Reservation Agreements: Informing the design of an effective offer

Disclaimer:

This research study was commissioned by a previous administration and is being published for transparency purposes.

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1. Executive Summary

Background and Context

1.1 The rationale for commissioning this study about Reservation Agreements was to address the issue of failed housing transactions. It is estimated that between one third and one quarter of planned residential property transactions fail and this costs consumers hundreds of millions of pounds each year in wasted costs.[1] Nearly two thirds of all buyers and sellers are concerned about the final outcome of a sale even after acceptance of an offer.[2] The fact that there is a large amount of insecurity on both sides following acceptance of an offer can be a source of great stress and there can be considerable financial impacts and a sense of loss when transactions fall through.

1.2 The Government is committed to reforming the home buying and selling process so that it is quicker, cheaper and less stressful. Following a Call for Evidence in 2017, Reservation Agreements were suggested as one way of improving the home buying and selling experience for consumers.[3] There was broad support for developing standard agreements, and in its response the Government committed to commissioning behavioural insights research to support the development of Reservation Agreements.

1.3 The then Ministry of Housing, Communities and Local Government (MHCLG) commissioned Kantar (Public Division) to explore the potential of Reservation Agreements to help make the home buying and selling process quicker, cheaper and less stressful for consumers**.** The high level approach was to explore some options for designing a reservations agreement with industry stakeholders and test this with home buyers and sellers, but before discussing the methods and findings, it is necessary to define some key terms and concepts relating to reservations agreements.

1.4 A reservation agreement is a legal agreement signed by the buyers and seller of a specific property in which they make a binding commitment to transact the property. The standard form of agreement would involve both the buyer and seller putting down a deposit, but a variant with a non-financial commitment was explored by the study. Other key terms and concepts are outlined in Table 1.1 overleaf.

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[1] https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06980#fullreport

[2] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/653581/buying-selling_homes-research.pdf

[3] Reservation Agreements are currently used for the purchase of very high value property in some cases where people are prepared to pay for bespoke legal advice. Since the government's Call for Evidence response was published, a small number of commercial organisations offering their own version of Reservation Agreements have emerged.

Table 1.1: Definitions and Key Terms Relating to Reservation Agreements

Allowable Exclusion	A provision under either buyer and seller may be able to not complete the sale without penalty. Causes might include illness.
Commitment Device	This is the device that creates a binding agreement between the buyer and seller. The standard form involves a financial deposit, although the study also explores non-financial commitment devices.
Consumer Research	The behavioural insights work that observes the motivations of consumers, in this case buyers and sellers of houses and flats.
Deposit	The deposit consists of the money that both parties to a transaction hand over to a third party when a reservation agreement is signed, normally an ESCROW provider.
Deposit Pot	The sum of the deposits made by the prospective buying and selling parties.
Escrow/Escrow provider	The legal agreement/provider, which holds the deposits from the buyer and seller.
Field Trial	The field trial envisaged for phase two would have involved comparing transactions that went through estate agency branches using reservation agreements with the regular process (control group).
Gazumping	A situation where the seller initially accepts an offer on a property and then reneges on it after receiving a subsequent higher offer.
Quasi-Experiment	The proposed research design for the phase two study, involving a treatment and control group to identify the effects of reservations agreements.
Reservation Agreement	The agreement signed by buyers and sellers to make binding commitment to transact the property.
Reservation Disclosure	Part of the revised offer for buyers and sellers after the focus group work. This involves disclosure of key information about the buyer and seller's positions and about the property.

Methods

1.5 The study was undertaken in several stages. Stage one consisted of a series of stakeholder engagement exercises, consisting of eleven online depth interviews and small group discussions with a total of 19 industry stakeholders and a series of six reconvened discussion groups with home buyers and sellers to understand the appeal of a Reservation Agreement to consumers and inform an effective design.[4]

1.6 Stage two of the work was to have been a field trial. Unfortunately, the conclusion of stage one and proposed start of stage two coincided with the start of the Covid 19 pandemic, which severely affected both the housing market and the ability to undertake research fieldwork at that time, which delayed the study considerably.

1.7 Once market conditions returned to a level where a trial could proceed, a feasibility study was conducted to understand feasibility with the intention of proceeding if a trial looked possible. The feasibility study explored the opportunity for undertaking quasi-experimental trials on a forward looking or historical basis.

Consumer views on Reservation Agreements

1.8 The study was prompted by concerns about the number and impact of failed housing market transactions. In the focus groups, buyers and sellers cited a series of common concerns with the home buying and selling process:

- The length of time between offer and completion;
- Lack of clarity and certainty around costs and expenses;
- Complexity due to the number of parties and a lack of control having to rely on others;
- Lack of transparency and relatively low levels of trust between parties.

1.9 Underlying these issues, buyers and sellers raised the timing of information provision as a key issue causing uncertainty between offer and exchange and creating a prevailing culture in which an offer is seen as an expression of interest rather than a firm commitment. Though the freedom this provided to change one’s mind following an offer was valued on an individual level, consumers acknowledged that much of the uncertainty they experience stems from this feature of the current system.

1.10 Buyers and sellers were positive about the Government taking action to improve the home buying and selling process for consumers and were broadly in support of the concept of Reservation Agreements when presented with an over-arching concept (see Appendix A). However, appeal was initially undermined as participants felt it was unrealistic to ask buyers to make a commitment in the absence of key information about the property. As such, they struggled to see at what point in the process such an agreement would be of value: at the offer stage there was felt to be too little information to make a commitment; at the point of exchange commitment was already considered to be in place.

1.11 In response to this finding, a revised offer was developed in consultation with industry stakeholders featuring:

- A more detailed Reservation Agreement Guide (see Appendix C);
- A Reservation Disclosure that contained key information about the buyer and seller’s positions and about the property (see Appendix D).

[4] Phase one of the research included consumer focussed research, and so the terms buyers and sellers and consumers are used interchangeably in the relevant sections.

1.12 This revised offer was seen to change the fundamental nature of the agreement, providing the information that buyers felt they would need to make a firm commitment at the point of offer. Consumers felt an agreement accompanied by information would prompt buyers to think more carefully before putting in an offer, thereby improving the quality of offers, provide an incentive for both buyers and sellers to commit to the sale once an offer had been made, and increase transparency of the process, thereby helping to educate consumers.

1.13 However, buyers and sellers felt that Reservation Agreements were unlikely to prevent gazumping, as a seller could easily make up the loss of the deposit on a higher offer. As such, Reservation Agreements were seen to function best as a commitment device that introduces friction to either party changing their mind without cause.

Implications for the design of Reservation Agreements

1.14 The high level implications for the design of reservation agreements stemming from phase one of the study were as follows:

- A **standard, nominal deposit** is recommended to act as a commitment device. Any deposit set high enough to act as a deterrent is unlikely to be taken up on an optional basis and creates affordability issues;
- Consumers preferred for the **scheme to be operated** by an independent third-party, ideally government, but an escrow provider was also acceptable.[5] To promote trust in the scheme, efforts should be made to **reduce the cost of the scheme to consumers;**
- An agreement needs to **clearly set out the circumstances which violate the terms**, so it is easily interpreted by third-party deposit holder;
- **Allowable exclusions** for exiting the agreement should be limited to occurrences that are beyond the control of the immediate parties e.g. chain collapsing or survey bringing to light previously unknown information;
- Should a transaction collapse, the **injured party would receive the entire deposit pot.**

1.15 After exploring various options with consumers and stakeholders across both workshops, the following recommendations were identified for a high-level design for a Reservation Agreement, which are summarised in Figure 1.1.

[5] A financial arrangement where a third party holds and regulates payment of the funds required for two parties involved in a transaction.

Figure 1.1: Recommendations Identified for the Design Of A Reservation Agreement

Reservation Agreement is accompanied by a Reservation Disclosure which declares key information about the buyer and seller

- **Buyer**: Their financial position (e.g. whether they have a mortgage approval in principle or are a cash buyer) and whether they are in a chain or not;
- **Seller**: Declaration of key information about the property (see Appendix D) and whether they are in a chain or not;

Deposit: £1,000 deposit from buyer and seller paid via BACs transfer

Deposit holder: Third-party escrow provider administers the scheme for a minimal fee (e.g. £20)

Penalty: If a party was found to have provided false information or to otherwise cause the sale not to go ahead, the injured party receives the total deposit pot.

Arbitration*: In the event of a dispute, each party will pay an arbitration fee and provide documentary evidence to the third-party escrow provider to determine who is at fault. The injured party receives a refund for the arbitration fee and the total deposit pot.

Key exclusions:

- Chain breaks down beyond immediate parties;
- Survey turns up issue requiring additional spend over pre-defined threshold.

Timeframe: Agreement should be timebound to prevent contract from 'locking in' parties in perpetuity and help motivate action. Parties would have an option to mutually agree to extend timeframe if agreement expires before transaction is complete.

Actions: Both parties agree to key actions as a gesture of good faith but failure to comply would not represent a breach of terms of agreement

- **Seller** takes property off the market and notifies estate agent to take no more offers;
- **Buyer** agrees to stop looking and to initiate searches within 2 weeks of entering into the agreement.

**This is how arbitration is currently managed by escrow provider Transpact*

Stage 1 Implications for Holding a Field Trial

1.16 Based on their overall views of Reservation Agreements, stakeholders expressed a range of views about factors they felt would need to be incorporated into the design of a Reservation Agreement field trial in order for it to be successful, including lessons from existing providers, consideration for the undertaking of a trial, and the type of trial that could be undertaken.

1.17 Stakeholders felt that information provision was integral to the process. Here, the draft Reservation Agreement Disclosure Form was seen as a step in the right direction but some estate agents expressed the view that it did not go far enough and that the legal searches needed to be earlier in the process, This additional provision of information was seen as necessary to provide the certainty needed by both parties to enter into a commitment,

1.18 Estate agents also commonly felt that, given the role of chains in determining the success of any particular sale, any agreement would need to be mandatory to be effective and there was general agreement amongst providers that any Reservation Agreement would need to be underpinned by a financial commitment from both buyer and seller to ensure that neither party withdraws unreasonably.

Learnings from existing providers

1.19 The feasibility study also explored the offers of existing providers of Reservation Agreement-type offers, which have each been developed in response to real-world experience of implementation.

1.20 One consideration stressed by all providers was the need for a focused effort to educate the market about the value of their products given their novelty to the market. These efforts were concentrated primarily on estate agents, possibly including incentives, as the direct point of contact with buyers and sellers, with training provision to support in making pitches to customers.

1.21 Beyond this initial contact, the providers' platforms tended to then take over the operational work, as they felt that estate agents could not necessarily be relied on to administer their offers, citing high turnover over and the issue of sellers switching agents. The process of facilitating agreements was described as quite resource intensive but was seen as necessary to process the elements of information provision underlying agreements in particular.

1.22 All of the platforms that the research team engaged for this research had also found ways of navigating the challenges of engaging conveyancers in the process: one is licensed with the Law Society and had effectively taken on the process of conducting legal searches; another works with their own panel of solicitors; and another specifies that sellers should conduct searches upfront to inform a property information pack. All providers also stressed the importance of conducting legal work – and ideally a survey – upfront in the process to ensure that any commitment is based on as much information as possible.

1.23 Providers also stressed the importance of the underlying digital platform that facilitated their offer. These were considered important as a way to facilitate input from the various parties, to ensure transparency to the process and to provide an engaging experience for both estate agents and consumers.

Views on proceeding with a trial

1.24 Despite some scepticism about the potential value of reservation agreements and a preference for some other form of government intervention, many stakeholders were interested in proceeding with a trial, with a number expressing interest in taking part in a trial, including a number of estate agents, conveyancers associated with the Law Society; and an escrow provider. Stakeholders saw this as an opportunity to try to advance change within their profession and also, in some cases, to explore opportunities to innovate or advance their own businesses.

Considerations for executing a trial

1.25 The findings from this stage suggest a number of considerations that would need to be considered in the design of any trial if it is to stand a good chance of creating useful and robust evidence.

1.26 Most fundamentally, further work would be required to finalise the details of the underlying offer. The draft agreement designed in the last stage of this work (see Appendix A) provides a sound basis for the terms of an agreement. However, more thought would need to be put into how this would be delivered to clients, with the experience of existing providers suggesting that it may need to be underpinned by some degree of digital infrastructure to facilitate engagement by buyers, sellers, estate agents and solicitors.

1.27 Any offer involving a deposit would also require some means of holding deposits and arbitrating disputes, which would ideally be linked into the platform by which agreements are drafted and agreed. Alongside this, the success of any offer would also be likely to depend on the provision of quite detailed training for any estate agents involved.

