



The Law Society

Draft Home Information Pack regulations 2006

The Law Society response

January 2006

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Introduction

The Law Society has had the opportunity to make observations and comments on the draft regulations as they have been developed. A number of meetings have taken place between the ODPM and the Law Society. Comments and observations on the draft have been received by the ODPM from individual solicitors. This response is intended to be both a summary and résumé of comments which have already been made together with additional comments that are necessary as a result of a detailed examination of the draft regulations as published on the 31st October 2005.

We have divided our comments into three parts: points of principle; detailed comments on the draft regulations; and comment on the draft forms as set out in Schedule 4 and Schedule 5.

Points of principle

1. Health warning

We believe it is crucial that there should be a requirement for the HIP to contain in a prominent place a warning to consumers that they should not enter into any commitment financial or otherwise, on the basis of information contained in the HIP, without first taking independent professional advice. We believe that without such a warning there are very serious risks to the consumer arising from the HIP regime.

There are many examples in modern legislation where prescribed forms are required to contain such warnings. A good example are the regulations which prescribe the forms relating to the exclusion of Section 24 to 28 of the Landlord and Tenant Act 1954 (the right to a new tenancy) in business leases which must be supplied to a potential tenant before entering into a lease containing the exclusion. The form is required to provide in bold print 'It is therefore important to get professional advice – from a qualified surveyor, lawyer or accountant – before agreeing to give up these rights'. It is our view that a similar requirement should apply to HIPs. Without this requirement we believe that consumers will be exposed to the risk of being pressurised into taking on substantial liabilities and commitments without the benefit of independent advice.

Many consumer contracts (i.e. loan agreements and life policies) are required by legislation to contain a 'cooling off period' to give a consumer time to withdraw from an ill-considered contract without incurring any financial liability. There is a risk that with HIPs a consumer will be told by selling agents that the HIP contains all the information they need and they can enter into an immediate legal commitment. This risk will be significantly increased if as a result of market forces the selling agents take a greater financial interest in the transaction because they have underwritten either part or whole of the cost of the HIP, and they are only able to recover that cost if a sale of the property takes place through their agency. The government has ample evidence of the dangers to the consumers of this type of sales pressure. (Pension and endowment mis-selling are just two examples). If the HIP regime significantly reduces the number of properties on the market as predicted by some stakeholders many consumers will be put under considerable pressure to exchange contracts with undue haste. Particularly if as predicted gazumping becomes prevalent in the market

because of a reduced number of properties available for sale and the availability of information to many interested parties.

2. Dating and authenticity of HIPs

There is no provision within the regulations for either information included in the HIP or for the HIP itself to be signed or authenticated. This is in our view a serious defect. Early signs of the emerging market created by the new HIP regime indicates that a whole new sector is being developed within the housing market by organisations which are known as 'HIP' Providers. These are predominately large organisations who are committing substantial resources to enable them to offer HIPs direct to sellers estate agents or other responsible persons as defined in the legislation. It is possible that many of the HIPs in the market after the 1st June 2007 will have been put together by these HIP Providers. Neither the Seller nor the Responsible person will therefore be involved in the preparation of the HIP although they will have some element of legal responsibility for its contents. These HIP Providers will have no legal relationship with the Buyer and no liability under the proposed regulations. It is likely that the only recourse to a buyer who has received a defective HIP will be through the Responsible person or the Seller. It is clear that in the formal contract for sale of the property the Seller will seek to exclude by contract legal liability for information or statements contained within the HIP. The legal liability of the Seller to the Buyer will be strictly limited to information supplied directly by the Seller through his or her conveyancer which will be authenticated by that conveyancer in accordance with current practise. Sellers will therefore have no legal liability for information contained in the HIP unless they subsequently assume responsibility under the contract for sale. This is most unlikely.

It is important that a buyer who makes an offer to purchase the property and may subsequently enter into a contract for purchase, on the basis of information contained in the HIP, has easy and direct access to the person responsible for the preparation of the HIP.

It is also our view that there should be a requirement that the HIP when it first becomes available to the responsible person it should specify the date when the HIP has been completed. This will provide crucial information to the consumer. There should also be an obligation to inform a Buyer if the HIP has subsequently been revised and information as to the date and details of the revision should also be supplied.

This will enable the consumer to know when the HIP was prepared (rather than having to work it out from the different dates that may be contained in constituent parts of the HIP). Equally importantly it will tell the consumer if the HIP has been revised. The date and authentication will also assist the progress of the formal conveyancing transaction when it commences after the Buyers offer has been accepted. The conveyancers acting for the Buyer and the Seller who will have much more information about the HIP. This will enable them to make decisions on what further enquiries and information may be necessary as part of the full due diligence procedure that will still be required on behalf of buyers and lenders. This will be particularly important if the property has been on the market for some considerable time.

