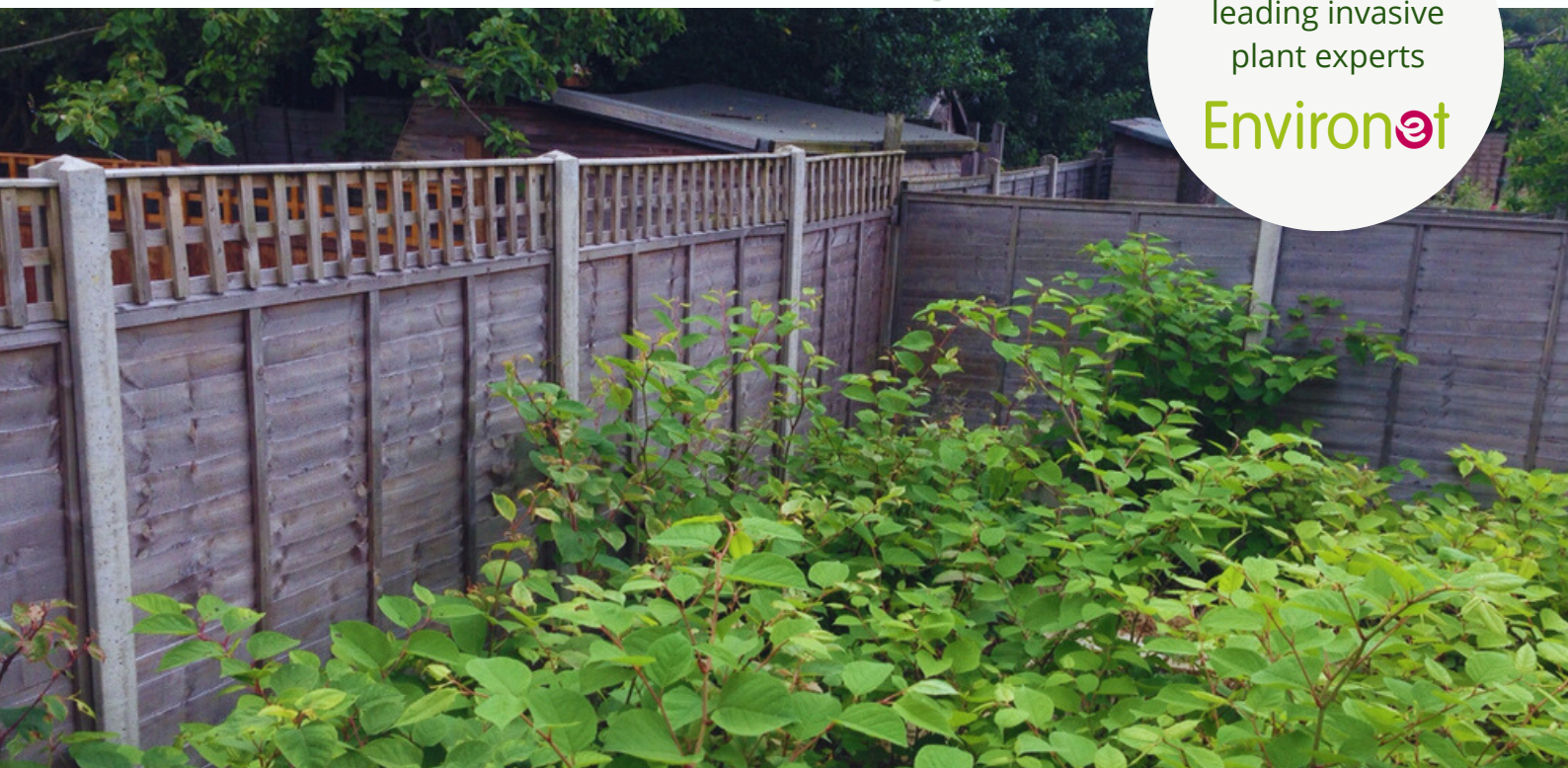




Authored by
leading invasive
plant experts

Environet



Mitigating the risks arising from Japanese knotweed misrepresentation

New consumer research carried out with YouGov shows that almost one in ten sellers (9%) would give false information if they were selling a property affected by Japanese knotweed, despite the legal risks, meaning around 4,500 homebuyers could unknowingly buy a property with knotweed every year.

