

## **Commercial Property Standard Enquiries**

### **GN/CPSE (version 3) Guidance notes on the Commercial Property Standard Enquiries**

#### **Use of this document is free, subject to the Conditions set out below.**

This document is part of the Commercial Property Standard Enquiries (CPSE) suite of documents, prepared by members of the *London Property Support Lawyers Group* ([www.practicallaw.com/9-101-3380](http://www.practicallaw.com/9-101-3380)) and endorsed by the *British Property Federation* ([www.practicallaw.com/9-106-4398](http://www.practicallaw.com/9-106-4398)).

If you have any comments, please e-mail: [cpse@practicallaw.com](mailto:cpse@practicallaw.com).

For details of changes made between this document and its previous version, see *Legal update, June 2010: new versions of the CPSE documents released* ([www.practicallaw.com/5-502-2711](http://www.practicallaw.com/5-502-2711)).

*PLC Property*

#### **About the CPSE**

The Commercial Property Standard Enquiries (CPSE) comprise a suite of documents, which offer a range of pre-contract enquiries and requirements that it may be appropriate to raise on behalf of a party investigating a property.

The enquiries and requirements are accompanied by guidance notes (see *Guidance notes*).

The CPSE are updated and modified from time to time. When changes are made, a new version of the relevant CPSE document is published. The current and historical versions are published on the PLC Property website (see *Commercial Property Standard Enquiries* ([www.practicallaw.com/6-502-2923](http://www.practicallaw.com/6-502-2923))).

"CPSE document" means any document or version of that document in the suite.

## Documents and scope

### Documents

The CPSE are intended as a standard minimum for use in any commercial property transaction. It is expected that additional enquiries and requirements will be necessary to deal with specific issues in relation to the particular transaction.

- CPSE.1 is designed to cover all commercial property transactions.
- Apart from enquiries dealing with the Carbon Reduction Commitment (CPSE.6), CPSE.1 will (together with any additional enquiries relevant to the particular transaction) be sufficient if the transaction deals only with a freehold sold with vacant possession.
- CPSE.5 is an alternative to CPSE.1 for use before a surrender of a rack rent commercial lease.
- Depending on the nature of the transaction, CPSE.2, CPSE.3, CPSE.4 and CPSE.6 offer supplemental enquiries.

Use:

- CPSE.2 where the property is sold subject to existing tenancies;
- CPSE.3 where a lease of the property is being granted;
- CPSE.4 where the property being sold is leasehold; and
- CPSE.6 to deal with the CRC Energy Efficiency Scheme (CRC).

There are a number of variants of CPSE.6. Only one variant should be used. For more information, see *RQ (version 3.0) Request for replies to Commercial Property Standard Enquiries: Note on CPSE.6* ([www.practicallaw.com/8-502-0758](http://www.practicallaw.com/8-502-0758)).

- STER and SCR offer a collection of requirements that lawyers may want addressed prior to exchange of contracts and completion (respectively):
  - STER: Solicitor's title and exchange requirements;

- SCR: Solicitor's completion requirements.
- The Disclosable Overriding Interests questionnaire is intended to help applicants to identify those overriding interests that are disclosable to the Land Registry.

RQ: Request for replies to Commercial Property Standard Enquiries is not part of the CPSE.

It is a form that lists the CPSE documents and allows the user to identify:

- The CPSE document or documents to which answers are required.
- Whether there are any enquiries additional to the CPSE that the user wishes to raise.

RQ is not compulsory but may be useful, particularly as it avoids the need to physically print and post CPSE documents to the Seller.

## Scope

Pre-contract enquiries are used to provide the buyer with information about the property that cannot readily be obtained from another source (for example, title deeds or local authority searches). The CPSE are not intended to address:

- Matters that will be apparent from the title deeds.
  - Matters that should be included in the terms of the contract (for example, a request for confirmation that charges will be discharged).
- Requests that stages of the conveyancing procedure be dealt with (for example, deduction of title).

## Guidance notes

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

It is assumed that the parties will be represented by solicitors, who will guide their clients through the enquiries and responses, and who may supply a copy of the guidance notes to their clients. It is not expected that the seller's solicitor will merely send the enquiries and the

guidance notes to the client and leave the client to draft the replies alone, although many commercial clients may have sufficient expertise to manage with little assistance.

The guidance notes have been integrated with the enquiries or requirements in the web format of version 3 of the CPSE (see *Format*).

The guidance notes:

- Offer some explanation of statutory provisions referred to in the enquiries.
- Contain information that would otherwise need to be included in the enquiries, enabling the enquiries to be drafted concisely without extensive lists and allowing for brief references to be made to certain topics, such as overriding interests.
- Illustrate a question that has been phrased generally, by giving examples of the types of things covered by the enquiry (see for example the guidance note for CPSE.1 enquiry 1.5). This avoids the use of exhaustive lists in the enquiries.
- Although not intended as a checklist for practitioners, it may remind practitioners why certain questions need to be raised.
- Suggest what further action might be taken depending on the answer received to an enquiry (for example, reference to experts). This avoids complicating the basic enquiry with a series of "follow-up" questions, which may not be appropriate in all circumstances.

