

- whether any previous advice you gave to your client may need to be revised, and
- whether there may be implications for your marketing of the property:
 - are there existing statements in the particulars or other marketing information that may need to be amended?
 - could the new information be material information that must be disclosed to all future prospective buyers?⁴⁹

5.37 The reason why a previous sale fell through will not always be material, for example where the buyer pulled out because they did not have the finance or did not like the findings of the survey even though those findings did not highlight any major issues. However, where a survey reveals significant problems and you are put on notice that these problems do or may exist, you would be expected to make appropriate enquiries. If the information is material, you will be expected to disclose it.

5.38 For example, if you become aware that Japanese Knotweed is growing in the garden of a property you are marketing, perhaps because a buyer pulls out of a sale and tells you, then you cannot ignore the problem. The appropriate action may be to talk to the seller and advise that an expert is brought in who can confirm whether there is a problem. The presence of Japanese Knotweed, or the risk that it may be present, is an example of the type of material information that you would be expected to disclose to prospective buyers once you knew of it.⁵⁰

⁴⁹ In the context of residential property sales in Scotland, this would include a situation where you are put on notice that the Property Questionnaire may contain inaccuracies. In such circumstances, you may need to take steps to ensure that you are not committing a breach of the CPRs, for example you may need to review your own marketing materials and advise your client to correct their answer(s) in the questionnaire.

⁵⁰ Japanese Knotweed may cause serious damage to outbuildings, conservatories, drains, garden walls, patios, paths and drives. It can be difficult to control and costly to treat, and its presence may affect property values and deter lenders.