1.28 Findings also suggest that there will be a need to 'sell' the product to estate agents and provide a clear incentive for them to offer the product to their clients.

1.29 Related to this, some estate agents echoed views from the first stage of this work that competitors not taking part in a trial could seek to undermine the offer, positioning the fact that their clients would not need to provide a deposit as a competitive advantage. Whilst in reality any seller would have the option of whether to take out a Reservation Agreement or not, it might be necessary to assuage these concerns amongst estate agents who choose to take part in the trial

1.30 For any reservation agreement involving a deposit, there would also be a need to engage with conveyancers, to ameliorate the risk of them advising clients against signing an agreement with which they are unfamiliar and/or charging their client for reviewing the document and considering the implications. Ideally, such a trial would directly engage with conveyancers involved in all trial transactions. However, given the freedom of buyers and sellers to choose their own legal representation from anywhere in the country, this would not be feasible. An alternative would be some kind of mass engagement with the profession via industry-wide communications, such as the Law Society property section bulletin or Conveyancing Quality Scheme bulletin. However, there are questions to the extent to which all conveyancers will be aware of or engage with any such guidance.

1.31 Thinking about the actual design of a trial, it would also be necessary to identify some way to randomise and record the outcomes of transactions. Conversations with estate agents during the study explored the possibility of randomising the allocation of the intervention at a transaction level using the CRM systems they employ. However, they expressed scepticism about the feasibility of this given that these systems are used very differently by different agents and do not therefore provide a standard route. This suggests that it would be necessary to randomise at the branch level to help ensure a clear delineation between transactions in the intervention and control groups.

Deposit-based trial

1.32 The preferred option entering into this investigation phase was to run a field trial of a deposit-based Reservation Agreement, as this most closely fits the model that has been discussed with industry to date.

1.33 However, there were considerable practical barriers to proceeding with a trial of such an offer. Furthermore, any findings will lack external validity unless DLUHC was able to develop an offer for testing that is comparable to those currently on the market.

1.34 To create evidence with relevance to the kind of offers that are currently available from private providers, any agreement tested would need to share some of the key features that underpin the success of those offers (and would need to inform the design of any national scheme if that is an intention). Considering these, it may be feasible to work with stakeholders within the terms of this project to develop a full set of terms and a platform for holding deposits and resolving disputes. However, it will not be feasible without considerable extra input to deliver other features that existing providers feel are integral to their offers such as the incorporation of the provision of legal services; in-depth training for estate agents delivering the offer; direct support for buyers and sellers once they have chosen to enter into an agreement; and a digital infrastructure through which estate agents, buyers and sellers can interact.

1.35 Without these features, there are two sets of factors that could undermine the success of an intervention and therefore lessen any impact on our primary outcome measures: the level of fall-throughs and speed of transactions.

1.36 The first set of factors relate to the legal process. Whilst a trial could attempt to engage the legal profession as a whole, it would not be able to engage the individual conveyancers within each deal. As such, there is a good chance that a proportion of conveyancers involved in trial transactions will either advise their clients not to proceed with any agreement or will introduce charges that suppress take-up.

1.37 The second set of factors relate to delivery by estate agents. Whilst a trial could provide some level of training for estate agents, it would not be able to provide the close support for buyers and sellers that existing providers currently offer and suggest is necessary for success. It would also not be able to provide the kind of high-quality digital infrastructure that existing providers use to support agents.

Commitment-only trial

1.38 A trial of a commitment-only agreement presented an alternative that, due to its simpler design, may avoid some of the feasibility issues associated with a deposit-based agreement.

1.39 Most importantly, a commitment-only agreement would not require input from conveyancers, as it would not need to be an official legal document or require any financial input from buyers and sellers. This would therefore remove one of the most significant barriers to successfully delivering a deposit-based intervention. In addition to this, there would be no need for any party to hold deposits or to design a process for arbitrating disputes, another significant concern for the design of a deposit-based trial.

1.40 As such, a commitment-only trial could be administered more easily by estate agents and would arguably not need the same level of digital infrastructure to support engagement and trust in the offer. Some stakeholders suggested that an agreement could be incorporated into the existing Memorandum of Sale, which is already familiar to estate agents, includes a lot of the key transaction detail and is signed by both parties.

1.41 Given that a commitment-only agreement would be qualitatively different to the kind of reservation agreement-type offers already offered by private providers, it would also not raise the same kind of issues about external validity. Instead, any such trial would create evidence of the effect of a commitment device only. If commitment alone is found to have an impact, then it could be rolled out as a national scheme, as well as create further industry engagement with deposit-based commitment schemes. If it is not found to have an impact, then this does not significantly undermine those offers that are based around a deposit.

1.42 However, there are questions around the extent to which industry is open to or has faith in the idea of a commitment-only agreement. The majority of the estate agents engaged as part of this investigation stage expressed doubts about the efficacy of such an approach and worried in particular about engagement from agents dealing directly with customers. They feared that such an agreement would be just one more piece of paper for buyers and sellers to sign at the point of making an offer, therefore diluting its impact, and that, with no financial stake, it would not be taken seriously enough to shift behaviour.

1.43 This also raises potential issues for the delivery of any intervention as part of a trial. If estate agents delivering the intervention do not have faith in its effectiveness, then this is likely to affect the fidelity of delivery, with agents either failing to deliver or to fully explain the benefits of such an offer. Here, again, some kind of process evaluation element would be needed to assess fidelity and enable the interpretation of any findings.

Feasibility Investigations for Possible Trials

1.44 The initial study concluded that it was not feasible to proceed with a field trial of either a deposit-based or commitment-only agreement, as each was likely to fail to meet the underlying need to create robust evidence of effectiveness of an offer.

1.45 For a deposit-based trial, government would need to develop an offer that incorporates the factors that underpin the success of other available products. In the absence of this, any agreement would be less likely to be successful and any evidence created would lack external validity. Overall then, this is likely to undermine industry engagement with those offers currently available from private providers and with the idea of Reservation Agreements in general.

1.46 For a commitment-only trial, the primary issue would be that any evidence generated by a trial would be of limited usefulness as it would not prove effectiveness of an offer to which Government or the industry are committed. Furthermore, whilst increasing budget to include some kind of process evaluation could help to understand the extent to which participating estate agents are faithfully able to deliver the intervention, it still does not remove the considerable risk that a lack of faith in its effectiveness undermines delivery.

1.47 The existing evidence base suggested it is unlikely that either of these approaches would provide enough transaction data to conduct a properly powered experimental approach, and the study concluded at that point. As a result of this conclusion, the study then investigated two alternative approaches to developing evidence of the impacts of Reservation Agreements, each involving quasi-experimental analysis of data relating to providers' existing offers. The first approach was forward-facing: it would involve working with providers to assess the impact of their offers in 2022. The second was retrospective: it would involve analysis of historical datasets to assess the impact of providers' activities conducted to this point. Detail on these options can be found in section 8 of the main report.

1.48 If there were interest in exploring either of the experimental trial routes further, then it would be necessary to engage further with providers to discuss and set up the infrastructure for the receipt of retrospective data. (As mentioned above, depending on the depth and format of these data, this process may involve data processing or non-disclosure agreements.)

1.49 Once historic data has been received from providers, then an analysis of this could help to answer three questions that will be fundamental in the formulation of the most appropriate trial design. The key points of concern were as follows:

- Identification of appropriate outcome variables;
- Treatment effects of an agreement on appropriate outcomes;
- Time required for a sufficiently powered experiment: the final input into the power calculations is the number of transactions required for a sufficiently powered trial.

2. Background and Methodology

2.1 It is estimated that between one third and one quarter of planned residential property transactions fail and this costs consumers hundreds of millions of pounds each year in wasted costs.[6] Nearly two thirds of all buyers and sellers are concerned about the final outcome of a sale even after acceptance of an offer.[7]

2.2 For buyers, the two most common worries were discovering something unexpected about the condition of the property (35%); and the seller changing their mind about selling (33%). Other concerns included the seller continuing to market the property, taking a long time to find a property to buy themselves, and increasing the selling price before exchange of contracts. For sellers, the main concern was that the buyer would withdraw their offer (46%). Others included the buyer lowering their price, continuing to look at other properties, and discovering something unexpected about the property or neighbourhood.

2.3 The fact that there is a large amount of insecurity on both sides following acceptance of an offer can be a source of great stress and there can be considerable financial impacts and a sense of loss when transactions fall through. The Government is committed to reforming the home buying and selling process so that it is quicker, cheaper and less stressful. Following a Call for Evidence in 2017, Reservation Agreements were suggested as one way of improving the home buying and selling experience for consumers.[8] There was broad support for developing standard agreements, and in its response the Government committed to commissioning behavioural insights research to support the development of Reservation Agreements.

Project objectives

2.4 The Department of Levelling Up, Housing, and Communities (DLUHC) commissioned Kantar to explore the potential of Reservation Agreements to meet their goals. The study was originally divided into two key stages:

- Stage 1 comprised stakeholder engagement and consumer research with buyers and sellers to inform the effective design of a potential Reservation Agreement so that it was attractive to consumers and industry;
- Stage 2**,** a field trial of a Reservation Agreement. Unfortunately, the conclusion of stage one and proposed start of stage two coincided with the start of the Covid 19 pandemic, which severely affected both the housing market and the ability to undertake research fieldwork, causing significant delay to the study.

[6] https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06980#fullreport

[7] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/653581/buying-selling_homes-research.pdf

[8] Reservation Agreements are currently used for the purchase of very high value property in some cases where people are prepared to pay for bespoke legal advice. Since the government's Call for Evidence response was published, a small number of commercial organisations offering their own version of Reservation Agreements have emerged.

2.5 The original intention was to go ahead with the trial once market conditions returned to normal but beginning with a scoping stage to assess feasibility for two trial options - deposit based and commitment only - as well as alternative quasi-experimental options. Unfortunately, phase two never proceeded beyond the feasibility stage because as it emerged out that none of these would produce the quality of evidence that would be needed to robustly evaluate the options.

Methodology

2.6 Stage one was structured around a series of workshops with industry stakeholders and consumers with the views of stakeholders informing the design of research materials to be tested with consumers over a number of iterative stages. Across this process a qualitative approach was employed to enable an in-depth exploration of views and develop hypotheses about how an agreement could most effectively deliver against consumer and industry needs and concerns.

2.7 Stage one commenced with a review of materials related to work already carried out by members of the Home Buying and Selling Group Reservation Agreement working group and twelve scoping interviews with stakeholders representing conveyancers, estate agents, escrow providers, consumers, and commercial providers of Reservation Agreements. The findings from these stages informed the design of materials for the first workshops with consumers.9

2.8 Following the first workshops, the interim findings were presented to key stakeholders from the Home Buying and Selling Group Reservation Agreement working group at an interim workshop. Feedback collected from stakeholders informed a revised version of the Reservation Agreement offer, which explored in the second consumer workshops.

2.9 The consumer research took place across a series of six reconvened workshops with buyers and sellers, which comprised the same group of consumers across two separate sessions held approximately three weeks apart enabling the facilitation of more informed and detailed discussions of Reservation Agreements in the second workshops.

2.10 Workshop 1 (August 2019) examined consumer views on and concerns with the current home buying and selling process, introduced the concept of a Reservation Agreement (see Appendix A), and explored design options (see Appendix B) to capture high levels views and preferences.

2.11 Workshop 2 (September 2019) explored responses to a more developed offer comprising of a more detailed Reservation Agreement overview and Reservation Disclosure (see Appendix C & D).

2.12 All consumers had bought or sold a property within the past year and were primarily or jointly responsible for decision-making during the process. Beyond this, the sample was designed to represent a range of characteristics that may influence experiences and preferences, including level of experience of buying and selling, whether properties bought or sold were in a chain, and location Table 2.1 shows the

[9] This working group, formed following the Call for Evidence, is comprised of stakeholders from industry and government with a remit to explore the potential of Reservation Agreements to meet the Government's commitment to improve the home buying and selling process.

sample structures for the consumer workshops). Workshops lasted for an hour and 45 minutes, with six consumers in each (n=36).

Table 2.1: Sample for consumer workshops

Group	Experience	Chain	Region
1	1st time buyers and sellers	Chain	London
2	1st time buyers and sellers	No chain	Birmingham
3	1st time buyers and sellers	Chain	Leeds
4	Experienced buyers and sellers	Chain	Birmingham
5	Experienced buyers and sellers	No chain	Leeds
6	Experienced buyers and sellers	Chain	London

2.13 For this Investigation stage a series of 11 online depth interviews and small group discussions with relevant industry stakeholders were undertaken, each lasting around 90 minutes. A purposive sampling approach was used, engaging with representatives of the different industry segments who may need to be engaged as part of a trial, including estate agents, conveyancers and an escrow provider, as well as existing providers of Reservation Agreement type offers.