## **Answering the enquiries and requirements**

### **Caveat emptor**

The legal principle of *caveat emptor* (let the buyer beware) means that the buyer is assumed to buy the property in its condition at the date of the contract, regardless of what the buyer actually knows about the property. The responsibility for finding out about the property lies with the buyer so it is the buyer who raises pre-contract enquiries with the seller.

Whether or not the buyer raises enquiries, the seller is under a duty to disclose latent encumbrances and defects in title, unless the contract says something to the contrary.

The seller's duty does not extend to disclosure of physical defects and the seller is not required to disclose anything that is already in the buyer's knowledge. It is generally unwise for the seller to assume that the buyer has actual knowledge.

### **Buyer's remedies for incorrect or incomplete replies**

Subject to the terms of the contract, the buyer has no remedy against the seller for incorrect or incomplete replies unless the buyer can successfully establish that there has been some misrepresentation. A legal misrepresentation requires:

- An untrue statement of fact by the seller.
- Reliance on the statement by the buyer, inducing it to enter into the contract.
- Loss suffered by the buyer as a result of entering into the contract.

### **Saving time: preparing replies in advance**

Although usual for the buyer to raise pre-contract enquiries with the seller, in some circumstances it may be appropriate for the seller to supply replies to anticipated pre-contract enquiries.

To speed up the transaction, the seller and its advisers should, where appropriate, prepare in advance a set of replies to a standard set of pre-contract enquiries, which can be delivered with the draft contract and evidence of title. The buyer can raise additional enquiries later, as necessary.

Recognising this potential use of pre-contract enquiries, the CPSE are drafted to strike a fair balance between buyer and seller, making them a reasonable standard set of enquiries to which a seller can volunteer replies.

## **Seller's knowledge**

### **Qualified replies**

The seller and the seller's solicitor should be aware of the risks of qualifying a reply with words like "not so far as the seller is aware" or "not to our knowledge but no warranty can be given".

These and similar phrases are treated by the courts as an implied representation that the seller and the seller's solicitors have no actual knowledge of a matter **and** that they have made all the investigations that a prudent conveyancer would be expected to have made (*William Sindall PLC v Cambridgeshire County Council [1994] 1 WLR 1016*).

### **Corporate awareness**

There may be difficulties with "corporate awareness" if the seller is a corporate entity, particularly if the seller has owned the property for a number of years. Records may no longer be available and personnel with expert knowledge of the property may have left the company. There may be added difficulties if issues of confidentiality prevent the company consulting its employees over the replies to enquiries.

If there is an issue of corporate awareness, it may be prudent for the seller when replying to pre-contract enquiries to advise the buyer and the buyer's solicitors (either in a covering letter or, preferably, in the replies) of any deficiencies in the seller's records, or if any key personnel are not available to supply the information required.

Failure to address this issue may lead to an incorrect or misleading reply being given, which may entitle the buyer to rescind the contract and/or claim damages for misrepresentation.

## **Authors and endorsement**

The CPSE are drafted and reviewed by a number of law firms ("Participating Firms"), listed at *London Property Support Lawyers Group* ([www.practicallaw.com/9-101-3380](http://www.practicallaw.com/9-101-3380)) and PLC

Property, with help from time to time from individuals at various law firms, particularly in response to public consultations, and other experts.

The CPSE are endorsed by the *British Property Federation* ([www.practicallaw.com/9-106-4398](http://www.practicallaw.com/9-106-4398)) with a view to encouraging use of the CPSE as the industry-standard pre-contract enquiries for commercial property transactions.

## **Format**

Each CPSE document is available for use in three formats:

- **Web.**

In the web format of the current version of each CPSE document, the guidance notes have been integrated with the enquiries or requirements. In historical versions, the guidance notes were contained in separate documents.

The integrated guidance notes can be viewed or printed separately from the enquiries or requirements by using the options in the Actions pane in the top right hand corner of the relevant web page.

- **Word.**

The Word format of the current version of each CPSE document allows a user to insert replies to the enquiries or requirements.

The Word format does not contain integrated guidance notes.

The Word format can be accessed from the Actions pane in the top right hand corner of the screen when viewing the web version of the relevant CPSE document.

- **PDF.**

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4. You may not insert additional enquiries or requirements into any CPSE document. Any additional enquiries or requirements should be raised by one of the following means:
- using another appropriate CPSE document;
  - adding the additional enquiries or requirements to RQ: Request for replies to Commercial Property Standard Enquiries; or
  - using a separate document, which should clearly identify the additional enquiries and requirements as being separate from and additional to those raised in any CPSE document.
5. You can use any CPSE document in connection with the provision of legal advice or legal training, including advice or training given for reward or commercial gain, but otherwise will not sell or publish for reward or commercial gain the whole or part of any CPSE document or any document that incorporates the whole or part of any CPSE document.