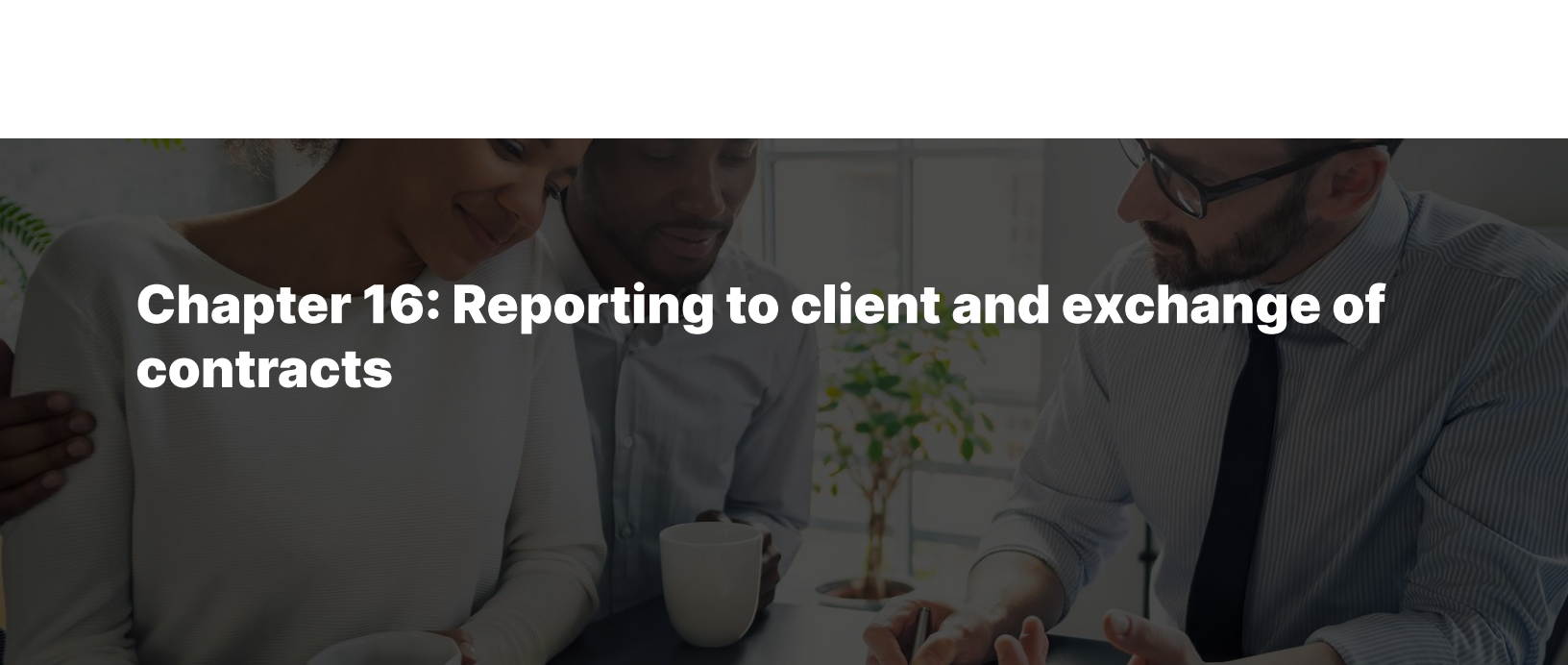


A photograph of three business professionals (two men and one woman) sitting around a table, engaged in a meeting. The woman on the left is smiling and looking towards the man in the middle. The man in the middle is looking down at a cup on the table. The man on the right is wearing glasses and a tie, looking towards the other two. The background is slightly blurred, showing an office environment with a plant.

Chapter 16: Reporting to client and exchange of contracts



Aims of this Chapter



16.1 The Protocol



16.2 Report to client on purchase



16.3 Pre-exchange file review – sale



16.4 Pre-exchange file review – purchase



16.5 Exchange of contracts



16.6 Steps to take immediately following exchange of contracts



Knowledge check



16.7 Chapter summary

Aims of this Chapter

Once the buyer's conveyancer has carried out pre-contract searches and enquiries, and has investigated the seller's title, the transaction can proceed towards exchange. There are some important matters that must be checked before exchange, by both buyer's and seller's conveyancers. This chapter will explain these matters, and then go on to look at the ways in which contracts are exchanged. It will conclude with an outline of some issues that need to be addressed on, and immediately following, exchange.