2.14 The purpose of the workshops was to explore the feasibility and potential design for two trial options. Option 1 involved a financial commitment based on a deposit, whilst option 2 would involve a non-financial agreement/commitment between the buyer and seller.

2.15 Recruitment was conducted via existing links to the industry Home Buying and Selling Group established in Phase 1 of this work, as well as snowballing from these contacts to further frontline representatives. This phase engaged with 19 different individuals and conducted a further three follow-up sessions (see Table 2.2 below).

Table 2.2: Stakeholder sample

Stakeholder Category	Depth / Group	Participant(s)
Estate Agents (Professional Associations)	Group	3
Estate Agents (Frontline)	Group	3
Estate Agents (Frontline)	Group	5
Conveyancers	Group	4
Conveyancers (follow up)	Depth	1
Escrow	Depth	1
Existing Provider	Depth	1
Existing Provider	Depth	1
Existing Provider	Depth	1
Existing Provider (follow up)	Depth	1
Existing Provider (follow up)	Depth	1

2.16 Sections 3 and 4 of the report respectively outline buyers and sellers' views on reservation agreements generally and their preferences for the content of such agreements, but at this stage it is necessary to define some of the technical terms and concepts that are discussed in these sections, and referred to throughout the rest of the report.

2.17 The most important concept is that of a reservation agreement itself. This is a legal agreement signed by the buyers and seller of a specific property in which they make a binding commitment to transact the property. The standard form of agreement would involve both the buyer and seller putting down a deposit, but a variant with a non-financial commitment was explored by the study. The key terms and concepts are summarised in Table 2.3.

Table 2.3: Definitions and Key Terms Relating to Reservation Agreements

Allowable Exclusion	A provision under either buyer and seller may be able to not complete the sale without penalty. Causes might include illness.
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Consumer Research	The behavioural insights work that observes the motivations of consumers, in this case buyers and sellers of houses and flats.
Deposit	The deposit consists of the money that both parties to a transaction hand over to a third party when a reservation agreement is signed, normally an ESCROW provider.
Deposit Pot	The sum of the deposits made by the prospective buying and selling parties.
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3 Consumer Views on Reservation Agreements

3.1 This section explores existing consumer views on the home buying and selling process and their response to the concept of Reservation Agreements within this context. It also explores consumers’ views on the potential for Reservation Agreements to address their concerns about the current process.

3.2 Prior to the focus groups with house buyers and sellers, the research team engaged with industry stakeholders involved in the Home Buying and Selling Group Reservation Agreement working group in August 2019. We then conducted a series of 12 scoping interviews with stakeholders representing conveyancers, estate agents, escrow providers, consumers and commercial providers of Reservation Agreement-type products. Findings from this engagement were used to inform the design of the focus groups with consumers. The research team then met with the Home Buying and Selling Group Reservation Agreement Group again in October 2019 to feed back the research findings and seek industry input into the design of an agreement to take forward to trial.

Views on the current process

3.3 Buyers and sellers across the sample cited a series of common issues with the home buying and selling process. These issues were seen to stem mainly from features of the current market, rather than perceived bad behaviour by other buyers and sellers. The key issues raised in the consumer workshops echoed those in a government briefing paper published earlier this year and contributed to generally high levels of dissatisfaction with the current process.[10] These issues included:

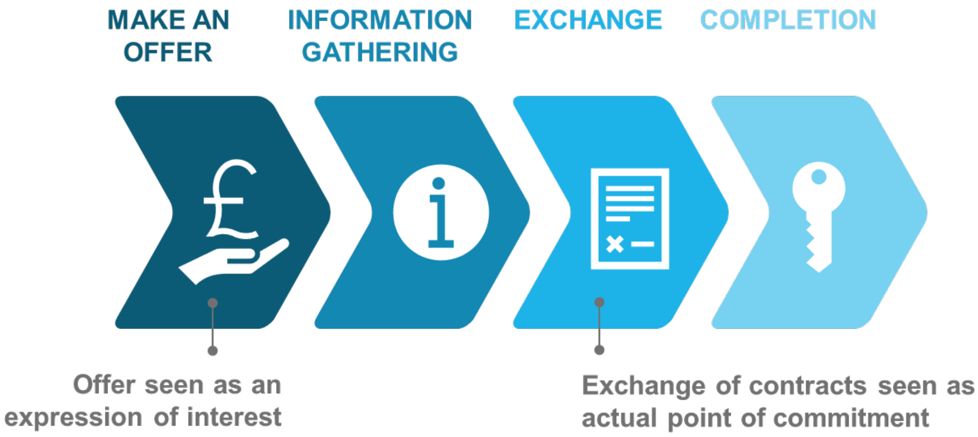
- Time required to complete a transaction; costs and the lack of clarity and certainty around expenses;
- Complexity due to the number of different parties involved;
- Lack of transparency between the parties involved and about the property;
- Lack of control and having to rely on others; and
- Distrust of all parties based on a sense that everyone is out to profit from the process. [11]

3.4 A number of buyers and sellers raised the timing of information provision as a key feature of the market underlying their concerns. At present, buyers felt that they need to make an offer in the absence of key information, leading to uncertainty around the outcome of the transaction for both parties. Figure 3.1 illustrates the current process, whereby making an offer on a property is seen as an expression of

[10] https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06980#fullreport

interest, followed by an information gathering stage, and only at the point of exchange of contracts is there an expression of financial or actual commitment.

Figure 3.1: The current process for consumers



3.5 This lack of full information at the point of offer (the caveat emptor principle) has created a prevailing culture of freedom of choice prior to exchange, in which an offer is seen as an expression of interest and exchange of contracts seen as actual point of commitment. Buyers and sellers valued this freedom to change their mind prior to exchange, which was seen as rational individual behaviour within the context of the current market. At the same time, there was also wide acknowledgement that this culture generates some of the uncertainty driving dissatisfaction with the process, with broad spontaneous support for a greater provision of information earlier in the process.

3.6 Related to this, consumers were positive about offerings or processes that helped to improve trust, transparency and sense of control. Those that had used online estate agents spoke positively about this because it offered greater control over the process and helped facilitate contact between the buyer and seller. Online conveyancing was also viewed positively by some who had used it, for the greater visibility this created around the search process and the improved sense of control that this engendered.

“Online conveyancing has been a revelation for me, you can see things moving and I’ve saved so much time in making calls. You know when the ball is in your court.”

(Experienced, Chain, London)

3.7 Finally, consumers were positive about making direct contact with their buyer or seller as it created a greater commitment to the process, increasing trust, transparency and their sense of control over the process.

“I rang the guy who I'm buying off because I was fortunate to know him and I said, do you have the Energy Certificate? I said can you scan and send it to me. Then I called [the solicitor] right back and said there it is.”

(Inexperienced, No chain, Birmingham)

Consumer responses to the concept of Reservation Agreements (Wave 1)

3.8 In the Wave 1 workshops, consumers were presented with a high-level description of the Reservation Agreement concept, which is reproduced in Figure 3.2 below.

Figure 3.2: The Reservation Agreement Description Presented to Housebuyers and Sellers in the Consumer Workshop

> **What is a Reservation Agreement?**
>
> A legal agreement signed by the buyers and seller of a specific property in which they make a binding commitment to transact the property. This is likely to include a financial commitment by both buyer and seller, which would be payable to the other party if either is deemed at fault in the event of the sale falling through. This will be subject to certain exemption criteria – e.g. poor survey results or failure to secure a mortgage.

3.9 Consumers were largely positive about the idea of government taking action to improve the experience for consumers. They also saw potential in the idea of increasing commitment between buyers and sellers, acknowledging that a lack of commitment could lead to wasted time and costs. Having an agreement in place would provide some assurance that the sale is going ahead earlier in the process, lessening uncertainty and stress.

3.10 The key issue identified was that buyers and sellers felt it was unrealistic to ask buyers to make a commitment in absence of key information about the property, undermining the appeal of the idea.

"In the UK you have 20 mins to make a decision, and you only know what you're buying after paying the money. We should have something like in Scotland. This is asking us to commit to something before we know what we're committing to."

(Experienced, In a chain, London)

3.11 At this stage, consumers struggled to see at what point in the process such an agreement would be of value: at the offer stage there was felt to be too little information to make a commitment; at the point of exchange commitment was already considered to be in place.

3.12 This revised version included a more detailed iteration of a Reservation Agreement (Appendix C) and, in response to the barrier posed by a lack of information to making a commitment at the point of offer, an accompanying Reservation Disclosure (Appendix D): a document by which sellers provide key information about the property, and both buyers and sellers provide information about their position in relation to the sale (e.g. cash buyer, whether in a chain).

3.13 Consumers were considerably more positive about this revised offer. The provision of key information was seen to provide a firm basis on which to make a commitment at the point of offer, changing the underlying nature of the Reservation Agreement. Consumers felt that a Reservation Agreement would help to 'weed out the time-wasters', by ensuring that those making or accepting an offer were doing so from an informed position and in good faith.

3.14 In this respect, it is important to note that consumers did not see Reservation Agreements as a credible means to prevent gazumping or gazundering, as an acceptable deposit level was not seen to be commensurate with the financial gains that a buyer or seller could stand to make if they encountered a better offer. However, they did see the financial and contractual commitment as a way to prevent speculative offers by introducing a small amount of friction into the process, and thereby prompt greater consideration and increase the quality of offers. Many also felt that the act of making a commitment and provision of key information had the potential to reduce the likelihood of buyers and sellers looking further after having entered into an offer.

> *"I think it's less likely to fall through because people have more information upfront. That's really important."*

(Experienced, No chain, Leeds)

3.15 The provision of information earlier in the process, with a standardised document to guide this, was also seen to have the potential to educate and guide consumers through the process and increase transparency. More experienced buyers in particular, felt that a Reservation Disclosure would help to educate both buyers and sellers about the information that they will need to provide as part of a transaction, and move the provision of this information further forward in the process, thereby improving behaviour and the quality of interactions.

3.16 Overall, the idea of a Reservation Agreement with Information Disclosure was seen to have the potential to address a range of concerns with the current process. The Reservation Disclosure was seen to increase transparency and reduce unknowns at the point of offer, creating a mechanism to bring forward the provision of information that would currently be provided later in the process. The additional commitment generated by the agreement was also seen to increase a sense of control, by providing additional certainty that offers will proceed to transaction and increasing visibility in chains. Increasing transparency and making a greater commitment earlier in the process were in turn expected to increase trust between buyer and seller (in lieu of actually meeting).

3.17 Consumers also saw benefits in terms of certainty around the time and cost of transactions. As the length of the sales process was seen to be largely determined by the activity of solicitors later in the process, many were sceptical that an agreement would affect the average time for a successful deal. However, they were positive that Reservation Agreements could avoid delays and improve certainty around time by reducing the chance of a deal falling through. Likewise, consumers were doubtful that an agreement would reduce the cost of a successful transaction and could in fact add costs in terms of fees, but felt that they could prevent the loss of money committed to a failed transaction.

3.18 Consumers felt the impact of Reservation Agreements would vary depending on whether the scheme was optional or mandatory. In an optional environment, willingness to enter into a Reservation Agreement would be a way for the buyer to signal to the seller that they were serious and committed to the transaction. Others felt that if Reservation Agreements were mandatory, they had the potential to drive a cultural shift in home buying and selling and improve transparency of the process.

Roles of experience on attitudes

3.19 Overall, consumers were positive about the government taking action to improve the home buying and selling process. However, there were some consistent differences in views across the audience depending on experience of the home buying and selling process.

3.20 More experienced buyers and sellers were most positive about a Disclosure-based Reservation Agreement, which they felt helped to improve information provision early in the process and improve the transparency of the process for consumers. They were also more open to the idea of making a commitment earlier in the process, which they approached more functionally than first-time buyers. A mandatory agreement was also seen to demonstrate strong government support for improving the home buying and selling process, helping to legitimise the offer.

3.21 The less experienced (i.e. first-time buyers and sellers) could be more sensitive to the proposed changes and feared that they may add complexity.

> *"It seems like on the surface just another thing to pay for and go through but if it works and makes things go quicker then it would be worth it."*

(Inexperienced, In a chain, Leeds)

3.22 They tended to want to retain the freedom to change their mind and preferred an optional agreement that meant they could avoid feeling locked in.

3.23 Ironically, the more experienced felt that a Reservation Agreement would help to improve the process for first time buyers by helping to make information needs clearer and thereby helping to educate and reduce seeming complexity.

