

## The importance of updating replies to CPSEs

### The issue

When purchasing a property, before contracts are exchanged between parties, it is common for sellers to provide buyers with replies to standard enquiries called Commercial Property Standard Enquiries (or CPSEs). CPSEs are relied upon by the buyer in making a decision whether to buy the property, and is a fundamental part of the conveyancing process.

A recent Court of Appeal case has highlighted a key statement in the CPSE: "The seller confirms that pending exchange of contracts or, where there is no prior contract, pending completion of the Transaction, it will notify the buyer on becoming aware of anything which may cause any reply that it has given to these or any supplemental enquiries to be incorrect."

### The facts

Two separate buyers were interested in purchasing a property (which had development potential).

The first buyer entered into negotiations with the seller to buy the property with the intention to redevelop it into a block of residential flats.

The second buyer, a local doctor was also interested in purchasing the property and developing it into a medical centre, and applied for planning permission to do this.

The first buyer received replies to CPSEs from the seller. Two days after this the seller was notified of the doctor's planning application.

The seller should then have updated the first buyer on the existence of the planning application (in accordance with the requirement contained within the CPSEs) but he didn't, and contracts were exchanged between the parties.

Following exchange, the first buyer became aware of the planning application and was immediately concerned that if the local community wanted a medical centre, and if planning permission was obtained for that, then it was improbable that the he would be granted permission to use the property for residential flats. He sought to rescind the contract, but the seller served a notice to complete. The first buyer then

commenced proceedings to rescind the contract and to have the deposit returned. The seller counterclaimed and sought specific performance of the contract or damages for breach of contract.

The County Court judge ordered the rescission of the contract and the return of the deposit. Amongst other reasons, the judge held that the buyer had relied on the accuracy of the replies to the CPSEs and if he had known about the planning permission he would not have exchanged contracts. The decision was appealed by the seller, which was dismissed by the Court of Appeal.

### Conclusion

Although replies to CPSEs are often given at the start of a transaction, this case highlights the importance of the continuing obligation (which lasts until exchange of contracts or if there is no contract until completion) on the seller to notify the buyer about any information which may mean that the replies become incorrect.

If you have completed replies to CPSEs and you then come across information which renders these inaccurate, you should seek legal advice.

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