3. HIPs as part of the ongoing house buying process

We do not consider enough consideration has been given in the drafting of the regulations as to the role that the HIP will play in the on-going conveyancing process.

The HIP must be capable of full integration with the rest of the conveyancing process. This is particularly important as it is highly likely that many HIPS will be prepared by commercial concerns that have no on-going interest or responsibility for the ultimate sale. The government has always made it clear the purpose of the HIP is to provide a buyer with the ability to make an informed decision as to whether or not to make an offer for the property. Similarly the government has always made it clear that the principle of caveat emptor will apply. This must mean the Buyer and the Buyers lender will need to carry out a full due diligence enquiry before either the Buyer or the Lender is committed in respect of the property. The regulations as currently drafted will not assist this process and are likely to result in a duplication in effort and wasted cost.

4. Acceptability of personal searches by lenders

In the current conveyancing process it is the almost universal practice of Lenders under the terms of the Lenders Handbook to require the conveyancer acting for the Lender and the Buyer to effectively underwrite accuracy of any search carried out by personal search companies. Market forces are making it impossible for solicitors to discharge their obligations to Lenders in that regards. It is unlikely that the HIP regime will deliver the benefit to consumers promised by the government unless personal searches which meet consistent quality standards with robust consumer protection can be included in the HIP. If personal searches are to be permitted by the regulations they must then be universally accepted by Lenders without conditions.

5. Definition of removal from the market

We are concerned that the definition relating to the removal of a property from the market is unclear and will inevitably lead to serious abuse which could undermine the whole HIP regime.

6. Logo

It is going to be very difficult indeed to incorporate the logo on official documents. It is possible that the logo will be mis-used to give official credibility to inappropriate documents. We believe the logo will not be an effective method of authenticating or protecting the contents of the HIP and that some alternatives will have to be developed.

Detailed comments on the draft regulations

Part 1

Interpretation Clause 2(3)(6)(iii)

It should be made clear that not only must the building have the 'facilities' but those facilities must be in appropriate working order.

Part 2

Regulation 3

We are concerned that the use of the words 'must be clearly distinguished' will be inadequate to prevent the copy HIP being given to a consumer from being buried within a mass of unofficial and inappropriate documentation. The purpose of the HIP being distinguished is to effectively separate it from such information and we feel the drafting of this clause should be reviewed by making it clear that the HIP must be 'separate' from as well as 'distinguished' from. Ideally the regulations should provide that separation and distinction must be such as to make it very obvious that the additional documents are not in any way part of the HIP. There should also be a prohibition on the HIP being put inside or supplied as part of a general folder of information relating to the property. As many HIPs will be supplied electronically the regulations must be drafted to prevent HIPs being mixed with unofficial and inappropriate documentation electronically.

Regulation 5

We have already expressed our view that the Logo will not be an effective method of distinguishing authorised or required documents within the HIP from other documents. It should be made clear that the Logo is the only such Trade Mark or Service Mark which can be displayed as part of the HIP. Any personal searches included in the HIP for example must not be permitted to carry logos or other promotional material relating to the search provider. The regulation does not appear to specify the logo must be accurately reproduced. Is it envisaged that Schedule 1 will contain the exact dimensions and colour of the logo which must be reproduced on each and every occasion? If this is the intention it will undoubtedly make it difficult to produce copies and will increase the cost.

Regulation 6

The regulations must make clear the distinction between a true copy and 'a copy' of the Home Information Pack (which after all is the one the Buyer will receive) and that it must be an exact replica of the official HIP. In other words it should not contain advertising or other material and must be supplied on blank paper with no other marks or information. Presumably it is intended that unless a copy 'is a true copy' it will not comply with the regulations.

Regulation 7 (3)(a) and (b)

It would appear to be possible for a property in Wales to have a HIP prepared only in Welsh. Unless the Responsible Person is obliged to provide the HIP in a language appropriate to the prospective buyer then such persons will be seriously disadvantaged. This would be particularly unhelpful for a buyer who could only speak English.

There is also the potentially serious issue that there are many home buyers in England where English is a second language. Unless the Pack can be translated for them or is provided in their principle language they will be seriously disadvantaged.

We would also reiterate the comments which have been sent to you under separate cover that the regulations take no account of persons with disabilities particularly those who are poorly sighted or blind be they seller or buyer. It is unhelpful to specify in the regulations that the HIP must be provided in paper format if there are sections of the community who will not be able to meaningfully access the information contained in the paper copy of the HIP.

Part 3

Regulation 8(a)

An Index will not 'explain' the contents of the HIP it will only list the contents which is different. If it is intended that the Index should explain the contents of the Pack then this part of the regulations will need substantially redrafting.