This chapter will cover:

- reporting to the client
- preparation for exchange
- how to exchange contracts, and
- steps to take immediately following exchange of contracts.



Figure 16

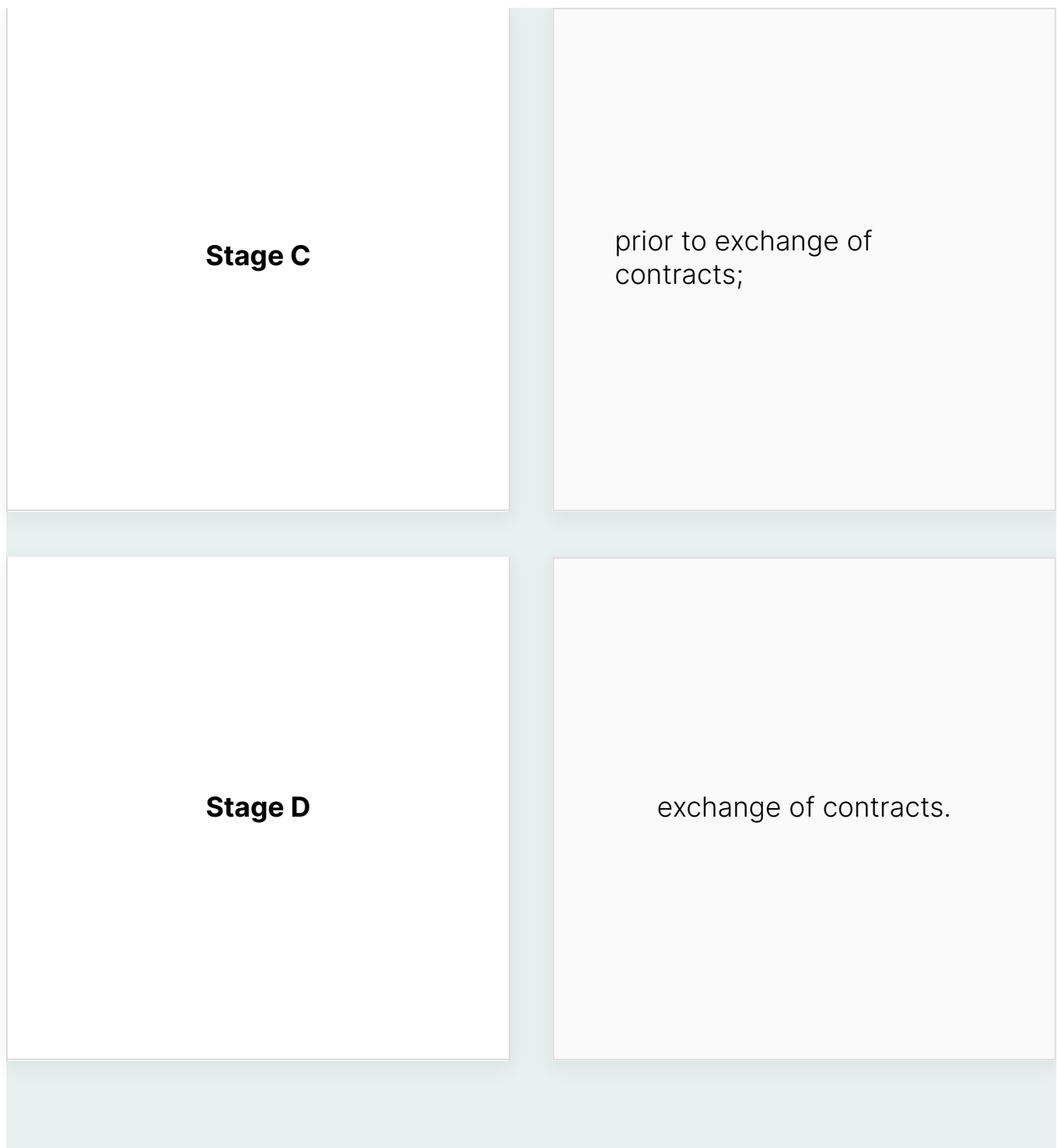
CONTINUE

16.1 The Protocol

The Law Society Conveyancing Protocol (the Protocol) contains provisions relating to this part of the transaction in:

Stage B

pre-exchange – submitting a contract;



These provisions reflect good modern practice.