The role of a buyer's professional advisor is critical in ensuring a knotweed infestation is discovered, or if not, that their client has a strong legal case against the seller. We look at the checks and balances in place to protect buyers and the steps advisers can take to protect their clients' interests.

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YouGov[®]
What the world thinks

The risk of misrepresentation is clear

There are two obvious opportunities in the homebuying process where a Japanese knotweed problem can and should be revealed. Firstly, sellers have a legal duty to declare the presence of knotweed - including on adjacent and abutting land and hidden beneath the ground - and can expect to face legal recourse if they don't. Secondly, a RICS surveyor has a responsibility to identify knotweed if it's clearly visible, although they're not expected to dig up the garden.

Despite the obvious legal risks, our latest YouGov research shows that 9% of sellers would opt to keep quiet rather than declare the presence of knotweed on their property - and that doesn't account for those who might state in good faith that their property is unaffected, when in fact it is.

Japanese knotweed
Note: Please see the Explanatory Notes for Sellers and Buyers for further information about Japanese knotweed.

23.3 Is the property, or an area adjacent to or abutting the boundary, affected by Japanese knotweed?

If Yes, please state whether there is a Japanese knotweed management and treatment plan in place and supply a copy with any insurance cover linked to the plan.

Radon
Note: Radon is a naturally occurring inert radioactive gas found in the ground. Some parts of England and Wales are more adversely affected by it than others. Remedial action is advised for properties with a test result above the 'recommended action level'. Further information about Radon can be found at: <https://www.gov.uk/government/collections/radon>

23.4 Has a Radon test been carried out on the property?

If Yes:
(a) please supply a copy of the report
(b) was the test result below the 'recommended action level'?

23.5 Were any remedial measures undertaken on construction to reduce Radon gas levels in the property?

24. Transaction information

24.1 Is this sale dependent on the seller completing the purchase of another property on the same day?

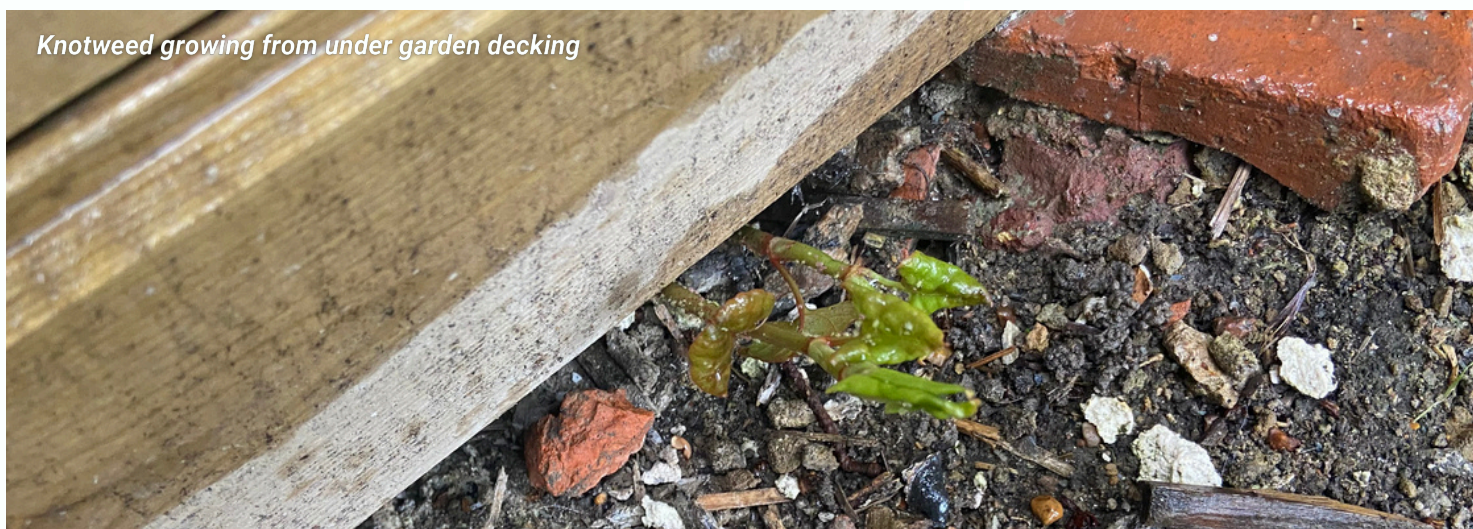
24.2 Does the seller have any special requirements about a moving date? If Yes, please give details:

24.3 Is the sale price sufficient to repay all mortgages and other loans?

Case Study: Raynes Park, London – 2023

There have been several recent legal cases which have favoured claimants suing sellers for failing to disclose knotweed, whether it can be proven that the seller knew the plant was present or not.

