<u>Material Information in Property Listings Reform Consultation Response</u>

Question 1 – Question 4

This response is provided by the Devon and Somerset Law Society (DASLS) of Aston Court, Pynes Hill, Exeter, Devon EX2 5AZ, an organisation/professional body. The person submitting the response on behalf of DASLS is Pippa Bruce, Vice Chair of the Property and Private Client Committee for DASLS who is contactable on 01395 220021 or pippa.bruce@everys.co.uk.

Question 5 - What do you think are the most significant issues that prevent estate agents from providing material information in property listings?

- Access to information which may affect a buyer proceeding to complete the purchase being costly and time consuming for sellers to obtain. E.g.:
    - Freehold development management fees and obligations in connection with freehold managed developments - freehold development owners or their managing agents require up-front payment to provide the relevant information, and these are out of date within a few months usually.
    - Leasehold fees and onerous obligations in connection with building and/or communal areas management - landlords and/or their managing agents require up-front payment to provide the relevant information, and these are out of date within a few months usually.
    - Searches to provide information on drainage and water connection, planning and building regulations information (to include financial liabilities attached to the property in respect of the same), and environmental matters - these incur an up-front cost of £300-£400 minimum usually, and are out of date after 6 months.
    - Surveys that would provide detailed information on property condition are expensive £800 + for a full survey) and this is likely a significant deterrent for sellers who may not have available funds to cover the cost.
    - Evidence of compliance with all planning and building regulations requirements to include any financial obligations attached to the property in respect of the same – this would require searches carrying out, a survey report provided and review by suitably qualified persons to verify compliance and possible costs associated with the same if works carried out to the property are not compliant.
    - Evidence of compliance with covenants to verify no costs/outlay required in respect of the same – this would require purchase of all the relevant title documents and review by a suitably qualified person to verify compliance and identify possible costs associated with the same if covenants have been breached.

    - Identifying positive covenants (legal obligations attached to property which require financial expenditure to comply with the same) - this would require purchase of all the relevant title documents and review by a suitably qualified person to provide this information.
    - Covenants which may prevent intended use by the buyer - this would require purchase of all the relevant title documents and review by a suitably qualified person to provide this information.
    - Investigation to ascertain whether a title is defective and requiring remedying to ensure they are compliant with mortgage lender's requirements - this would require purchase of all the relevant title documents and review by a suitably qualified person to provide this information and to identify possible costs associated with the same.
- Agents no doubt want to secure the listing, and a requirement for the seller to provide up front information is likely a deterrent to securing that listing.
- Up-front costs are likely a deterrent for sellers who may have very little available funds to cover the costs, especially if the information will need updating. Properties rarely sell immediately and can sometimes take several months or longer for a sale to proceed.
- Providing up-front information will likely delay properties coming to market by several weeks while the information is collated, so this just shifts much of the transaction timescale to pre-listing, rather than reducing the *whole* timescale for a seller.
- The information provided as up-front information will likely have to be reviewed again by a buyers conveyancer in any event, so on the face of it this would just appear to be duplicating work, unless the legal principal of "buyer beware" is abolished.
- Providing up-front information which requires legal investigation by suitably qualified persons is likely to duplicate the legal costs as a buyers conveyancer would also need to advise the buyer on all matters.
- Professional boundaries and liabilities will need to be carefully considered and set to ensure the correct entities are held liable for any misinformation or inaccuracies which a buyer then relies on.

Question 6 - In addition to providing guidance, what other steps do you think government should take to support estate agents to meet their legal responsibilities with regard to material information?

- Set clear boundaries on the parties who are responsible for providing specific information. Information must be provided by the person(s) suitably qualified to provide that specific information.

- Run a pilot scheme for estate agents to identify what works and what does not, and what steps may assist material information being available at an early stage via estate agents.
- Consumers need to be properly advised on the limitation of accuracy and reliability of the up-front information.
- Provide training that every person involved with providing up-front information must complete and obtain confirmation of their understanding. This will assist in ensuring liability for inaccuracies or misleading information can rest where it should, and that the persons providing the information understand the requirements of them.

Question 7 - What action would you like to see from other organisations or property professionals, and consumers, to support estate agents with their legal responsibilities regarding material information?