The Index should not be the long Index which is provided in Schedule 2 but should consist only of the documents that are actually relevant to the individual HIP. The regulations must be drafted on the assumption that sellers will wish to produce the briefest and cheapest pack and will not wish to include anything other than the minimum contents. Schedule 2 should prescribe a list of potential contents which can be tailored to suit the individual HIP. (If the HIP is revised is it necessary for a new Index to be included?). Will there be any reference to the change? It is unclear as to how this particular regulation links into Regulation 15 (up dating the Home Information Pack Index). If the HIP is revised is it necessary for a new Index to be included? Will there be any reference to the change? Without such a requirement it may be difficult for a buyer to appreciate or understand that the Pack has been revised or changed since it was originally produced. Changes must be obvious and not covered merely by a replacement Index. It would be helpful if the Index was signed and dated by either the responsible person or the producer of the Pack. We have already made some earlier comments and observations on these particular issues.

Regulation 8(b)

The sales statement set out in Schedule 3 does not contain any declaration by the seller which renders it unreliable. The statement should give the postcode of the property and as designed the form is slightly confusing. The expression 'completed version' here and elsewhere in the draft regulations needs definition as to what this exactly means. Presumably there will be three types of version fully completed, partially completed and blank. The documents in Schedules 3,4 and 5 are at the very heart of the HIP and it is very important indeed there is no confusion on the part of the seller or the buyer as to what is required in respect of these forms. In the sellers check list the word 'they' is ambiguous.

Regulation 8(c)

There is confusion between this regulation and the form itself. The form appears to permit deletions which is inconsistent with the other provisions of Regulation 8(c).

Regulation 8(d)

If a completed or partially completed form is included in the HIP then there will be no blank form for comparison purposes if the wording is followed to 'substitute' rather than 'add'.

Regulation 8(e)

The possibility to cater for multiple registered titles needs to be included where appropriate.

Regulation 8(j)

The proposed scheme is unclear. This is particularly so as Schedule 9 appears to be incomplete. Warranty schemes could change the procedures under which they operate. The scheme envisaged by the regulations is therefore potentially subject to such changes. The requirement if a property is physically complete to provide either a Home Condition Report or a warranty should be made clearer and the word 'and' should be substituted for 'or'.

Regulation 8(o)

What precisely does 'in any other form' mean.

Regulation 9 (a)

As we have already commented the fact that a translation is only authorised is discriminatory.

Regulation 9(b)

As above.

Regulation 9(e)

This definition could permit the inclusion of copies of the original documents without any explanation which would be confusing to the Consumer.

Regulation 9(f)

It is unfortunate there is no obligation to provide the full text of documents which may be exempt information documents. Information which has been edited out under the Land Registry Rules could be very material and could affect a buyers decision whether or not to make an 'informed decision' to buy the property. If exempt documentation is excluded the buyer will be unable to make an informed decision.

Regulation 10

Where a new property interest is created there may well be additional documents that will be required. These should be clearly identified in a separate or appropriate part of the Index.

Regulation 11

It might be better to substitute the word 'owner' for 'seller'.

Part 4

Regulation 12(2)

'The first point of marketing ' is defined as a 'time'. It is suggested that this should be changed to 'the day on which'. Regulation 17(2)(b) already refers to 'day'.

Regulation 12(3)

Are the days to be consecutive? Could the property be taken off for say fourteen days put back on again and then taken off for twenty one days all in a period of six or seven weeks?

Regulation 12(5)

There are two difficulties with this particular provision. The first is that it could mean a HIP becomes very stale if the property is taken off the market because an offer has been accepted but the transaction subsequently fails. Is there a limit as to how many times a property can be taken off the market in these circumstances before a new HIP is required? What arrangements are envisaged to cover the transitional provisions in respect of properties marketed before the 1st June 2007 and those marketed afterwards?

We are generally concerned that this particular provision is open to serious abuse.

Regulation 14(3)

In our view all documents in the HIP should be dated and authenticated or alternatively and preferably the HIP itself should be dated and authenticated for reasons we have previously explained.

Regulation 15

How is this revision to be done? Is a new Index prepared or is the old Index revised with the new revisions being highlighted? Transparency for the consumer is very important and this issue needs to be clarified.

Regulation 16

Is it to be explained to the consumer the reasons why these documents have not been included in the HIP. The consumer may well wish to know this information.

Regulation 17

For consistency there should be reference to potential sale at the end of 2(b). It is also our view that a seller should be expressly included in paragraph 2. In other words reasonable efforts should not be limited just to the responsible person. Is it acceptable for a Pack to be deemed fit for marketing without a Condition Report. We are generally concerned about the whole issue of incomplete packs.

Regulation 18 and 19

If the Seller has knowledge of or is a party to any change affecting the documentation within the HIP then that information should be provided and the HIP updated. The

Responsible person may be unaware of changes and the need for the HIP to be updated. This also rather begs the question as to how the Responsible person would obtain 'the revised document' to enable the HIP to be updated. These particular regulations highlights our anxiety of who will be actually putting the HIP together and what knowledge the Seller or the Responsible person will have about the detailed contents of the HIP.

