

## Commentary

The overall topic of completion has been dealt with in the question in several distinct ways. First you have to consider a non-protocol, personal completion; the old style personal way of completing. Secondly, there is a question that should ring alarm bells in that it bears comparison to the Hong Kong Privy Council case that, in part, brought about the Law Society's Completion Code. In effect, you will score highly if you can identify the relevance and significance of the case examined in the following answer. You will have come across the case if you have actually read the Code for Completion as it is specifically referred to in note 7 to the Code. This is followed by an examination of the protocol procedure and, in particular, the Code for Completion; this is the modern approach.

## Suggested answer

**a)** I have instructions on an unregistered sale of part of a freehold property and I will be completing the transaction personally. In readiness for completion I have prepared a list of documents to be handed over together with a list of items to be received. The documents to be handed over are: -

1. The transfer deed duly executed by the seller. This will be in the form of a transfer as the property is subject to compulsory first registration.
2. There is a mortgage on the property and the mortgagees have issued a deed of release for the land being sold and this release will be handed over.
3. The house being new there will be NHBC Buildmark scheme documentation to be handed over.
4. The property being newly erected there will be available, on completion, the original planning consent and building regulations approval to be handed to the buyer's solicitor.
5. There being no agents the keys to the new house should be available to be handed over.

The essential item to be received is a computerised bank payment to our client's account representing the balance of the purchase price. A cheque or bankers draft cannot be accepted.

As to other steps to be taken because the sale is of part the following matters should be considered: -

1. The seller will retain the deeds and consequently the abstract of title must be examined and marked up at completion. The original deeds must therefore be made available.
2. A memorandum of the sale should be endorsed on the last conveyance of the whole. (Please see s.200 of the Law of Property Act 1925).
3. A copy of the transfer of part should be made up at completion and kept with the deeds. In this way there can be no doubt as to the contents of the deed and the terms of it.

**b)** The circumstances that form the basis for this question are similar to those in the case of *Edward Wong Finance Co. Ltd. v Johnson, Stokes, and Masters* [1984] A.C. 296. In that case it was held on very comparable facts that the undertaking mentioned in the question was not sufficient.

The Law Society's Code for Completion ('the Code') must be adopted by both sides in non-protocol cases but for protocol cases the Code will apply unless otherwise agreed. The Code was revised in May 2019. The main provisions are: -

The crucial element of the Code is that the buyer's solicitor appoints the seller's solicitor as his or her unpaid agent for completion.

The buyer's solicitor must provide full instructions for the 'agent' relating to the buyer's requirements. These instructions should clearly set out for the seller's solicitor what the buyer's solicitor requires them to do and what is to be sent on after completion has been effected.

The seller's solicitor must confirm instructions from the seller to receive the sale monies and that he or she has been appointed the authorised agent of any mortgagee authorising the receipt of monies required to redeem.

The buyer's solicitor will send the completion monies by bank telegraphic transfer (a CHAPS payment) and on receipt the completion takes place. Until completion has taken place the seller's solicitor will hold the purchase monies to the order of the buyer's solicitor. At the point of completion the deeds and documents are held by the seller's solicitor as agent for the buyer's solicitor.

That day, (the day of completion), the deeds and documents must be sent to the buyer's solicitor and once posted properly they are at the buyer's risk.

It should be noted that adopting the code involves the giving of professional undertaking that will be enforced through the Law Society.

The Code can only be used if there is no obvious conflict, if such exists the appointment of an 'agent' would be inappropriate.

In light of the decision in *P&P Property Limited v. Owen White & Catlin LLP and Dreamvar (UK) Limited v. Mishcon de Reya (a firm)* [2018] EWCA Civ 1082, paragraph 8(i) of the Code constitutes an undertaking that the seller's solicitor has authority from the true owner of the title to the property named in the contract to receive the purchase money, and that such person is at the point of completion entitled to convey such title as the contract states will be conferred. This was introduced in 2019 to give buyers increased protection from identity fraudsters.

Finally it should be noted that nothing in the Code shall override any rights and obligations of either the seller or the buyer under the terms of the sale contract or otherwise.

In the *Wong* case completion took place on the basis that the buyer's solicitors paid the completion monies relying on an undertaking given by the seller's solicitors to the effect that they would pay off the seller's mortgage. Unfortunately the seller's solicitors then absconded with the monies without of course paying anything to the mortgagees. The Court held that the loss had to be borne by the buyer's solicitors because the Court said they had failed to take all necessary and appropriate steps to protect their client's interests. In effect the Court said the solicitors were negligent because they did not seek confirmation that the seller's solicitors had the authority of the mortgagees to accept the monies. Notwithstanding this is a case from Hong Kong it will clearly apply in similar circumstances in England and Wales.

The only really safe arrangement is for the buyer's solicitors to obtain in writing an authority from the mortgagee allowing them to pay the redemption monies to the seller's solicitor. If completion was in person two drafts could be handed over; one for the mortgagee and the balance to the sellers. This is, of course, a somewhat impractical suggestion but if the buyers have cause for concern this is the only really safe approach. It is interesting to note that the Code does not include this requirement and if this is necessary then where the Code prevails the alteration to the Code must be agreed by the parties failing which the Code cannot apply.