Overall views on Reservation Agreements

3.24 Given the issues aired about the home buying and selling process, consumers welcomed potential solutions and were positive about the government acting to improve the process. The revised offer of a Disclosure-based Reservation Agreement was expected to introduce additional friction at the offer stage and therefore increase the quality of transactions, as well as reduce the likelihood of either party withdrawing from the transaction. This was in turn expected to reduce uncertainty and to reduce the average time and cost of transactions by reducing the rate of failure after costs have already been committed.

3.25 It's important to note that there was resistance amongst some consumers to losing the flexibility it afforded them to change their mind, despite recognising issues with the current system. However, even this group were able to imagine circumstances in which they would be willing to make a binding commitment and were supportive of the idea an optional Reservation Agreement. Others, particularly more experienced buyers, felt that they would take up an agreement if well designed under any circumstances, and hoped that their introduction would be part of a wider government drive to improve transparency and improve the experience of the home buying and selling process.

4. Responses to specific aspects of an agreement

4.1 The focus groups also examined considerations and preferences for key features of a Reservation Agreement, namely deposit value, deposit holder, penalty, exclusions, and the disclosure. This chapter explores consumer responses to these features, synthesising feedback from both consumer workshops.

Deposit

4.2 As part of a Reservation Agreement, both buyers and sellers put down a deposit. A variety of options were explored for the deposit amount and payment in order to understand consumers' preferences. The options for deposits and payments are noted below in Table 4.1.

Table 4.1: Deposit and Payment Options Proposed to Buyers and Sellers

Deposit Option	Payment Options
A flat rate of £1,000	Cash (Via BACs transfer)
1% of the property value	Credit Card Imprint
An agreed upon amount	

4.3 Consumers preferred a flat rate deposit of around £1,000 over other options. Using a flat rate was seen to help reduce complexity by avoiding the need for negotiation or variation. The amount was seen as sufficient to act as an incentive whilst still supporting affordability. Some initially preferred a percentage of the property price as a proportionate way to account for a range of property values. However, even a proportionate rate of 1% was not considered sufficient financial incentive to prevent a change of mind if a buyer or seller were faced with a significantly better offer in financial terms. As such, consumers typically prioritised reducing additional costs at the point of buying or selling a house and saw £1,000 deposit as sufficient to act as a commitment device.

"There will always be somebody who is willing to pay more for a property and willing to sacrifice the deposit."

(Inexperienced, No chain, Birmingham)

"As a seller, I would want this to know that a buyer is serious. As long as the deposit is not ridiculous then I can still take up a better offer if one comes along."

(Experienced, Chain, London)

4.4 Consumers raised some concerns about how the deposit would be paid. A cash deposit was initially seen as problematic or burdensome for both buyers and sellers, particularly sellers who may not have ready access to cash. As an alternative, holding the deposit as a credit card imprint was suggested as a potential solution. However, on reflection this was seen to introduce new issues and concerns, for example credit card limits and accessibility for those without a credit card. Consumers eventually agreed that a cash deposit would be the simplest approach, although they felt that this should be restricted to around £1000 in order to ensure broad affordability and even then some concerns about accessibility remained. This was ameliorated for buyers somewhat if they believed that the deposit could be offset against the property deposit.

Deposit holder / scheme operator

4.5 Consumers felt positive about the government taking action to address issues in the housing market and expected an agreement scheme to be government-run, with some mentioning the Tenancy Deposit Scheme (TDS). They were sensitive to the involvement of commercial entities, which raised concerns that the scheme would be profit-making and would increase complexity rather than a genuine attempt to improve the process for consumers. Whilst the introduction of a new third-party entity was seen as potentially adding complexity, it was seen to maintain neutrality compared to if the conveyancer or estate agent of one party were to hold the deposit.

4.6 In reflection of these concerns about businesses profiting from the scheme, there was strong resistance to fees if these were perceived to be more than nominal, as it raised suspicions about whether the scheme was really in the interest of consumers or was in fact a profit-making exercise for businesses involved. Participants preferred a nominal amount for the third-party fee, and suggested costs to cover arbitration could be drawn from deposit if parties wanted to proceed with a dispute.

Penalty

4.7 Consumers were given two options related to the penalty for violating the terms of a Reservation Agreement:

- Deposit of other party is paid in full to injured party;
- Deposits of other party is used to reimburse fees incurred by the injured party (with the rest returned).

4.8 The first of these options was preferred. The idea of recouping incurred expenses was considered fair, but was not seen to compensate for time wasted or emotional distress. Documenting and proving expenses was also expected to be too complicated, with the potential for abuse due to the variable cost of surveyors and solicitors.

Exclusion clauses

4.9 Participants felt that whilst the Reservation Agreements should have exclusion clauses to account for extenuating circumstances, any exclusions must be sufficiently well-defined to prevent ambiguity.[12]

4.10 In cases in which a property was deemed not mortgageable or valued well below the purchase price, or in cases where the chain collapses beyond immediate parties, participants felt that either party should be able to withdraw without penalty.

[12] By ‘exclusion clauses’ we mean pre-defined terms of the Reservation Agreement under which parties can withdraw without penalty.

4.11 Consumers also felt that it was acceptable for either party to withdraw without penalty in cases where previously unknown information came to light, for example if the survey turned up unanticipated costs. However, in this case there was felt to be the need for a clear pre-defined definition of what constitutes ground for exclusion in these cases.

4.12 Whilst consumers saw these events as potential ground for exclusion, they also stressed that the terms of an agreement should be flexible enough to enable a renegotiation of the terms of an offer (such as the price) if both parties still wished to proceed with the transaction.

Actions for buyer and seller

4.13 As part of signing the Reservation Agreement (see Appendix C), buyers and sellers committed to exchanging contracts by an agreed date and agreed to certain actions:

- Seller takes property off the market and notifies estate agent to take no more offers;
- Buyer agrees to stop looking and to initiate searches within 2 weeks of entering into the agreement.

4.14 These aspects of the agreement were viewed positively in theory, but participants questioned whether a timeline was realistic in practice and whether these actions were enforceable. Consumers felt a timeline might motivate buyers and sellers to move quickly, but believed time taken was largely down to solicitors and therefore beyond the scope of what buyers and sellers could realistically agree to.

4.15 Likewise, they struggled to imagine how an agreement around specific actions could be enforced, particularly for buyers. Consumers could still be positive about the idea of including these as part of an agreement, but they felt these should be clearly delineated from actions that could be more easily proved and would practically form the basis for forfeit of the deposit.

Reservation Disclosure

4.16 As discussed above, consumers responded positively to the addition of a disclosure to the Reservation Agreement because it brings forward information you would generally receive later in the process in piecemeal way. Whilst some of the information included you would know from visiting a property, consumers felt it was useful to have it all collated in a single document, particularly for inexperienced buyers.

"Never too much information when you're buying a house - you want to know everything."

(Experienced, In a chain, Birmingham)

4.17 Most felt they would be able to interpret and provide the information without legal advice. However, some questioned what would happen if they inadvertently provided the wrong information and expected they would involve their solicitor to ensure they supplied the correct information.

5 Implications for the design of Reservation Agreements

5.1 This section discusses the implications of homebuyers and sellers’ views, preferences, and concerns on the design and implementation of Reservation Agreements. The conclusions and recommendations are drawn mainly from consumer feedback but also take account of feedback from key stakeholders.

Principles for developing a future agreement

5.2 Based on consumer feedback, the following principles should be considered in the design of a Reservation Agreement scheme:

- The scheme has most potential as a commitment device, improving behaviour and quality of by increasing consideration at the point of offer and providing recourse to those who stand to lose investment due to the withdrawal of the other party after costs have been committed;
- To avoid adding complexity the agreement should be standardised with a clear set of conditions and exclusions that apply across all circumstances, separating out circumstances which will lead to forfeit and those deemed as desirable but not enforceable (e.g. buyer and seller actions);
- These points should be reflected in the deposit level, where a relatively small flat-fee deposit of around £1,000 is preferred over a higher or variable amount;
- To promote trust and avoid perceptions this is a profit-making scheme, efforts should be made to frame the scheme as government-endorsed and reduce administrative fees;
- The agreement is aimed at discouraging bad behaviour (e.g. withdrawing for no reason), not to guarantee the transaction will go through, so exclusions should be limited to circumstances that are beyond the immediate control of the parties involved, such as the chain collapsing.

Consideration should also be given to how to ensure access to finance for the deposit e.g. amongst sellers, those on low incomes.

5.3 Based on these consumer-derived principles and in consultation with industry, a set of recommendations were identified for a high-level design for a Reservation Agreement recommend the following high-level design for Reservation Agreements. These are outlined in Figure 5.1.

Figure 5.1: Recommendations for Trial Stage Reservation Agreements (Post-Customer and Stakeholder Consultation Stages)

Reservation Agreement is accompanied by a Reservation Disclosure which declares key information about the buyer and seller

- **Buyer**: Their financial position (e.g. whether they have a mortgage approval in principle or are a cash buyer) and whether they are in a chain or not
- **Seller**: Declaration of key information about the property (see Appendix D) and whether they are in a chain or not

Deposit: £1,000 deposit from buyer and seller paid via BACs transfer

Deposit holder: Third-party escrow provider administers the scheme for a minimal fee (e.g. £20)

Penalty: If a party was found to have provided false information or to otherwise cause the sale not to go ahead, the injured party receives the total deposit pot.

Arbitration*: In the event of a dispute, each party will pay an arbitration fee and provide documentary evidence to the third-party escrow provider to determine who is at fault. The injured party receives a refund for the arbitration fee and the total deposit pot.

Key exclusions:

- Chain breaks down beyond immediate parties;
- Survey turns up issue requiring additional spend over pre-defined threshold.

Timeframe: Agreement should be timebound to prevent contract from ‘locking in’ parties in perpetuity and help motivate action. Parties would have an option to mutually agree to extend timeframe if agreement expires before transaction is complete.

Actions: Both parties agree to key actions as a gesture of good faith but failure to comply would not represent a breach of terms of agreement

- **Seller** takes property off the market and notifies estate agent to take no more offers;
- **Buyer** agrees to stop looking and to initiate searches within 2 weeks of entering into the agreement.

**This is how arbitration is currently managed by escrow provider Transpact*

Engaging with industry on Reservation Agreements

5.4 Engaging with and considering the needs of industry would be key to the success of a scheme in a non-mandatory environment. Industry have been involved in discussions about Reservation Agreements throughout the project and are broadly supportive but have some concerns that will need to be considered in the design of any trial.

1. Estate agents will be key to delivering any scheme in the market and it will therefore be key that the scheme is framed as being appealing to sellers. Some estate agents feared that the scheme could be used by competitors as a source of competitive advantage, by stressing the additional costs involved

and downplaying the potential benefits. Wider industry and government endorsement of the scheme will help to ameliorate this and encourage broad industry engagement.

2. Conveyancers are likely to be involved in the process of providing information or signing the agreement, raising issues about liability. Conveyancers were also concerned about the time involved in accommodating a new step in the existing legal process, which could have cost implications for their clients, especially in the short-term. Standardising documentation will help to reduce any burden so that handling of the process can be incorporated into standard costs in the medium term.

3. Escrow providers are confident about their ability to accept deposits and administer the scheme at an affordable rate but raised some concerns about taking responsibility for arbitrating disputes. To mitigate this, it is important to have very clear, easy to interpret terms in the Reservation Agreements that make clear who is at fault, which will also limit the number of disputes that go to arbitration.

Outstanding concerns

5.5 Whilst there was agreement from both consumers and industry stakeholders that Reservation Agreements have potential, there were some outstanding issues identified that would need to be considered in the design of a finalised scheme:

- Arbitration: Don’t want to encourage arbitration, so need to consider how arbitration can best be managed to avoid lengthy or expensive disputes;
- Exclusions: To avoid ambiguity it will be necessary to define clearly when information uncovered during a survey or conveyancing searches can be considered grounds for exclusion, by either specifying conditions or introducing a financial threshold;
- Fees: Fee levels will need to be set based on costs from facilitating parties (e.g. escrow provider) with the aim to keep these as low as possible;
- Accessibility: Design should consider affordability for all and consider potential criticism that scheme favours wealthy or disadvantages those on low incomes;
- Mandatory verses optional: Different market dynamics at play in each case, and while there are benefits to both, there are more barriers to deal with on an optional basis.

Stage 1 Findings and Implications for Further Investigation

5.6 Consumer responses suggested that there was potential for a well-designed Reservation Agreement to improve their experience of the home buying and selling experience and this study has identified the broad outline for a Reservation Agreement with accompanying Disclosure.

5.7 The Stage 1 research also outlined a number of outstanding concerns about how a Reservation Agreement might work in practice. Some of these relate to the design of the scheme itself, for example with regards to how the arbitration process might work. Others relate to how the scheme may be received by industry, which will be key given their role in delivery, for example whether it may (at least initially) lead to a rise in conveyancing fees.