Some examples of matters which the Protocol deals with here are:

- sharing information with others (e.g. other parties, lenders and estate agents);
- making all necessary searches before exchange;
- raising any necessary additional pre-contract enquiries;
- reporting to the client about the title and other matters;
- considering mortgage instructions and any conditions imposed by the lender;
- approving the contract, and agreeing any transfer supplied before exchange;
- advising the buyer about survey, insurance and deposit arrangements;
- confirming the completion date;
- asking the buyer to sign the contract; and
- checking any mortgage discharge arrangements.

It is important for practitioners adopting the Protocol to consult the Protocol documentation itself to see the full details and to ensure compliance, as this course book gives only general information and sets the Protocol in context.

One specific point to mention regarding the Protocol is that it contains provisions about dealing with the draft transfer and the Completion Information and Undertakings Form (TA13) at an early stage, prior to exchange of contracts. These matters are traditionally dealt with after exchange and will be covered in this course book as part of **Chapter 17** on work done after exchange. However, the Protocol also recognises these matters as steps to be dealt with after exchange, so the timing may vary between firms. The introduction to the Protocol recognises that transactions may not always proceed in a fixed order and that

many of the processes can be undertaken simultaneously or in a changed order, so firms do vary with some “front loading” more work than others.



CONTINUE

16.2 Report to client on purchase

16.2.1 Information from pre-contract searches and enquiries

Once the conveyancer has checked the register entries and the title plan, and obtained answers to any title queries, they can add this information to that obtained from the pre-contract searches and enquiries. They will then have a fuller picture of the property.

The type of information obtained includes information about:

- 1 The status of the roads (highways) near the property (e.g. whether they are maintained at public expense or whether they are private roads). If a road is private, the buyer's conveyancer should have checked that there are appropriate access rights for the buyer client (rights of way over the road) and these rights should be unrestricted (e.g. at any time of day and with or without vehicles). The buyer's conveyancer should also have checked whether there is any obligation to contribute to the cost of maintaining the road and whether the local authority has any future plans to adopt and make up the road.
 - 2 The boundaries of the property.
 - 3 The services which benefit the property (e.g. gas, electricity and drainage) and whether these are public (e.g. mains drainage) or private (e.g. septic tank).
-

- 4 Third-party interests (e.g. rights for neighbours to enter on to the property to maintain fences, or rights of others for their pipes and wires to cross the property).
- 5 Disputes (e.g. neighbour disputes, or disputes with the local authority about planning issues).
- 6 Regulatory matters (e.g. whether the local authority is taking any action for breach of planning permission).
- 7 Physical information (e.g. whether the property has broadband, and if so, the identity of the service supplier).
- 8 Overriding interests (e.g. whether there are any occupiers who have rights in the property).

CONTINUE

16.2.2 Title reports

Once the buyer's conveyancer has all the search results, has investigated the title, and has satisfactory answers to any queries, they will give the buyer client a report about the title and the property. The buyer can then check that they are happy to proceed to exchange, and that there is nothing to cause them to withdraw before exchange of contracts. The conveyancer should give a full picture of the property and the title, and point out any problems, indicating their significance and severity. Most conveyancers send the buyer client a written report, attaching any relevant documents (e.g. a copy of the title plan or the fittings and contents form). Most firms have their own standard format for such a title report, adapting it to the individual transaction.

Matters commonly covered are:

- a summary of the conveyancer's overall view (e.g. that there are no major problems);
- a summary of the property (e.g. current ownership and a copy of the plan);
- a summary of the title and matters burdening and benefiting it (e.g. easements and covenants), highlighting any problems;
- a summary of the source of funding for the purchase (e.g. details of the buyer's new mortgage);
- a summary of the main points arising from the pre-contract searches and enquiries, highlighting any problems;
- information about the draft contract (the report will often be sent with the contract for signature by the client); and
- information about the conveyancing transaction generally (e.g. explaining the work still to be carried out).

These are examples only, and different firms have different methods of reporting to their clients.

Once all of the issues are resolved, the conveyancers are in a position to advise their clients that they can liaise with other parties in the chain to agree a completion date with a view to proceeding to exchange of contracts. At this stage, both conveyancers should review their file in readiness for exchange. Let's look at this in more detail.



