

Stakeholder engagement: code for signing and exchanging property contracts

Background

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

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

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

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

To help address uncertainty in these areas, as well as to replace our formulae for exchange, which need modernisation, we have drafted a new code for signing and exchanging property contracts and are circulating this to key stakeholders in the process for input and feedback.

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

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

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

Just like the formulae for exchange and the code for completion, our aim is that it will be suitable for use in both commercial and residential property transactions.

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

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

Question	Answer
Name of organisation:	City of London Law Society Land Law Committee
Type of body:	<p>Representative body -</p> <p>The City of London Law Society represents approximately 17,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.</p> <p>The City of London Law Society responds to a variety of consultations on issues of importance to its members through its 21 specialist committees. This response to the Consultation has been prepared by the Land Law Committee, described as the Committee in this response.</p>
Location:	City of London
Number of members:	See above
Do you think the draft code will be useful in residential transactions, compared with the formulae for exchanging contracts by telephone?	<p>Many thanks to the Law Society for consulting on the new Code and for all the work that has clearly gone into producing this substantial document. It is a very impressive document covering a large number of issues, but in its scope and detail lie the Committee's primary concerns.</p> <p>The draft has wider scope than the existing Law Society formulae for exchange, also dealing with the use of electronic documents, holding the deposit to order and electronic exchange. The draft includes several protocols for dealing with different aspects of the exchange process,</p>

two of which replace the existing formulae for exchange.

The Committee's view is that, compared to the current Law Society formulae for exchange, the new Code is too long and complex.

Since there will be different requirements for residential and commercial property transactions (for example there was quite a lot in the Code on chain transactions which are mainly only relevant for residential), there should be separate Codes for residential and commercial.

As the Code currently stands, there are a large number of matters to agree (in three protocols) before the contract can be signed and this will be particularly administratively burdensome on the residential side but also for commercial transactions.

The Committee have concerns about the undertakings being given by individuals when in practice they are normally given by the relevant law firm.

The Code refers to the individuals being authorised by the seller or buyer that they represent, to exchange contracts or to release the contract for exchange. The Committee consider that normally the law firm and not the individual would be authorised, otherwise there would be a need for further authority if another representative of the firm exchanged the contract etc.

There are many references in the Code to the solicitor being taken to give an undertaking or treated as undertaking and the Committee are concerned that, in relation to this wide set of undertakings, clients may change their minds.

The Committee are quite happy with the existing formulae for exchange, which need minor changes for electronic signing and for the concern about money being held by the firm and being lost in the event of bank insolvency.

	<p>The Committee would like the Law Society to re-consider its approach to the Code and look for something more straightforward.</p> <p>The Committee would be very happy to work with the Law Society in relation to creating an updated process for exchange.</p>
Do you think the draft code will be useful in commercial transactions, compared with the formulae for exchanging contracts by telephone?	Please see the above comments.
If you are a trade, representative organisation or regulator, do you already advise members on exchanging using electronic methods?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, what advice or warnings do you provide?	If yes, specify:
Are there any parts of the current exchange/electronic signature/'held to order' deposit process that you or your members have encountered difficulties with, or confusion over, that are not covered by the draft code?	<input type="checkbox"/> Exchange formulae - uncertainty over which formulae to use <input type="checkbox"/> Not receiving contract executed in the way expected <input type="checkbox"/> Not receiving the expected amount of deposit <input checked="" type="checkbox"/> Other (specify): See above
How do you think the draft code would be best implemented across all transactions in a chain?	This is more an issue for residential transactions.
Are you or your members aware of lay clients having access to electronic signing facilities?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Don't know

If yes, what percentage of lay clients approximately?

Most (the Committee members' clients will be mainly commercial organisations).

Don't know

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

They are often provided - for example Land Registry execution requirements mean a conveyancer has to control the e-signing process.

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

Journals; other professional committees; social media; mailings from the Law Society.

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

Yes

No

If yes, specify: One year, but it may be shorter if the changes are minor.