Last year, a seller in Raynes Park, London, was ordered to pay £200,000 in costs and damages to the buyer of their 3-bedroom family home after knotweed was found growing at the back of the rear garden. The seller claimed not to have known about the plant, which was located behind a shed, but the judge decreed that it had been present for several years and would have been visible during summer, making the seller liable for the resulting diminution of the property's value and legal costs.



Awareness and knowledge are different things



In addition to fraudulent misrepresentation, risk can also arise from negligent or innocent misrep. UK-wide awareness of knotweed is now at 77%, according to our YouGov research, yet only 12% of the general public was able to correctly identify Japanese knotweed in its most obvious form out of a gallery of six different plant photos, including bindweed and lilac.

Sellers aren't expected to become gardening experts, but they are expected to take reasonable measures to ensure the questions they give on the TA6 are correct. Answering "No" when one can't confidently identify knotweed during the different seasons leaves a seller vulnerable to a misrepresentation claim.

Another consideration is that even if knotweed was professionally treated years prior, there is still a legal requirement for sellers to disclose that fact due to the risk of rhizome dormancy. This probably isn't clear enough in the TA6 guidance, so additional advice to sellers may be required.

"Not known" is almost always the safest TA6 response

The recently revised wording to the Japanese knotweed question on the TA6 form makes it clearer to sellers that they must identify whether there is Japanese knotweed present not only on their property but also "adjacent to or abutting" the boundary.

Clearly, if knotweed is visible or if the seller is aware of its presence, the answer to the knotweed question is definitively "Yes". But that leaves the vast majority who can't be certain. For them, the safest response is to tick "Not known" and, for a belt and braces approach, provide accompanying evidence of a professional knotweed survey with a warranty showing the property to be knotweed-free to the best of their knowledge.

Where a seller has ticked "Not known", the onus moves onto the buyer to carry out further investigations. It's recommended that conveyancers advising buyers in this situation can reduce their risks with a professional knotweed survey/warranty or with a Japanese knotweed indemnity policy before progressing.

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"If a conveyancer for the buyer ignores a 'Not known' response and fails to recommend their client carries out further checks, they themselves could be at risk of a professional negligence claim if knotweed later emerges."

"The seller on the other hand is better protected, (unless he/she knew the property was affected), hence why we see far fewer 'No' responses."

**Nic Seal,
Environet Founder**

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If in doubt, ask the experts

Environet's JustCheck™ survey was created to protect both buyers and sellers by determining whether or not a property is affected by knotweed. Our consultants check the property for any sign or suspicion of knotweed, and where possible on adjoining land. Assuming none is found or suspected, a 5-year warranty is provided to cover the cost of up to £20,000 of treatment in the unlikely event the plant should later appear.

Armed with an "all-clear" report and warranty, sellers are still advised to answer "Not Known" to the TA6 knotweed question and attach the survey report showing the property to be knotweed-free to the best of their knowledge.



Surveyor assessing knotweed

Summary

Declaring the presence of Japanese knotweed may make a property more difficult to sell, but certainly not impossible. The YouGov research shows that 68% of sellers would choose the correct course of action and commence professional treatment, allowing their sale to proceed. If an infestation is professionally dealt with (ideally, removed from the ground rather than herbicide treated), with an insurance-backed guarantee, it is possible in most cases to restore the value of the property – although the so-called 'knotweed stigma' can still have some minor impact.

Buyers are also becoming more pragmatic, with two-thirds (67%) saying they would go ahead and buy a property with knotweed, as long as it was professionally dealt with by the seller, or the price was discounted to reflect the cost of removal. However, there is still a large contingent of buyers - 33% - who would walk away, not wanting to take on the burden. With the pool of buyers who would potentially purchase a property reduced by a third in such cases, house prices may be negatively affected in what is currently a buyer's market.



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Authored by experts, Beacon is a series of information papers providing insights into the removal and treatment of invasive plants in the UK.

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