for capital allowances on the Property after completion of the Transaction for a previous accounting period when the Property was still owned by the Seller.

Enquiry 19.7 Even if the Seller has not claimed allowances, the Buyer's claim may still be restricted if allowances have been claimed by any former owner of the Property, provided that the former owner disposed of the Property on or after 24 July, 1996. It is therefore necessary for the Buyer to be aware of the recent history of ownership and details of any transaction affecting the plant and machinery now included in the sale.

Enquiry 19.8 For transactions made on or after 19 March, 1997, it has been possible for the parties to make a joint election, fixing the amount to be allocated to the Fixtures within a building. This is subject to certain limits, and must not be motivated by tax avoidance. If the Fixtures have been subject to a previous election notice, then the value of that election will limit the level of allowances available to subsequent buyers.

Enquiry 19.9 The Buyer and the Seller can agree to elect between themselves an amount at which the Fixtures will transfer from the Seller to the Buyer. The procedure is set out in section 201 of the CAA 2001.

Enquiry 19.10 Capital allowances are available for both fixtures and industrial buildings in respect of contributions towards another person's expenditure, and the written-down value of any such allowances will pass to the buyer of the contributor's interest.

Enquiry 19.11 Any loose (i.e. not fixed) plant or machinery included in the sale may be the subject of a claim by the Buyer, based on open market value. This may be restricted if sale and leasebacks or other similar arrangements are envisaged.

Enquiry 19.12 Allowances on plant and machinery are generally given at a rate of 25% per annum. This is reduced to 6% per annum, however, for plant and machinery that has a useful economic life, when new, in excess of 25 years. Various exemptions for plant within a hotel, office, shop or showroom apply.

Enquiry 19.13 Allowances will not be available to the Buyer in respect of any plant or machinery within the building upon which a tenant has incurred expenditure, or subject to an equipment lease.

Enquiry 19.14 Where a landlord grants a long leasehold (over 50 years) interest in a property for a premium, the tenant acquiring that long leasehold interest will not be acquiring the Relevant Interest that entitles it to make a claim for any Industrial Building Allowances available on the property. In order for the tenant as opposed to the landlord to be treated as the owner of the Relevant Interest, both parties must within two years from the grant of the long leasehold interest enter into an election under section 290 of the CAA 2001.

Similarly, where a landlord grants a long leasehold interest in a property for a premium, the tenant acquiring that long leasehold interest will not be acquiring the interest that entitles it to make a claim for any plant and machinery allowances on any fixtures within the property. In order for the tenant as opposed to the landlord to be treated as the owner of the fixtures, both parties must within two years from the grant of the long leasehold interest enter into an election under section 183 of the CAA 2001.

VALUE ADDED TAX (VAT) REGISTRATION INFORMATION

Most property transactions in the course of a business are within the VAT regime, but this does not necessarily mean that VAT must be added to the price. The most common VAT classifications are standard-rated supplies, exempt supplies and transfers as a going concern. Transactions involving certain types of property may occasionally be zero-rated supplies.

This and the following VAT enquiries will not elicit all necessary information about the VAT position but the replies should trigger a series of additional enquiries as appropriate, which can then be referred to VAT experts. To avoid delay, these notes suggest relevant additional enquiries and the Seller is encouraged to volunteer the replies before waiting to be asked.

It is essential to establish if the Seller is registered for VAT to ensure that any charge to VAT is valid. The information is also important in deciding whether an election should be made to waive exemption. If the Seller is registered as part of a VAT group, the name of the group representative member is needed, as the Transaction will be deemed for the purposes of VAT to be made by that company.

TRANSFER OF A BUSINESS AS A GOING CONCERN (TOGC)

The sale of an investment property subject to one or more leases can constitute the transfer of a business as a going concern (TOGC) for the purposes of VAT. In such a case no VAT is payable.

Qualification for treatment as a TOGC requires that:

- The asset or assets are to be used by the Buyer in carrying on the same kind of business as that carried on by the Seller;
- Where the Seller is a taxable person (that is registered or liable to be registered for VAT), the Buyer must already be a taxable person or immediately become, as a result of the transfer, a taxable person;
- In relation to a part transfer, that part is capable of separate operation;
- The effect of the transfer must be to put the Buyer in possession of a business which can be operated as a business;
- The business, or part, transferred must be a 'going concern' at the time of transfer, which in essence means that it is a business, whether profit-making or not;
- There should not be a series of immediately consecutive transfers of the business; there should be no significant break in the normal trading pattern before or immediately after the transfer; and
- Where the Seller has made an election to waive exemption, or the supply is the freehold sale of new buildings or civil engineering works which are less than three years old, the Buyer must make an election to waive exemption in relation to the land and buildings concerned and notify HM Customs & Excise of that election before the first occasion on which a supply of the property is made. This may mean that the Buyer must make an election in respect of the Property before exchange, if, for example, it is to pay a deposit on exchange of contracts to the Seller's representative as agent for the Seller (as often happens in auction sales) rather than to a stakeholder (see *Higher Education Statistics Agency v Customs and Excise Commissioners* [2000] STC 332).