- Clear boundaries of responsibility and liability for each part of the up-front information must be set to prevent liability creep.
- All information must be unbiased and factual.
- Once the full extent of the required up-front information is agreed in principle, government should contact each specific group of professionals for consultation as to how best the information can be provided. There will not be a "one size fits all" for provision of all parts of the information, and careful consideration is required before the reform is implemented.
- The cost of the information must be reasonable, and must not be "ransomed" – some managing agents charge excessive fees for management packs, sometimes with the whole information split between managing agents so sellers have to pay for more than one pack.

Question 8 - What information categories do you think should be included in guidance as things that would likely be considered material information?

In principle we agree all the information listed will be material to a buyer, however the information should include warnings if subject to change, or if it cannot be relied upon/not guaranteed (in which case we fail to see why the information should be included as this will just confuse consumers – this should then just be flagged as being material information requiring guidance by suitably qualified/experienced property lawyers or suitably qualified/experienced persons expert in that particular matter).

If the Government require all material information included in an up-front information pack we would suggest the following matters are also material:

- Restrictions on ownership (e.g. only persons allowed to buy who have lived or worked in the local area for a certain period; only persons over a certain age). This is particularly important as there is no point in any person even considering viewing a property which they would not be allowed to buy under the restrictions on ownership.

- Costs associated with any private services such as private drainage which requires contribution for upkeep and maintenance
- Costs associated with any private driveway or parking or accessways which requires contribution for upkeep and maintenance
- Covenants (we note “restrictions” are within the list, but this does not include positive covenants which require financial expenditure to comply with, and which are a legal obligation attached to the property).

We would ask: who is going to pay for the information? Will estate agents be content to spend significant time in gathering all the information with no financial recompense if no sale proceeds? Further, will sellers will want to spend a minimum of £2,000 plus VAT for searches, surveys, freehold estate or leasehold management packs, and legal advice/input to provide the up-front information, especially as much of the information may need to be updated once a sale is agreed, and there is no guarantee this will result in any sale being agreed? The usual search pack required by mortgage lenders cost around £250-£350 plus VAT minimum, leasehold management packs cost anywhere from £100 - £700 minimum, full surveys cost around £800 plus VAT minimum, legal fees for time spent in reviewing, considering and advising on the up-front information is likely to be around £850-£1,000 plus VAT minimum, with the seller then having to then cover the legal fee for the actual conveyancing once a buyer is found which is likely to be around £1,000 plus VAT minimum. We do not see that this would save sellers costs in their sale, but increase them significantly, shifting the responsibility of the searches and survey from a buyer to a seller.

Question 9 - Are there any information categories you want to highlight as data you would not consider material information? If so, why would you not consider it material information?

No reply – all information within list for Q8 do appear to be information which may be material to buyers. We have already provided our concerns on the material information in our response to Q8.

Question 10 - Are there any information categories that you think should be considered material information, but which could be challenging to display in property listings in a way that is easily understood by consumers?

How do you think any information categories of this sort should be treated?

If the Government require all material information provided in an up-front sale pack, then:

- Rights and covenants would need to be explained in easy to understand and simplified language by suitably qualified and regulated property lawyers. Otherwise, the general public are highly unlikely to understand these if they are just “copied and pasted” from the title documentation.
- In leasehold or freehold developments, the rights and covenants affecting properties can be extensive – if all of these are included within the initial up-front information, the more important information may be missed by buyers.
- Building safety defects may need explaining – i.e. if the property has been extended or part converted and no building regulations has been obtained then this should be investigated more thoroughly by a suitably qualified person to ensure safety and to provide a building regulations compliance/regularisation certificate, but if electrics or gas installations have been carried out without building regulations compliance, a gas safety report or electrical installation report checking the installations may adequately evidence safety and avoid the need for an inspection to provide a regularisation certificate (and avoid the higher cost associated with a regularisation certificate over a gas safety report or electrical installation report carried out by a “competent person”).

Question 11 - Do you think it is reasonable for any information that could be considered material to not be included in full detail in property listings, instead with further details being provided at a later stage in the process, for example when a customer views a property?

& Question 12 - If so, what are the differences between information you think should be included in property listings vs that which should be provided at a later stage?

Potential buyers and estate agents may waste time in viewing/showing property which would not be suitable had the buyer had sight of material information such as restrictions on use (e.g. if the property must not be used for holiday or short term lettings, and the buyer is looking for a suitable holiday let property; if the buyer is only looking at the property if they can extend, but no extensions or additions are allowed; if only persons over a certain age or those who have lived or worked in the local area for a certain period are allowed to own the property etc.).