5.8 Findings therefore suggested that there was potential value in continuing to the trial stage to provide firm evidence of the impact of a Reservation Agreement on the home buying and selling process. However, they also revealed a number of potential complexities around designing and administering a trial.

5.9 In particular, any trial would require DLUHC and industry partners to develop a Reservation Agreement with Disclosure Agreement to use as the primary intervention. For a deposit-base scheme, this would require mechanisms for administering a written agreement and upfront property information at a single point in the process: the seller's estate agent. In addition to this, a deposit-based scheme would require the involvement of conveyancers (since any exchange of money would introduce legal liabilities) who are not necessarily tied to the seller's agent and would need to be convinced of the value of taking part in the trial and endorsing the Agreement to their clients. It would also need to involve escrow providers or another means of holding deposits during transactions.

5.10 The trial design could potentially be simplified by creating a commitment-only scheme, leveraging the behavioural science principle that individuals are more likely to act in ways that they have already stated they will do.[13] However, any approach would need industry buy-in to be effective, and it was unclear from Stage One whether there was support for such an intervention. This therefore raised questions around the usefulness of any evidence generated.

5.11 The decision was therefore made to carry out a scoping phase before proceeding further with a field trial.

[13] Werner, Carol M., Jane Turner, Kristen Shipman, F. Shawn Twitchell, Becky R. Dickson, Gary V. Bruschke, and Wolfgang B. von Bismarck (1995), "Commitment, Behavior, and Attitude Change: An Analysis of Voluntary Recycling," Journal of Environmental Psychology, 15 (3), 197–208.

6 Industry Views on Stage 1 Findings and Potential for a Trial

Interventions tested in the investigation stage

6.1 The aim for the investigation stage was to develop insight into the feasibility, validity and risks attached to a range of different trial options. Specifically, it set out to understand this in the relation to two potential trial designs, namely a deposit-based Reservation Agreement or a commitment-only Reservation Agreement.

A deposit-based Reservation Agreement

6.2 This would involve a commitment between buyer and seller signed at the point of offer and backed by the provision of information, underwritten by a financial deposit of £1,000 by each party, with funds forfeited to the other party if any terms of the agreement are not met. This most closely matches industry expectations and is the preferred option for DLUHC due to its use of financial incentives.

A commitment-based Reservation Agreement

6.3 This option would involve a commitment between buyer and seller signed at the point of offer and backed by the provision of information, leveraging the behavioural principle that Individuals tend to act in ways that are consistent with what they have already done or said. This is a simpler design, which sidesteps the need for legal involvement and for holding deposits, and has the potential to generate targeted evidence of the impact

Overview of the audience

6.4 Across the course of this Investigation stage, the study engaged a range of industry representatives via the depth interviews and focus group discussions, and their views are outlined in the remainder of this chapter.

6.5 A key focus for this stage was estate agents, who – as the point of engagement with buyers and sellers – will be vital to the implementation of any trial. 11 estate agents were engaged, including representatives of two professional associations (NAEA, Propertymark, and the Guild of Property Professionals), and nine directors of estate agent business, each of whom are managing other agents but also actively dealing with customers. This group represented a range of different geographic markets and clientele.

6.6 One of the key findings from the last stage of this work was that conveyancers would need to be involved in any legal agreement between buyers and sellers, and they are likely to advise clients not to take part in a Reservation Agreement if it is unfamiliar, or to charge clients for administering any agreement whilst it is novel and unfamiliar. To help understand how to avoid these issues, researchers engaged with representatives from the Law Society, who were involved in the design of the

Reservation Agreement explored in stage one of this work, and have a broad understanding of the concerns of others within their industry.

6.7 Any deposit-backed scheme would require some means of conveniently and efficiently holding deposits for buyers and sellers, returning these under the terms of the agreement and arbitrating in case of any dispute. The research team engaged with Transpact, an escrow provider who had already expressed an interest in participation in the last stage of this work, and currently offers escrow services as part of the Government endorsed Trustmark scheme for homeowners working with tradespeople.

6.8 Finally, researchers also engaged several existing providers of Reservation Agreement-type offers. This was in part as we wished to learn from their experiences in terms of operationalising an agreement. Researchers also sought to understand the extent to which they would be willing to share data to inform our understandings of the success of their offers to date, or the possibility of involving them in a trial.

Views on Reservation Agreements

6.9 Stakeholders from various parties consistently expressed the view that there are issues with the existing process for house transactions, echoing findings from the previous stage of this research. The key area of concern was the gap between offer and exchange, which was primarily seen to arise from a lack of information at the point of offer, leading to prolonged periods of waiting whilst searches and surveys take place, and creating an environment in which uncertainty and incomplete deals are the norm. There was also a strong desire for government to take action to address this.

6.10 However, estate agents in particular voiced scepticism about the potential of Reservation Agreements to address these issues. Again echoing views from some estate agents in Stage one of this work. For example, there were doubts about how effective any voluntary agreement could be given the importance of chains for the success of transactions, if other transactions in the chain do not have a similar level of commitment. There was a common view, especially amongst estate agents, that a more fundamental change in the market was needed, and that Reservation Agreements were unlikely to have an impact unless they were mandated.

6.11 Estate agents and solicitors also expressed some scepticism about the potential success of Reservation Agreements based on their perceptions of the low uptake of existing offers from commercial providers. A number of individuals expressed the view that, if there was real demand for such an offer, then those already offering them would already have encountered more widespread success. Some also felt there was not a strong enough incentive for estate agents to change their behaviour as currently estate agents are incentivised (via bonuses) on properties that are sold subject to contract (STC) rather than on sales that complete.

6.12 Given these views, estate agents commonly expressed an interest in reforms that helped to increase the provision of information earlier in the process. In this light, a number offered support for Home Information Packs or seller-commissioned surveys, with the Scottish system commonly mentioned as an example of how things could be done differently. Information provision of some form was seen to have the potential to act either as a support for Reservation Agreements or as a good in itself given the perceived issues with the market. A focus on information provision was also expected to lead to both sellers and buyers engaging earlier with solicitors, which was further seen to have potential to help speed up the overall process.

6.13 Considering of the broader context, changes in market conditions since 2018 were perceived to have weakened the potential for the success of a Reservation Agreement. That was in part as, at the time of interviews in October / November 2021, the market was seen to be balanced in favour of sellers, with demand outstripping supply, weakening sellers' incentives to commit too soon to a particular buyer. More generally, there was seen to be an increased focus on and demand for digitisation of the home buying and selling process since the onset of the pandemic, shifting the focus of the kind of reforms desired by industry.

Views on design of a Reservation Agreement

6.14 Based on their overall views of Reservation Agreements, stakeholders expressed a range of views about factors they felt would need to be incorporated into the design of a Reservation Agreement in order for it to be successful.

6.15 Most importantly, stakeholders felt that information provision was integral to the process. Here, the draft Reservation Agreement Disclosure Form designed as part of the previous stage of this research (see Appendix A) was seen as a step in the right direction. However, a number of estate agents expressed the view that it did not go far enough to provide the basis for the buyer in particular to commit to a sale. For this to happen, there was seen to be a need to bring the usual legal searches forward in the process, with some also expressing the view that ideally any commitment would also be based around a seller-commissioned survey.

6.16 This additional provision of information was seen as necessary to provide the certainty needed by both parties to enter into a commitment, as well as to reduce the number of exclusions that any agreement would need to accommodate. Without this, there was a fear that any agreement would be so contingent on what was later revealed in the process as to be ineffectual and unattractive to buyers in particular.

6.17 Estate agents also commonly felt that, given the role of chains in determining the success of any particular sale, any agreement would need to be mandatory to be effective. Unless all transactions within any given chain are covered by an agreement, then stakeholders felt that the value of any individual agreement would be seriously undermined, as the success of the transaction to which it relates would still be so contingent on what happened elsewhere in the chain. Conversely, if made mandatory then Reservation Agreements were seen to provide a means for creating some certainty within a chain of transactions, thereby helping to address one of the key issues driving fall-throughs and drawing out transaction times.

6.18 There was general agreement amongst providers that any Reservation Agreement would need to be underpinned by a financial commitment from both buyer and seller to ensure that neither party withdraws unreasonably. Here some raised the issue that it may be challenging for a seller in particular to raise the funds necessary to pay an upfront deposit. Given this, some stakeholders advocated the use of a contract in place of a deposit, with a condition to pay any losses incurred by the other party (up to a specified amount) in cases of breach, a model already used by some existing providers. Some others raised concerns that this could make arbitration and the collection of monies owed more challenging in disputed cases.

6.19 Views on the level of financial commitment varied. Most stakeholders felt that a flat rate of £1,000 would be unlikely to be sufficient to deter bad behaviour, which is in line with findings from stage one of this work, which found that a deposit at this level would work as a commitment device rather than a direct financial incentive not to seek or accept a better offer. With this in mind, existing providers tend to use a percentage of the property price (~1%) as a deposit amount. In line with this, most stakeholders felt that there would be little value in an agreement based on a commitment only, as this would not significantly alter the process as it is as present, and would be very unlikely to secure buy-in from estate agents.

6.20 Stakeholders also felt it was important that a Reservation Agreement be timebound so that buyers and sellers were not locked in indefinitely, although they recognised the challenge about keeping to timescales due to chains.

Learnings from existing providers

6.21 The feasibility study also explored the offers of existing providers of Reservation Agreement-type offers, which have each been developed in response to real-world experience of implementation.

6.22 Each of the providers who were engaged with had developed a unique offer and were at a different stage of operationalisation. However, it is worth noting that all was yet to see significant market penetration. There were also a number of common themes in their design that highlight key considerations for any future offer.

6.23 One consideration stressed by all providers was the need for a focused effort to educate the market about the value of their products given their novelty to the market. These efforts were concentrated primarily on estate agents, as the direct point of contact with buyers and sellers, with training provision to support in making pitches to customers. Some providers also talked about the importance of providing a direct incentive for estate agents to facilitate their engagement. For example, one provider had developed a system by which the buyers deposit was received by the estate agent as their fee, ensuring that they would benefit from introducing an agreement regardless of the outcome of the sale.

6.24 Beyond this initial contact, the platforms tended to then take over the operational work, such as onboarding sellers, responding to queries and chasing up solicitors or other paperwork as necessary. This was because they felt that estate agents could not necessarily be relied on to administer their offers, citing high turnover over and the issue of sellers switching agents. One had actually switched to this model following an initial attempt to deliver directly through estate agents. The process of facilitating agreements was described as quite resource intensive but was seen as necessary to process the elements of information provision underlying agreements in particular.

6.25 All of the platforms that the research team engaged for this research had also found ways of circumventing the challenges of engaging conveyancers in the process: one is licensed with the Law Society and had effectively taken on the process of conducting legal searches; another works with their own panel of solicitors; and another specifies that sellers should conduct searches upfront to inform a property information pack. All providers also stressed the importance of conducting legal work – and ideally a survey – upfront in the process to ensure that any commitment is based on as much information as possible.

6.26 Providers also stressed the importance of the underlying digital platform that facilitated their offer. These were considered important as a way to facilitate input from the various parties, to ensure transparency to the process and to provide an engaging experience for both estate agents and consumers. They also provided a rich source of data to providers to understand the impact of their offers and other key metrics. Given the perceived direction of the housing market towards greater digitisation, a developed and engaging digital infrastructure was considered key to the success of any agreement.

Views on proceeding with a trial

6.27 Despite some scepticism about the potential value of reservation agreements and a preference for some other form of government intervention, most stakeholders were interested in proceeding with a trial. Given the discussions that had already taken place within the industry about the idea, they felt that it was important that some further action was taken by government to create evidence of effectiveness, even if this was to demonstrate the limits of their impact and to move the conversation on to other solutions.

6.28 Many stakeholders also expressed interest in taking part in a trial, including a number of estate agents, who would be needed to actively deliver any intervention; conveyancers associated with the Law Society, who could help draft the terms of the final agreement; and an escrow provider, who could provide a platform through which deposits could be held for a small fee. Stakeholders saw this as an opportunity to try to advance change within their profession and also, in some cases, to explore opportunities to innovate or advance their own businesses.

6.29 In considering their views, it is worth noting that, whilst some stakeholders had taken part in product pilots in the past, none had experience of taking part in a full-scale field trial. This could frame their views on what a trial would involve and, understandably given their role, they were not typically aware of the considerations involved in designing a robust field trial.

6.30 Among the stakeholders with whom we engaged, the only reticence about taking part in a trial resulted from concerns that government would launch its own Reservation Agreement product. They saw this as a potential threat to their own business and therefore would want reassurance from DLUHC that this would not be the case.