Enquiry 21.2 Sufficient detail should be provided to enable the Buyer to satisfy itself on the treatment of the Transaction as a TOGC. This will include, for example, providing details of:

- Any elections to waive exemption;
- The precise use of the Property by the Seller; and
- On a freehold sale, the period that has elapsed since practical completion or occupation.

Enquiry 21.3 The availability of treatment as a TOGC can be affected by the Seller's circumstances or actions. For example TOGC treatment may not be available if:

- The Property is entirely let to a company within the same VAT group as the Seller;
- The Seller transfers the Property to another of its corporate group companies which is not within the same VAT group registration and this transfer takes place immediately before the Transaction itself; or
- The Seller makes an election to waive exemption before the Transaction takes place and the Buyer does not make an election.

Enquiry 21.5 If the Transaction is a TOGC, it is important to determine if the Property is a capital item for VAT purposes and is within its adjustment period. The Capital Goods Scheme adjustments are designed to ensure that the VAT reclaimed on the original cost of development or acquisition is adjusted over a five or ten year period (dependent upon the length of the interest held or acquired). This is done through clawbacks and it will be important for the Buyer to be aware of any clawback liability.

Enquiry 21.6 It is normally the responsibility of the Buyer to take over and maintain the VAT records relating to a property acquired as a TOGC. If the Seller is unwilling to transfer the records it should apply to Customs & Excise for permission to retain them. In practice it is often difficult to transfer the records relating to one property which is part of a portfolio and consequently applications to retain the records are commonplace.

OTHER VAT TREATMENT

If the Transaction is not a TOGC, it is important to identify its correct VAT treatment, as certain actions may be required to validate that treatment.

This enquiry is intended to help the Buyer to verify the Seller's view of the correct VAT treatment of the Transaction. The legislation is extremely complex and specific expert advice should always be sought.

STANDARD-RATED SUPPLIES

This enquiry is intended to help the Buyer to verify the Seller's view of the correct VAT treatment of the Transaction. The legislation is extremely complex and specific expert advice should always be sought.

EXEMPT SUPPLIES

This enquiry is intended to help the Buyer to verify the Seller's view of the correct VAT treatment of the Transaction. The legislation is extremely complex and specific expert advice should always be sought.

ZERO-RATED SUPPLIES

This enquiry is intended to help the Buyer to verify the Seller's view of the correct VAT treatment of the Transaction. The legislation is extremely complex and specific expert advice should always be sought.

TRANSACTIONS OUTSIDE THE SCOPE OF VAT (OTHER THAN TOGCs)

Certain property transactions (other than TOGCs) may be outside the scope of VAT. This would apply if, for example, the Transaction is not made in the furtherance of a business. It is important to establish the reasoning to avoid any disputes if it is subsequently discovered that a VAT charge was appropriate. By way of example, the sale of a church by a religious movement which has no business activities is likely to be a transaction which is non-business and outside the scope of VAT.

NOTICES

The Buyer needs details of every notice affecting the Property so that it:

- Knows what may affect the Property;
- Can take steps in the contract to ensure that the Seller deals with all notices as appropriate;
- Is prepared to take appropriate action following completion of the Transaction; and
- May negotiate an indemnity.

Examples of notices which may affect the Property include planning notices, compulsory purchase notices, public utilities' notices, repair notices, landlords' notices of intention to sell the freehold, tenants' notices of intention to buy the freehold or to enfranchise, notices about a change of landlord or tenant, mortgages and rent review.

Notices about disputes should be included in the reply to enquiry 28.

If the Buyer raises supplemental enquiries in forms CPSE.2, CPSE.3 or CPSE.4, it may be more appropriate to give details of landlords' and tenants' notices in response to those supplemental enquiries. Alternatively the information can be given here and a cross-reference made in the replies to the supplemental enquiries.

DISPUTES

The Buyer needs details of every dispute relating to the Property so that it may:

- Appreciate what liabilities it may be taking on.
- Be aware of potential obstacles to the use and enjoyment of the Property.
- Take steps in the contract to ensure that the Seller deals with all disputes as may be appropriate.
- Be prepared to take appropriate action following completion of the Transaction.
- Negotiate an indemnity.

Disputes include those that have arisen in the past, whether or not they have been resolved. The existence of a dispute in the past may indicate a potential problem for the future and also may explain facts and circumstances about the Property. Information should be included on anticipated disputes, even where there is nothing formally on record.