The information which would not allow certain buyers to purchase should definitely be provided up-front as part of the publicly available information provided by estate agents.

Other information may be provided to potential buyers once they have requested a viewing – we would suggest before they view a property they are sent the other material information to review before they actually view the property, as this would prevent time being wasted and disappointment of sellers, buyers and estate agents if the material information is not agreeable to the buyer.

The more in-depth explanation and advice on the legal matters can then be provided once a buyer has accepted the basic material information and made an acceptable offer.

We highly doubt buyers will review all material information before viewing or offering on a property unless they are ‘drip-fed’ the information; it would be overwhelming. From experience, most buyers or sellers do not generally tend to review all information in detail if there is a vast amount provided all in one go.

Question 13 - What should be the requirement on estate agents regarding material information that could require technical expertise to obtain or interpret?

& Question 14 - What should guidance state about estate agents working with surveyors and conveyancers to obtain or interpret technical information?

There should be a clear warning that the information must be obtained or reviewed by suitably qualified persons for their advice. No information should be provided which is not guaranteed, or without liability accepted by the seller or the party providing the information as this cannot then be relied upon by a buyer.

Question 15 - What should guidance say about estate agents working with other property professionals such as managing agents, mortgage advisers, lenders etcetera?

If any financial or other incentives are made by the estate agent to those providers, this should be made clear within the up-front sale pack as this may be considered material information to a buyer. All information provided by the estate agent must be entirely unbiased and factual.

Question 16 - How could guidance on material information ensure data gathered by estate agents, and supplied by sellers, is as accurate as possible?

& Question 17 - What else could government do to ensure information gathered by estate agents is as reliable as possible?

& Question 18 - What could other organisations and sellers do to ensure information gathered by estate agents is as reliable as possible?

By making it clear to all parties who provide information that they are expected to provide honest answers, that they will be considered liable for any incorrect or inaccurate information, and that they must ensure the information is updated and amended if they become aware of any change to that information.

For all information provided by public registers/authorities, the estate agents could include a link to their website which holds the up to date information so that this is automatically the most current information held by those parties. Estate agents could then include on the material information pack that the buyer is expected to review the links regularly prior to completion to check for any changes as these are subject to change.

Question 19 - How can we most effectively support consumers to understand their rights and responsibilities regarding material information?

Consumers must be made aware that it is their own responsibility to review all information provided and raise any queries with suitably qualified persons, and for a seller that they are expected to give honest answers, that they will be considered liable for any inaccuracies or incorrect information provided, and that they must ensure the information is updated and amended if they become aware of any change to that information. The language used must be easy to understand and not include technical or legal jargon.

Question 20 - Which of these audiences do you think should be provided with guidance on material information alongside estate agents – buyers, sellers, conveyancers, surveyors, etcetera.

All the above to include lenders as they will no doubt expect to rely on all material information provided at the outset.

Question 21 - What information regarding enforcement do you think should be contained in the material information guidance?

For example, this may include information about the different organisations estate agents are accountable to, including details on their specific roles.

It should be made clear in the guidance that sellers will be held accountable for the information they provide, and will be liable for any inaccurate or misleading information provided. The seriousness of their role and their personal responsibility for this should also be set out clearly.

There should be contact details included in the material information guidance for redress in respect of inaccurate or misleading information.

Following instruction by the seller in the material information pack, the other parties involved in gathering and providing the material information should have separate guidance provided to them as to their accountability/liability – this should form part of their formal instructions for dealing with/providing information for the material information pack.

Question 22 - What steps beyond those highlighted in your response to question 6 do you think government should take to support the implementation of material information guidance?

& Question 23 - What steps beyond those highlighted in question 7 do you think other organisations should take to support the implementation of material information guidance?

& Question 24 - Are there changes industry or individual businesses will have to make to support the effective implementation of guidance on material information which you wish to highlight?

- Government: commission independent pilots by totally unbiased parties.
- Professional bodies: develop competence frameworks and consumer education tools.
- Industry: adapt workflows without imposing excessive costs.

Question 25 - Do you think that material information guidance should be rolled out gradually during an implementation period?

Yes, if this reform proceeds, it should be gradually implemented and assessed to ensure it actually improves the house selling/buying process for the general public, and the parts that do not improve the process should be removed.

Question 26

Is there anything else, beyond the issues highlighted in the questions above, that you think needs to be included in guidance to support estate agents with their responsibilities regarding material information?

We have already provided all our input in previous questions.