7 Consideration for Trial Design Options

7.1 This section explores the methodological and practical considerations that findings suggest would need to be kept in mind in the design of any trial and underlying offer. It then discusses the implications for the two trial options under consideration: that for a deposit-based agreement and that for a commitment-only offer. The research concluded that, due to the nature of the intervention, a field trial was not a suitable approach to creating evidence of the effectiveness of reservation agreements at the time the feasibility study was undertaken.

7.2 As well as exploring these two alternative designs, the investigation stage also sought to understand opportunities to supplement any evidence with an analysis of data drawn from existing providers of Reservation Agreement-type offers, to provide some evidence of the likely impact of including a deposit above and beyond a commitment-only offer. This is discussed in section 8.

Considerations for executing a trial

7.3 The findings from this stage suggest a number of considerations that would need to be considered in the design of any trial if it is to stand a good chance of creating useful and robust evidence.

7.4 Most fundamentally, further work would be required to finalise the details of the underlying offer. The draft agreement designed in the last stage of this work (see Appendix A) provides a sound basis for the terms of an agreement. However, more thought would need to be put into how this would be delivered to clients, with the experience of existing providers suggesting that it may need to be underpinned by some degree of digital infrastructure to facilitate engagement by buyers, sellers, estate agents and solicitors.

7.5 Any offer involving a deposit would also require some means of holding deposits and arbitrating disputes, which would ideally be linked into the platform by which agreements are drafted and agreed. The escrow provider interviewed as part of this work could provide the underlying platform for this, but further work would be needed to develop this into something more like a consumer-facing product.

7.6 Alongside this, the success of any offer would also be likely to depend on the provision of quite detailed training for any estate agents involved. The experience of existing providers suggests that in the absence of this estate agents are unlikely to explain the offer to buyers and sellers in a way that is attractive, especially given the novelty of the offer. This training would therefore need to be developed and delivered. To mirror the design of existing offers, it would also ideally be supported by direct support for buyers and sellers throughout the process.

7.7 Findings also suggest that there will be a need to ‘sell’ the product to estate agents and provide a clear incentive for them to offer the product to their clients. Whilst the estate agents who were engaged, all of whom were directors of their own agencies, expressed an interested in taking part, they also raised the concern that frontline agents dealing with clients are unlikely to take the time to fully explain an offer or convince clients of its value unless they see some competitive advantage in it for themselves. This would be especially important in the current market conditions, given the high level of demand for available properties and consequent low rates of 'fall-through' in sales.

7.8 Related to this, some estate agents echoed views from the first stage of this work that estate agents not taking part in a trial could seek to undermine the offer, positioning the fact that their clients would not need to provide a deposit as a competitive advantage. Whilst in reality any seller would have the option of whether to take out a Reservation Agreement or not, it might be necessary to assuage these concerns amongst estate agents who choose to take part in the trial, by providing them with clear evidence, which they can share with their clients, that they are part of an official government trial. More generally, given the novelty of the offer and the fact that the launch of any fully-fledged policy would be supported by government announcements, supporting the success of any offer could depend on raising awareness of the trial amongst the general public.

7.9 For any reservation agreement involving a deposit, there would also be a need to engage with conveyancers, to ameliorate the risk of them advising clients against signing an agreement with which they are unfamiliar and/or charging their client for reviewing the document and considering the implications. Ideally, such a trial would directly engage with conveyancers involved in all trial transactions. However, given the freedom of buyers and sellers to choose their own legal representation from anywhere in the country, this would not be feasible. An alternative would be some kind of mass engagement with the profession via industry-wide communications, such as the Law Society property section bulletin or Conveyancing Quality Scheme bulletin. However, there are questions to the extent to which all conveyancers will be aware of or engage with any such guidance.

7.10 Thinking about the actual design of a trial, it would also be necessary to identify some way to randomise and record the outcomes of transactions. Conversations with estate agents during the study explored the possibility of randomising the allocation of the intervention at a transaction level using the CRM systems they employ. However, they expressed scepticism about the feasibility of this given that these systems are used very differently by different agents and do not therefore provide a standard route. This suggests that it would be necessary to randomise at the branch level to help ensure a clear delineation between transactions in the intervention and control groups.

7.11 Even with this in place, given the various questions around the extent to which frontline estate agents will be motivated to deliver the intervention, any trial would ideally involve some kind of process evaluation element to enable the interpretation of findings. This would need to include some kind of observational or 'mystery shopping' type element, to test the fidelity of intervention delivery, and some kind of qualitative research amongst participating agents, to inform an understanding of what is driving the success or failure of the intervention. Similarly, any trial would ideally also include some element of follow-up research amongst those receiving the intervention, again to understand what is driving or blocking take-up, to help interpret results and to identify ways in which delivery could be optimised.

7.12 The following sections look in more detail of what these considerations mean for the execution of the two trial options that were explored.

Deposit-based trial

7.13 The preferred option entering into this investigation phase was to run a field trial of a deposit-based Reservation Agreement, as this most closely fits the model that has been discussed with industry to date.

7.14 However, there were considerable practical barriers to proceeding with a trial of such an offer. Furthermore, any findings will lack external validity unless DLUHC was able to develop an offer for testing that is comparable to those currently on the market. In the absence of this, any trial risks creating evidence that fails to demonstrate an impact and therefore undermines industry faith in existing reservation agreement-type products.

7.15 To create evidence with relevance to the kind of offers that are currently available from private providers, any agreement tested would need to share some of the key features that underpin the success of those offers (and would need to inform the design of any national scheme if that is an intention). Considering these, it may be feasible to work with stakeholders within the terms of this project to develop a full set of terms and a platform for holding deposits and resolving disputes. However, it will not be feasible without considerable extra input to deliver other features that existing providers feel are integral to their offers such as the incorporation of the provision of legal services; in-depth training for estate agents delivering the offer; direct support for buyers and sellers once they have chosen to enter into an agreement; and a digital infrastructure through which estate agents, buyers and sellers can interact.

7.16 Without these features, there are a number of factors that could undermine the success of an intervention and therefore lessen any impact on our primary outcome measures: the level of fall-throughs and speed of transactions.

7.17 The first set of factors relate to the legal process. Whilst a trial could attempt to engage the legal profession as a whole, it would not be able to engage the individual conveyancers within each deal. As such, there is a good chance that a proportion of conveyancers involved in trial transactions will either advise their clients not to proceed with any agreement or will introduce charges that suppress take-up. Furthermore, even if conveyancers are open to proceeding, the novelty of the agreement and processes for managing it risk - in the short-term - increasing the time taken up by the legal process and therefore lengthening the overall transaction period.

7.18 The second set of factors relate to delivery by estate agents. Whilst a trial could provide some level of training for estate agents, it would not be able to provide the close support for buyers and sellers that existing providers currently offer and suggest is necessary for success. It would also not be able to provide the kind of high-quality digital infrastructure that existing providers use to support agents to explain the offer to clients and process transactions. If it was fully reliant on frontline estate agents to deliver the offer, then there is a risk that they stop doing so if they perceive it as too much hassle or lacking a clear benefit for themselves, undermining the fidelity of intervention delivery.

Commitment-only trial

7.19 A trial of a commitment-only agreement presented an alternative that, due to its simpler design, may avoid some of the feasibility issues associated with a deposit-based agreement.

7.20 Most importantly, a commitment-only agreement would not require input from conveyancers, as it would not need to be an official legal document or require any financial input from buyers and sellers. This would therefore remove one of the most significant barriers to successfully delivering a deposit-based intervention. In addition to this, there would be no need for any party to hold deposits or to design a process for arbitrating disputes, another significant concern for the design of a deposit-based trial.

7.21 As such, a commitment-only trial could be administered more easily by estate agents and would arguably not need the same level of digital infrastructure to support engagement and trust in the offer. Some stakeholders suggested that an agreement could be incorporated into the existing Memorandum of Sale, which is already familiar to estate agents, includes a lot of the key transaction detail and is signed by both parties.

7.22 Given that a commitment-only agreement would be qualitatively different to the kind of reservation agreement-type offers already offered by private providers, it would also not raise the same kind of issues about external validity. Instead, any such trial would create evidence of the effect of a commitment device only. If commitment alone is found to have an impact, then it could be rolled out as a national scheme, as well as create further industry engagement with deposit-based commitment schemes. If it is not found to have an impact, then this does not significantly undermine those offers that are based around a deposit.

7.23 However, there are questions around the extent to which industry is open to or has faith in the idea of a commitment-only agreement. The majority of the estate agents engaged as part of this investigation stage expressed doubts about the efficacy of such an approach and worried in particular about engagement from agents dealing directly with customers. They feared that such an agreement would be just one more piece of paper for buyers and sellers to sign at the point of making an offer, therefore diluting its impact, and that, with no financial stake, it would not be taken seriously enough to shift behaviour.

7.24 This also raises potential issues for the delivery of any intervention as part of a trial. If estate agents delivering the intervention do not have faith in its effectiveness, then this is likely to affect the fidelity of delivery, with agents either failing to deliver or to fully explain the benefits of such an offer. Here, again, some kind of process evaluation element would be needed to assess fidelity and enable the interpretation of any findings. The alternative approaches to a possible trial, comprising historical and forward facing quasi-experiments are discussed in the next section.

8. Considerations for quasi-experimental design options

8.1 This section explores two approaches to developing evidence of the impacts of Reservation Agreements, each of which involves working with existing providers to leverage data relating to their existing offers. Both these approaches involved the application of a quasi-experimental method to eliminate differences between treatment groups – matching using the propensity score – that has increasingly been used in policy and programme evaluation over the past decade (see Angrist and Pischke, 2010).

8.2 The first approach is forward-facing: it would involve working with providers to assess the impact of their offers in 2022. The second is retrospective: it would involve analysis of historical datasets to assess the impact of providers' activities conducted to this point.

Forward-facing quasi-experiment

The opportunity

8.3 The investigation stage identified that some providers planned to launch or expand their offers in 2022. This provided opportunity to assess the impact of their offers upon key outcomes (such as time until transaction completion and/or attrition) in a 'treatment group' in real time. The outcomes of this 'treatment group' would be compared against those of a similar 'control group' – matched to the 'treatment group' according to observable characteristics (such as geography, value of property, type of property etc.) – to infer average 'treatment effects'.

8.4 This approach is valuable in that it would allow the identification of the impact of existing offers 'in the wild' (that is, as they exist in the marketplace), providing robust ecological and external validity. Further, as transactions would be taking place in the current context, findings would be reflective of the impact of offers in the 2022 market.

8.5 Depending on the number of providers who were able and willing to take part, this approach could have also potentially enable us to compare impact across providers, helping to identify which underlying elements of an offer help to drive impact.

Potential challenges

8.6 One limitation of any approach involving providers is the reliance on their active participation (including the provision of data). While several providers did express an interest in involvement in the investigation stage, securing their participation would include additional steps (including, but not limited to: potential data sharing or non-disclosure agreements; and reassurance about the direction of DLUHC's plans for a Reservation Agreement, specifically whether the Government plans to launch its own product).

8.7 In addition, considerations for DLUHC about whether and how it will be feasible to conduct work with providers – given the potential commercial implications of findings – were also inherent in this approach. Relatedly, an additional limitation of this approach is that it would rely on being able to align the experiment around the activities of providers who are willing to take part. This had twofold implications for the study: first, it may have rendered the involvement of multiple providers challenging; and second, it implicitly means that it would be testing a product with a combination of features launched by an existing provider (all of which may impact overall efficacy).

8.8 Most importantly, there is also uncertainty about whether existing providers will have sufficient transaction volumes to power the experiment and enable the detection of ‘treatment effects’. If the experiment was underpowered, results would not be able to yield a robust measure of size of impact. Based on engagement with providers around their activity to date and plans for activity in the coming year, the research team’s assessment was that volumes may well have been problematic.

Historical quasi-experiment

The opportunity

8.9 If it was not feasible to conduct a forward-facing quasi-experiment, then an alternative would be to work with the historical data held by providers. This approach would compare the performance of a ‘treatment group’ against a ‘control group’ – also matched according to observable characteristics – using historical transactions from the same time period.

8.10 While this approach would also allow the development of some evidence of the impact of actual existing offers ‘in the wild’, its external validity would invariably be lower than Option 1 due to its use of retrospective data (meaning that we cannot generalise the results to the current market).

8.11 More positively, this approach was likely to present a lower barrier for participation; therefore, it inherently increases the potential for a broader array of providers to participate. Such diversity would enhance our ability to compare results across providers and potentially identify which elements appear to be driving effects.