[CONTINUE](#)

16.3 Pre-exchange file review – sale

16.3.1 Matters to be checked by the seller's conveyancer

- 1 The seller's conveyancer will reply to any outstanding queries.
- 2 They will then ask the client to sign their part of the contract (which has been approved by the buyer's conveyancer).
- 3 They will check that any linked (dependent) transaction is also ready (e.g. the seller's linked purchase).
- 4 They will ensure that they have redemption figure/s for all charges which the conveyancer will be undertaking to redeem on completion.
- 5 The conveyancer will advise their seller client to keep the buildings insurance on the property on risk until completion.
- 6 They will then arrange the method and timing of the exchange with the buyer's conveyancer.



CONTINUE

16.4 Pre-exchange file review – purchase

16.4.1 Matters to check before exchange

It is essential that the conveyancers ensure everything is in order before exchange since exchange will produce a binding contract.

The following points must be checked.

- 1 The buyer's conveyancer **checks the answers** to the pre-contract enquiries, checks all pre-contract information supplied (including the provision of an Energy Performance Certificate prior to exchange) and resolves any queries.
 - 2 They **check the results** of all searches and resolve any queries.
 - 3 They **investigate the title** and resolve any queries.
 - 4 They **approve the contract** (with any amendments, where applicable), returning one copy to the seller's conveyancer so that the seller can sign it prior to exchange (it was supplied in duplicate).
 - 5 They ask the buyer to **sign the contract** in readiness for exchange (they may send the contract to the client with the title report).
 - 6 They discuss a suitable **completion date** with the buyer and attempt to agree this with the seller's conveyancer (it is usual to exchange with an agreed completion date).
-

7

They check that the buyer is satisfied with the result of the **survey** (as previously explained, if the buyer is applying for a mortgage, a valuation – which is not as extensive as a survey – will usually be carried out by the lender's surveyor).

8

They may ask the buyer to **physically inspect** the property and report any obvious problems (e.g. unclear boundaries, other adults living in the property).

9

They check that the buyer will have **sufficient funds** to pay for the property (and related costs) on completion. If the buyer is obtaining a new mortgage, the conveyancer must check that a firm and satisfactory offer will be made before exchange. Prior to exchange, the conveyancer must ensure that they have received formal mortgage instructions from the lender and that the terms accord with those of the client's offer.

10

They check that any **linked transaction** is also ready, for example, the buyer's linked sale.

11

They discuss the matter of **property insurance** with the buyer. This is important in case the property is damaged or destroyed between exchange and completion (e.g. by fire or burst pipes). The fifth edition of the SCS provide that the property is at the risk of the buyer from the date of the contract. This means that the buyer must insure the property from exchange onwards. This was usually done previously in any event, as mortgage lenders required the property to be insured by the buyer in their capacity as borrower.

SC 5.1.2 states that the seller is under no obligation to the buyer to insure the property unless the contract provides otherwise, or the property is let on terms under which the seller (whether as landlord or tenant) is obliged to insure.

Even though the seller may not be obliged to insure, this does not mean that they are not entitled to do so. Many sellers will continue to insure, and will indeed be required to do so by their own mortgage lenders.

This means that there may well be double insurance (i.e. two policies in effect at the same time), each covering the same risks.

To cater for this possibility, SC 5 states that if the property is damaged, and a payment under a policy taken out by the buyer is reduced because of insurance held by the seller, the purchase price is to be reduced (abated) by the amount of the reduction.

Where the seller is obliged to insure (e.g. as a tenant under a lease), SC 5 requires the seller to maintain the policy and, if the property is damaged, to pay the buyer the amount of the policy proceeds which the seller has received (so far as not used in repairing the property), or to assign the insurance claim to the buyer.

12

The buyer's conveyancer discusses **deposit arrangements** and asks for the funds to be provided in time for cleared funds to be available on exchange. The usual deposit is 10 per cent of the purchase price (this is consistent with SC 2), but the contract may vary this. Sometimes, it is possible (e.g. where the buyer is obtaining a mortgage to cover most of the price) to negotiate a reduced deposit.

Except in the case of a sale by auction, SC 2.2.4 requires payment of the deposit either:

(a) by electronic means from the buyer's conveyancer's account maintained at a clearing bank to an account in the name of the seller's conveyancer maintained at a clearing bank (or where SC 2.2.5 applies, to a conveyancer higher up the chain); or

(b) by cheque drawn on the buyer's conveyancer's client account to the seller's conveyancer (or where SC 2.2.5 applies, to a conveyancer higher up the chain).

This means that the deposit can be paid electronically (through a bank funds transfer) or by cheque, but both methods are linked to conveyancers' bank accounts. This is to try to minimise opportunities for fraud and money laundering.