Potential challenges

8.12 As for a forward-facing approach, proceeding with this design would depend on provider’s being willing and able to engage, which in turn, depends on the stance of government towards their participation.

8.13 Beyond this, this approach also relies on providers being willing to share recent data in a relatively consistent format. The approach would also need to identify a historical dataset of transactions against which it can compare transaction outcomes. It would also need to bear in mind that any findings would be related to historical products and market conditions, which would undermine their external validity.

8.14 If it was possible to find a historical dataset, then it would be possible to match transactions on the basis of observed characteristics. However, there would be no element of randomisation to the allocation of treatments, and it is possible that the historical use of agreements may, to some extent, be associated with transactions in which buyers and sellers were already motivated to complete and less likely to withdraw. This could introduce bias that it would be difficult to measure or account for.

8.15 Lastly, depending on the number of transactions processed by existing providers, this approach may also have suffered from similar limitations in terms of statistical power to Option 1.

9 Conclusion

9.1 In conclusion, whilst the findings on consumer views of Reservation Agreements and their possible design in sections 3 and 4 demonstrate the possible attraction to home buyers, and sellers were attracted to the idea of introducing reservations agreements generally, there are some practical difficulties which would need to be resolved. Indeed, this study concludes that it was not feasible to undertake a field trial that would produce robust results.

9.2 However, there are practical difficulties in proceeding with Reservation Agreements. The first difficulty concerned the willingness of consumers to make a commitment in the absence of the provision of information about the property. The second issue would be around how to operationalise a trial to assess whether reservation agreements would work in practice.

9.3 For a deposit-based trial, government would have needed to develop an offer that incorporates the factors that underpin the success of other available products. In the absence of this, any agreement would be less likely to be successful and any evidence created would lack external validity. Overall then, this would have been likely to undermine industry engagement with those offers currently available from private providers and with the idea of Reservation Agreements in general.

9.4 This risk could have been ameliorated to some extent if funding was available for an accompanying process evaluation element, which would allow us to interpret any results, explain what has driven success of failure and suggest ways that an offer could be improved. However, even then, any focus by industry would be likely to be on the headline outcome measures and the extent to which this demonstrated success or, more likely in the absence of significant support, failure.

9.5 More generally, the idea of creating a fully-fledged offer was problematic on two fronts. If the aim of the Government was to develop a robust evidence base to inform a decision about whether to invest further in developing an offer, then it would be problematic to have to develop an offer first in order to assess the evidence base. It would also have been advisable to run a pilot of any offer as part of the developmental process, before proceeding to a trial of its effectiveness. Alternatively, if the aim was to provide evidence to help build support for provision by the public sector, then it would also be problematic to invest in their own offer, which would also risk being seen as a disruption to the existing market.

9.6 For a commitment-only trial, the primary issue would be that any evidence generated by a trial would have been of limited usefulness as it would not prove effectiveness of an offer to which Government or the industry are committed. Furthermore, whilst increasing funding to include some kind of process evaluation could help to understand the extent to which participating estate agents are faithfully able to deliver the intervention, it still would not remove the considerable risk that a lack of faith in its effectiveness could undermine delivery.

9.7 Considering the existing evidence base, it is unlikely that the original trial approach outlined in section 7 would provide enough transaction data to conduct a properly powered experimental approach. As a result of this finding the research team undertook further investigations to look at alternative approaches. This work identified the possibility of using a quasi-experimental design which would involve a trial which using retrospective data as a comparator. This would involve engaging with reservation agreement providers/estate agents to discuss – and set up the infrastructure for – the receipt of retrospective data. (As mentioned above, depending on the depth and format of these data, this process may involve data processing or non-disclosure agreements.)

9.8 Once historic data has been received from providers, then an analysis of this could help to answer three questions that will be fundamental in the formulation of the most appropriate trial design. These points are outlined below.

1. Identification of appropriate outcome variables: In the investigation stage, one provider suggested that certain potential outcomes – for example, proportion of completed property transactions – may not differ substantially between transactions involving or not involving reservation agreements.[14] This suggestion could only be confirmed or disconfirmed by examination of providers' data; if confirmed, such analysis would also aim to identify more appropriate outcomes (for example, number of days until transaction completion).
2. Treatment effects of an agreement on appropriate outcomes: once appropriate outcome measures have been identified, it would be important to estimate the average treatment effect associated with the intervention (implementation of reservation agreements) upon these outcomes. This treatment effect would feed into subsequent power calculations required for trial design. Time required for a sufficiently powered experiment: The final input into the power calculations would be the number of transactions required for a sufficiently powered trial.
3. In interrogating providers' data, the number of customer transactions at various time-points will provide an indication of the bounds, that is, the best- and worst-case scenarios of the transaction volumes that could be reasonably have been assumed in 2022. With these volumes, an estimate of the length of time required for fieldwork for a future-facing trial (or the extent of the back data required for a historical trial) would be possible.

9.9 Whilst it was not possible to conduct the trial under the auspices of this study it does provide a useful pointer for future studies.

[14] Due to additional effort exerted by agents in transactions not involving reservation agreements (akin to a Hawthorne Effect)

Appendix A – Workshop 1 Stimulus A

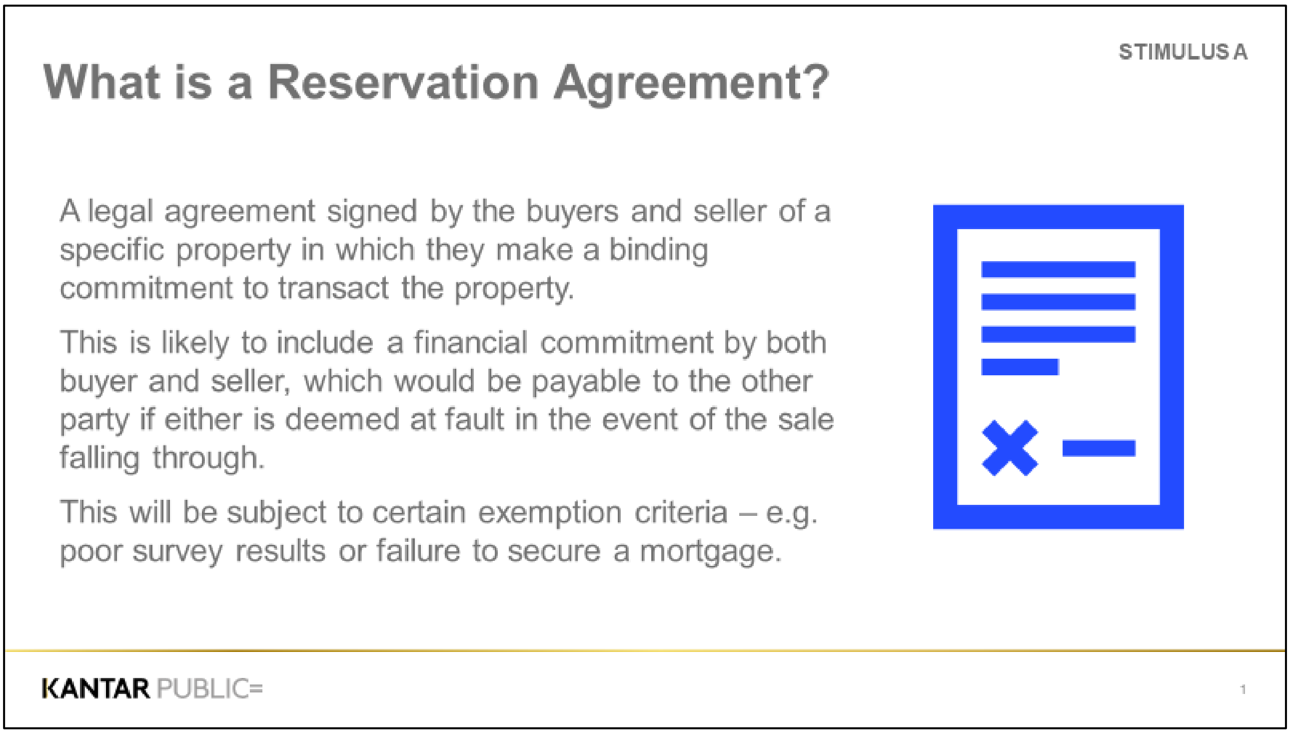
Figure A.1 shows the Workshop 1 Stimulus A showcard, which summarises the purpose of a Reservation Agreement. The exact text is reproduced below for reasons of accessibility.

A legal agreement signed by the buyers and seller of a specific property in which they make a binding commitment to transact the property.

This is likely to include a financial commitment by both buyer and seller, which would be payable to the other party if either is deemed at fault in the event of the sale falling through.

This will be subject to certain exemption criteria – e.g. poor survey results or failure to secure a mortgage.

Figure A.1 Workshop 1 Stimulus A Showcard



Appendix B – Workshop 1 Stimulus B Showcards

Figures B.1, B.2 and B.3 respectively show the workshop 1 stimulus B scenarios one, two and three, relating to the options for the design of a Reservations Agreement

Figure B1 shows the option to have Each party pays a £1000 flat fee, with the deposit being held by an ESCROW provider and with a penalty clause such that whoever is determined to be at fault for sale falling through forfeits their entire deposit to other party. Exclusions included buyers not being approved for a mortgage.

Figure B.1 Scenario 1 Showcard

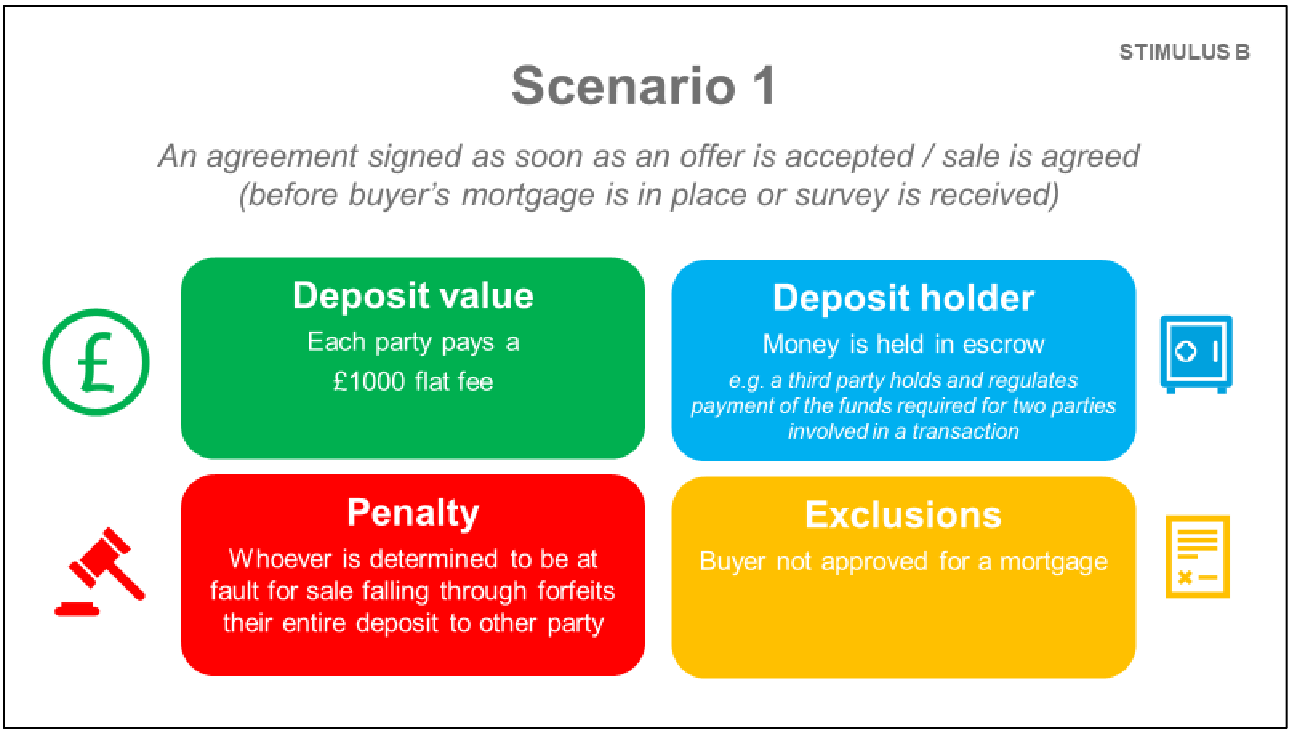


Figure B.2 shows the option to have each party pays a deposit of 1% of the value of the property, with the deposit being held by the seller's estate agent and with a penalty clause such that Deposits are used to reimburse the party who was not responsible for sale falling through for fees incurred. Exclusions referred to Survey results turning up something unexpected

Figure B.2 Scenario 2 Showcard

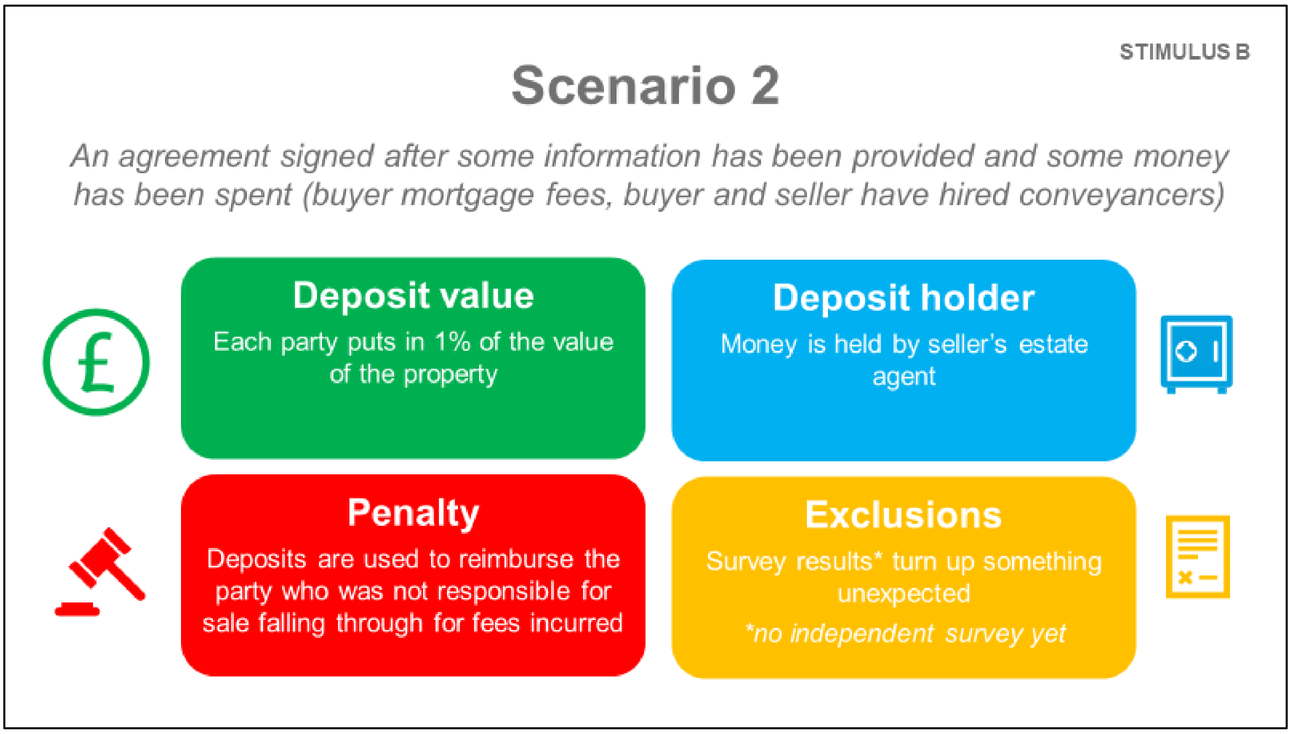
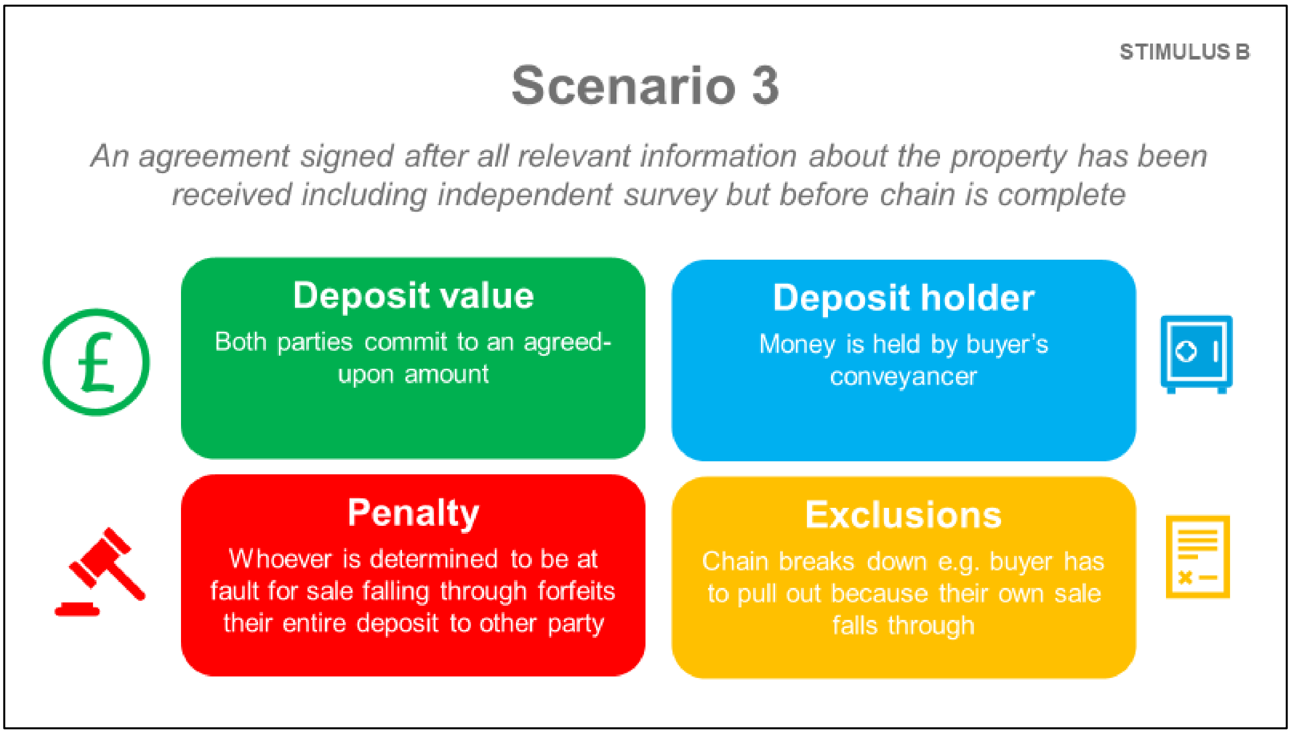


Figure B.3 shows the option to have each party commits to an agreed amount, with the deposit being held by the buyer's conveyancer and with a penalty clause such that whoever is determined to be at fault for sale falling through forfeits their entire deposit to other party. Exclusions referred to the chain breaking down (e.g. the buyer has to pull out because their own sale falls through).

Figure B.3 Scenario 3 Showcard



Appendix C – Workshop 2 Reservation Agreement Guide

RESERVATION AGREEMENT GUIDE

A formal agreement between a buyer and seller of property before they enter into the actual sale and purchase contract in which they declare some key information and agree and make a binding commitment to transact the property. The agreement includes a financial commitment by both buyer and seller, which would be payable to the other party if either is deemed at fault in the event of the sale falling through or if the information provided is shown to be incorrect. It is designed to encourage both the buyer and seller to feel committed to the transaction and to maximise the change of exchange of contracts taking place. The agreement would be introduced by the estate agent at the point of an offer being made.

Terms and Conditions

- **Set-outs a timeframe for the transaction**, with both parties agreeing to exchange contracts by an agreed date (e.g. six weeks after signing)

- **Includes a mutually agreed upon deposit** of between £1000-£3000, held as a credit card imprint (rather than payable as a cash deposit) by a private third-party escrow company
    - **Each party pays a** fee of £150 to cover administration of agreement and any future arbitration.

- **Accompanied by a declaration of information about the buyer and seller**
    - **Buyer**: Their financial position (e.g. whether they have a mortgage approval in principle or are a cash buyer) and whether they are in a chain or not;
    - **Seller**: Declaration of key information about the property (see Reservation Disclosure form) and whether they are in a chain or not.

- **Each party agrees to particular actions**
    - **Seller** takes property off the market and notifies estate agent to take no more offers;
    - **Buyer** agrees to stop looking and to initiate searches within 2 weeks of entering into the agreement.

- **Any party found at fault will forfeit the entire deposit**
    - If a party was found to have provided false information or to otherwise cause the sale not to go ahead, the injured party's conveyancer will provide documentary evidence to the third-party Escrow provider to prove fault.

- **Parties can withdraw from the agreement without penalty** in pre-defined cases
    - Conveyancing searches or a survey turn up a serious adverse matter.
    - Property is not mortgageable or property is valued at below agreed purchase price.
    - In chain transactions, if the chain collapses beyond two immediate parties, both parties would have the opportunity to leave the agreement without penalty (but could remain in agreement if they wanted).

- **Includes a 'Compassion clause'** by which either party could waive their claim to the deposit if they feel that the other party has had to withdraw from the deal due to exceptional circumstances (e.g. death in a family)

Appendix D – Workshop 2 Reservation Disclosure

RESERVATION DISCLOSURES

WARNING: *EACH PARTY WILL RELY ON THE OTHER PARTY'S DISCLOSURES ON THIS FORM WHEN ENTERING INTO THE RESERVATION AGREEMENT, BUT LIABILITY FOR GIVING INCORRECT INFORMATION IS LIMITED TO THE RESERVATION DEPOSIT.*

SALE PROPERTY ADDRESS: **POSTCODE:**	
SELLER'S DISCLOSURES:	The Seller gives the Buyer the following information for the purpose of entering into a Reservation Agreement:
Readiness to sell	The sale is [chain-free and is not dependent on a purchase] [part of a chain and is dependent on a purchase]. There is nothing [else] preventing the Seller from selling the Property at this time [except [●]].
Completion date	There are no limitations regarding the date when the Seller can complete the sale and give the Buyer vacant possession of the Property [except [●]].
Type of ownership	[The Property is freehold and [no rentcharge] [a rentcharge of £[●] per year] is payable.] [The Property is leasehold having about [●] years remaining and at a ground rent of £ [●] per year which [is fixed throughout the term] [rises every [●] years]. [A capital sum is payable to [●] whenever the Property is sold [or let], amounting to [●]].
Outgoings	Apart from council tax and usual utility charges, [there are no specific outgoings payable for the Property] [service charges or maintenance contributions are payable which are currently about £[●] per year. There are [no] anticipated major works required that may increase that sum significantly.]
Utilities	The Property has electricity, telephone, broadband, gas, mains water and mains drainage services [except that [●]].
Rights	The Property has [off-street car parking for [●] cars] [some unallocated off-street parking] [no off-street parking]. Street parking is [permitted] [subject to residents' parking controls] [prohibited for residents of the Property]. There are no private areas or amenities that are shared with neighbours [except for the common parts of the block or estate] [except for [●]]. No neighbour has the right to enter the Property [except [●]].

Restrictions	Apart from under local authority planning and building controls, alterations to the Property or its use [do not need the consent of any other person] [may require the consent of a neighbour, landlord, estate company or management company who [must][need not] act reasonably and may charge a fee]. The Property [is] [is not] a listed building and [is] [is not] in a conservation area. No tree on the Property is subject to a tree preservation order [except [●]].
Building works	All planning permissions, building regulation approvals and other consents that may have been required for any building works on the Property were obtained and no breaches of them are known [except [●]].
Disputes and defects	There are no disputes with any neighbours [except [●]]. The Property is not know to have been affected by flooding, radon gas, mining or fracking, Japanese Knotweed or hidden structural problems [except [●]].
Other matters	The Seller is not aware of anything else likely to affect a typical buyer's willingness to buy the Property or the price offered [except [●]].
BUYER'S DISCLOSURES:	The Buyer gives the Seller the following information for the purpose of entering into a Reservation Agreement:
Readiness to buy	The purchase is [chain-free and is not dependent on a sale] [part of a chain and is dependent on a sale]. The Buyer is funding the purchase [wholly in cash] [with a mortgage]. [The Buyer [has] [does not have] a mortgage loan approved in principle.] There is nothing [else] preventing the Buyer from buying the Property at this time [except [●]].
Completion date	There are no limitations regarding the date when the Buyer can complete the purchase and take possession of the Property from the Seller [except [●]].

IMPORTANT NOTES FOR THE BUYER AND SELLER:

1. Each party may rely on the information given above ONLY for the purpose of entering into a Reservation Agreement and NOT for the purpose of entering into a sale and purchase contract.
2. If the Buyer has any special requirements (such as parking a caravan or building an extension) the Buyer should tell the Seller and ask about any likely difficulties before entering into the Reservation Agreement.
3. A party giving incorrect information on this form is not liable to compensate the other party beyond the amount of the Deposit he pays under the Reservation Agreement.