CONTINUE

16.5 Exchange of contracts

16.5.1 The methods for exchange of contracts

There are various ways to exchange contracts. The net effect of all methods is that the seller's conveyancer will receive and hold a copy of the contract signed by the buyer and the buyer's conveyancer will receive and hold a copy of the contract signed by the seller; remember that there is no binding contract until exchange has taken place.

It is essential that the client has given their irrevocable **authority** to their conveyancer to exchange (i.e. has confirmed instructions to proceed).

1. Physical (personal) exchange —

The conveyancers for seller and buyer may meet and exchange the part contracts in person. This method is very rare – it is not practicable for chain transactions and is only possible where the two firms of conveyancers are located close to each other.



Postal exchange —

Contracts may be exchanged through the post. Normally, the buyer's conveyancer posts the buyer's part contract and sends the deposit to the seller's conveyancer. The seller's conveyancer then posts their client's part contract to the buyer's conveyancer. Exchange takes effect when the second part contract (usually the seller's part) is placed in the post. This method is not practicable for chain transactions. Postal exchange may be appropriate where there is no chain and the matter is not urgent.



Telephonic exchange —

Two conveyancers agree over the telephone that contracts should be treated as exchanged even though the documents have not been physically exchanged (i.e. the binding moment is the moment of agreement on the telephone). Exchange by telephone is very common for all types of transaction and is the only truly satisfactory method for chain transactions. The Law Society has developed three alternative sets of rules (formulas) to be followed when exchanging by telephone. Conveyancers adopting the Protocol are obliged to use one of the formulae when **exchanging** by telephone.



In November 2023, the Law Society issued a new 'Code for signing and exchanging property contracts 2024.' They had a short consultation on the Code, but as yet, have not introduced the Code. This will be a significant change to the practice of exchange of contracts if it is introduced and you should keep up to date with progress.

For more information go to: [Code for signing and exchanging property contracts 2024](#) | [The Law Society](#).

16.5.2 Linked transactions – simultaneous exchange

Not all transactions involve the sale and purchase of one property. There may be linked sales and purchases: the seller of **one** property may be buying another one and the buyer of another property may need to sell their own property first.

EXAMPLE

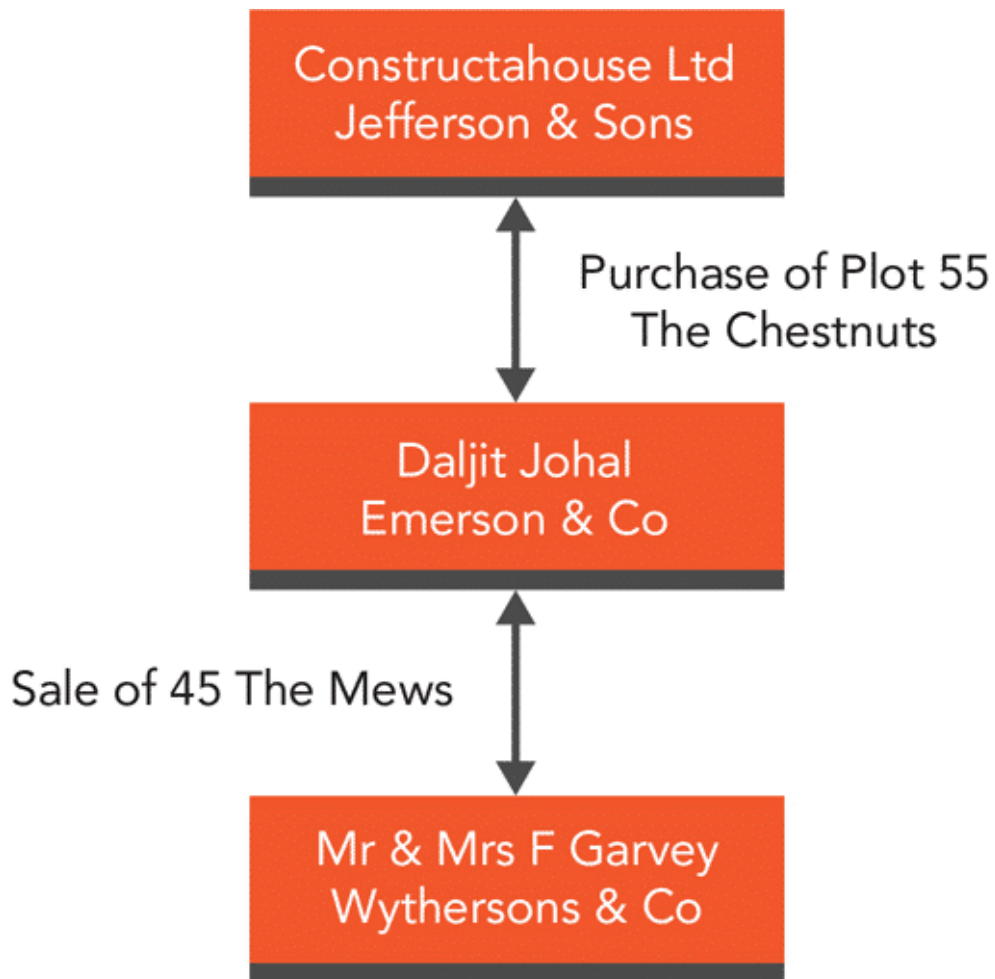
Daljit Johal consults her law firm Emerson & Co. She is selling 45 The Mews. The buyers are Mr and Mrs Fred Garvey. Their law firm is Wythersons & Co. Daljit is buying Plot 55 The Chestnuts from Constructahouse Limited. Its law firm is Jefferson & Sons. There are three law firms and three clients involved in this linked transaction (see figure below).

Some transactions involve much longer chains of sellers and buyers.

The respective conveyancers, when taking initial instructions and making pre-contract enquiries, will ascertain whether there are linked (dependent) transactions and, if so, the stage reached with these.

It is especially important to **link the exchange of contracts** on the client's sale and purchase (any instructions to the contrary should be confirmed to the conveyancer in writing, as failing to synchronise exchange in the absence of such instructions could amount to professional negligence).

If Daljit exchanges on her sale and then her purchase falls through, she will be left with no home. If she exchanges on her purchase and then her sale falls through, she will be left with two houses. Neither option is satisfactory.



NB Daljit is selling **and** buying. This is a linked transaction.

CONTINUE

16.5.3 The formulae for exchange by telephone

The aim must be (unless instructed otherwise) to exchange simultaneously on both sale and purchase. Postal and personal exchange methods are unsatisfactory, as there will inevitably be a gap between exchanges using such methods. It is usual to **exchange by telephone**.

This method produces as near to a contemporaneous exchange as is possible. In practice, the respective conveyancers will telephone each other prior to the call effecting the exchange, to check that all is in order and that the other conveyancer is ready to proceed.

The Law Society has produced three formulae for exchange by telephone, fax or telex, which may be used (and are widely used in practice) by conveyancers or licensed conveyancers.

If the Protocol is adopted, any exchange by telephone must be made in accordance with one of the formulae.

Formula A —

Formula A is used where one conveyancer holds both signed parts of the contract. This will be the case where one conveyancer (usually the buyer's conveyancer) has sent their client's signed contract to the other conveyancer (usually the seller's conveyancer) in advance of exchange to hold in readiness for exchange. Formula A is not used as often as Formula B.

When using Formula A, one conveyancer will telephone the other to exchange. They will first agree the completion date. The conveyancer holding the contracts inserts the completion date into each part contract and confirms that the contents of both parts are identical. The conveyancers then agree that exchange shall take place from that moment (this is the binding moment) and the conveyancer holding the contracts undertakes to send their client's signed part that day to the other conveyancer. The buyer undertakes to send any deposit due.

The conveyancers should each prepare a memorandum to record:

- the date and time of exchange;
- the use of Formula A and the exact wording of any variations adopted;
- the completion date;
- the deposit to be paid; and

- the identities of the parties to the conversation.

Formula B —

Formula B (more commonly used in practice) is appropriate where each conveyancer holds their own client's part contract. Again, one conveyancer telephones the other, the completion date is agreed, the parties confirm that the part contracts are identical, the completion date is inserted and the contracts are agreed to be exchanged (the binding moment). Each conveyancer undertakes to send out their client's signed part contract that day together with, in the buyer's case, the deposit. A memorandum should again be prepared by each conveyancer to record the exchange. This will be as given earlier, except that it will verify the use of Formula B.

Formula C —

Formula C is designed for use in linked transactions (i.e. where there is a chain). Essentially, each conveyancer holds their own client's signed parts of the contract and agrees to release the contracts for exchange for a specific period. This allows all parties to be ready to exchange so that, as soon as the party at the end of the chain is ready, all contracts can be exchanged almost simultaneously.

The conveyancer must obtain the client's specific authority before exchanging contracts on a Formula C basis, mainly because of the complexity and associated risk element. Formula C takes effect in two stages. Stage 1 takes place when the two conveyancers confirm that they hold their clients' signed contracts. The buyer's conveyancer undertakes to exchange if, by a set time that day (the time must be agreed there and then), the seller's conveyancer so requests. Stage 2 occurs when the seller's conveyancer requests exchange by the agreed time and the contract is binding. The conveyancers also give undertakings in relation to sending out their part contracts and, in the buyer's case, regarding the deposit.

It is important to appreciate that these Law Society formulas involve professional undertakings and, if these undertakings are breached, the disciplinary action may be taken, hence the importance of compliance with the terms of the formulae.

EXAMPLE

James is selling his house to Georgina. He is buying a new house from Kate. Kate is going travelling and is not buying another property so there is no forward (onward) chain.

Using Formula C, James's conveyancer would agree with Georgina's conveyancers that they would exchange contracts on the sale if he so requested by a fixed time that day (e.g. 4.00 pm).

James's conveyancer could then exchange contracts with Kate's conveyancer using Formula B as there is no forward (onward) chain. An immediate exchange on James's purchase is therefore possible (assuming Kate's conveyancer has already indicated readiness to exchange).

James's conveyancer can then contact Georgina's conveyancers by the stated time, and confirm exchange on the sale.

The practice of telephone exchange was approved by the Court of Appeal in ***Domb and Another v Isoz [1980]***, although it did make some reservations, suggesting it should only be done by a partner or sole practitioner. The standard contracts, however, envisage that any conveyancer can effect one. The main danger is the difficulty of having to prove what each party has agreed if one party decides not to proceed, but the formulas and the use of detailed attendance notes should meet the reservations in ***Domb***.



Activity

Follow the link below and read the Law Society's comments on the formulae for exchange of contracts by telephone.

Formulae for exchanging contracts by telephone

The formulae for exchanging contracts by telephone are a set of steps to follow when exchanging contracts.

READ MORE LAWSOCIETY



The Code for signing and exchanging property contracts 2024 referred to above will replace the formulae for exchange of contracts.

CONTINUE

16.5.4 Issues to be addressed on exchange

The following issues should be addressed:

- 1 Buildings insurance.
- 2 Client's authority to proceed.
- 3 Utilisation of deposit.
- 4 Method of deposit payment.
- 5 Agreed completion date.

6

Method and timing of exchange.

7

Record keeping (e.g. the memorandum of exchange. When using Formula C there must be two memoranda to reflect the fact that the formula is in two stages). It is also important to ensure that attendance notes are made and kept on file. These are in addition to the memorandum of exchange. Where there is a linked sale and purchase, it may be necessary to make multiple attendance notes. For instance, you would make the following attendance notes when using Formula C:

- (a) when the sale contract is released (e.g. until 4.00 pm that day);
- (b) when the purchase contract is released;
- (c) to confirm exchange on the purchase; and
- (d) to confirm exchange on the sale.

Each note should provide an accurate record of times and conversations.

The standard contract form provides a space on the front page for recording the method of exchange and the identity of the conveyancers.

8

Correspondence and communications.

There are various communications that should be made following exchange.

The conveyancers may have to send out part contracts to other parties when there has been an exchange by telephone. The buyer's conveyancer may need to send a deposit cheque if the deposit money has not been transmitted by direct credit transfer.

- (a) The conveyancers must keep their clients fully advised with regard to exchange. The clients should be notified of exchange (and confirmation of the completion date) as soon as exchange has taken place.

- (b) The conveyancers will also need to tell other parties that exchange has taken place (e.g. estate agents or lenders).
- (c) The conveyancers must stress the effect of exchange to their clients. The main effect is that the contract is now binding. Neither party can normally withdraw after exchange without incurring liability for breach of contract. If either side were to default, the innocent party could take action against them. For example, if the seller refused to complete the transaction, the buyer could apply to court to force the sale by seeking an order of specific performance or the buyer could seek damages. Neither can the parties vary the contract terms after exchange. A further effect is that the completion date becomes fixed and other contractual terms, such as those relating to fixtures and fittings, become fixed.

CONTINUE

16.6 Steps to take immediately following exchange of contracts

There are implied undertakings contained in the formulae for exchange which both conveyancers must comply with immediately upon exchange. There are also other practical steps which the conveyancers will take as briefly outlined later. These immediate steps are not seen as part of the preparation for completion.

16.6.1 Acting for the seller

In accordance with the implied undertaking, the seller's conveyancer must send to the buyer's conveyancer their client's signed part of the contract (with the date of exchange and completion date written in pursuant to the telephone conversation when exchange took place). This must be done on the day of exchange. The conveyancers can agree to vary the undertaking and send the contract after the day of exchange. Typically, this would be done if exchange takes place later in the day and it is not possible to despatch the contract that day.

The seller's conveyancer will usually telephone or email their client to inform them of exchange and confirm the agreed completion date. They may remind their seller client to keep the buildings insurance on risk until completion and, if relevant, the seller can now confirm the completion date with a removal company.

The seller's conveyancer might also inform the estate agent of exchange of contracts.

16.6.2 Acting for the buyer

In accordance with the implied undertaking, the buyer's conveyancer must send to the seller's conveyancer their client's signed part of the contract (with the date of exchange and completion date written in pursuant to the telephone conversation when exchange took place) plus the agreed 10 per cent deposit. This used to be sent by cheque but increasingly firms are sending it via a bank transfer of funds. This must be done on the day of exchange. Again, it is possible to vary the undertaking and send the contract and deposit after the day of exchange.



Link to Practice

The conveyancers may have agreed on exchange that the deposit is "**held to order**". This might be done if there is a relatively short period of time between exchange and completion and perhaps insufficient time for the deposit to be sent out. Buyer's conveyancer confirms to the seller's conveyancer that they are holding the agreed deposit to the order of the seller's conveyancer. This means that the buyer's conveyancer is giving an undertaking to the seller's conveyancer that they will send it to the seller's conveyancer if demanded. In effect, the buyer's conveyancer is holding onto the deposit until completion and will send the full 100 per cent of the purchase price to the seller's conveyancer on completion.

The buyer's conveyancer will usually telephone or email their client to inform them of exchange and confirm the agreed completion date. They may remind their buyer client to put the buildings insurance on risk immediately, although this advice will have been given before the day of exchange. If necessary, the buyer can confirm the completion date with a removal company.

16.6.2.1 Registration of an estate contract

Following exchange, the buyer is not yet the legal owner of the property but is now **the owner in equity**.

The buyer has an equitable interest called an “**estate contract**” from the point of exchange. This estate contract is regarded as a contract to create a legal estate at a future date and the estate contract can be protected by way of a notice on the register of title. It is not standard practice to register the contract however, but a buyer’s conveyancer might decide to register it by way of a notice in certain situations (e.g. where a dispute has arisen between the parties, where the buyer becomes suspicious that the seller might be trying to sell the property to another person or where there is to be a long period of time between exchange and completion for some reason). An example of the latter would be where the seller had died after exchange but before completion and there was going to be a delay as a result.



CONTINUE

Knowledge check

This knowledge check is a self-assessment to see how well you understood the content of this chapter and it does not count towards your course mark.

There are 2 questions in this knowledge check.

1. What is the effect of Standard Condition 5.1.2 in relation to insurance of the property between exchange and completion?

- ☐ a. The seller is obliged to insure the property unless the buyer chooses to insure it
- ☐ b. The seller is not permitted to insure the property if the buyer insures it
- ☐ c. The buyer is obliged to insure the property
- ☐ d. The seller is not obliged to insure the property, unless the contract provides otherwise, or the property is let and the seller is obliged to insure under the terms of a lease

SUBMIT



Complete the content above before moving on.

2. Which Law Society formula for exchange of contracts is used when each party's conveyancers hold their own client's part contract?



a. Formula A



b. Formula B



c. Formula C

SUBMIT



Complete the content above before moving on.

16.7 Chapter summary

(1) There are a number of important matters which must be checked prior to exchange of contracts (mortgage offer, finance, deposit arrangements, survey, insurance, etc.).

(2) The buyer's conveyancer will report to their client on the purchase documentation prior to exchanging contracts.

(3) There are various ways of exchanging contracts (in person, by post or by telephone). A telephonic exchange is the most common method.

(4) The Law Society has developed three formulae for exchanging contracts by telephone (A, B and C). Variations to these formulae can be agreed.

(5) It is necessary to obtain the client's authority to exchange contracts.

(6) Once exchange has been effected, a binding contract exists.

(7) The conveyancer must make a file record of the exchange and inform all relevant parties.

(8) If there will be more than a couple of weeks between exchange and completion, the buyer's conveyancer should consider registering an estate contract.

You have completed Chapter 16.

EXIT