Regulation 20

There does not appear to be any obligation on the Seller to actually check the accuracy of the Pack assuming they are able to do so. This again highlights the general concerns we have expressed about the need for there to be a clear audit trail back to the person or persons responsible for providing the documents and putting the HIP together. A potential buyer must know against whom they will have proper recourse in the event of the HIP being inaccurate.

Regulation 21

Is the grant of planning permission sufficient indication of intention?

Regulations 22(3) and 24(3)

A difficulty could arise where an intention changes during the course of the proposed transaction. The Seller would immediately be in breach as there does not appear to be any provision for a period of days of grace say fourteen days to get a HIP prepared.

Regulation 25

Who determines whether or not the condition proposes a serious risk to health? Potentially any property that is subject to serious disrepair proposes a potential risk.

Regulation 26(1)

This requires far greater definition. It is increasingly common practise in the good quality residential areas particularly in the Home Counties for older properties to be advertised for sale and purchased on the basis the existing house is demolished and a much newer and larger one constructed. The current VAT regime makes such development an attractive proposition particularly for owner-occupiers. Many such properties are marketed on a dual basis which 'suggest' the property is suitable for demolition and redevelopment.

We are also concerned that regulations take no account of properties being offered for sale which are not specifically being marketed for demolition or are unsafe. There are a substantial number of properties coming onto the market which for example have been occupied by people with very limited means and the properties although of sound construction do not measure up in any way to modern standards or requirements. When purchased these properties are completely refurbished. Many by amateur developers. A HCR in these circumstances would be meaningless to the Buyer and the HCR will not contain much of the information they really require which relates to the structure or manner of construction of the property which could affect its renovation costs.

Part 6

Regulation 27

In view of the substantial value of most properties and the profits available for estate agents and sellers the penalty of £200 is wholly inadequate. The penalty for failing to have available a HIP must at the very least exceed the cost of preparing the HIP otherwise it will be cheaper for a seller not to prepare a HIP and pay the £200 if they are reported.

Regulation 28

Is the test of 'reasonable steps' sufficient? Should it not be 'has taken reasonable steps to satisfy himself that'. Is it possible to say that sufficient steps have been taken unless the Seller has been provided with a full copy of the HIP? Should there not be an express obligation to give the Seller a HIP rather than the limited provisions of Regulation 20. It is assumed that the seller has to request under Regulation 20 a copy of the HIP before the responsible person is obliged to provide it.

Schedule 2

The headings of the Index do not appear to follow the requirements of the regulations as previously set out. The use of the phrase 'someone' is vague. The lack of responsibility to which we referred earlier could clearly lead to confusion and problems. Arrangements need to be made to ensure consistency. If the Index is to be in a finite form then this should be made clear. If items can be substituted or replaced that also needs to be made clear. It would probably be helpful if the Index could be separated indicating what was required and authorised and also provide separate Indexes relating to freehold, leasehold, new interests and commonhold. As we explained earlier the Index should make clear that if a document has not been included then why has not been included if it is required document.

Similar comments apply to the sales statement heading. We have already made the point that there needs to be a declaration as to the accuracy of the sales statement.

Schedule 3

Please see comments above.

Schedule 4

We have commented in detail on this form later in this letter.

Schedule 5

We have made comment on the prescribed form later in this letter. We do however have some comments to make in connection with Clause 2 of Schedule 5. We assume that this section is designed to facilitate a seller including their own form provided it is limited to the information and enquiries specified in paragraph 2. It is our view that list contained in Clause 2 is insufficient to provide adequate information to a buyer. For example 2(h) refers only to use and occupation of other land that affects or might affect the property. An appropriate enquiry would refer not only to other land but also the property itself. There are no enquiries relating to flooding or contaminated land.

2(l) is incorrectly drafted as it should refer to obligations to maintain the boundary feature i.e. the fence, wall or hedge as opposed to the boundaries themselves which may not even be marked on the site.

Schedule 6

1(g) there still appears to be confusion over this sub-clause and the period of thirty-six months. Accounts may relate to only part and not all of that period. The regulation should apply to the full accounting periods occurring within the thirty-six month period.

Schedule 8

A mortgage lender needs to be properly defined. We assume the intention is to cover a 'lender' for a proposed 'buyer' rather than existing lender of the current owner.

In clause 3(b) what are 'terms to greater effect'?

Clause 4(b) – what is the phrase 'any person involved in the sale' intended to cover. Many people may be involved in the sale of a property but it would be inappropriate for the prohibition to apply to them all.

Clause 4(h) – the word 'is' needs to be removed.

Clause 5(c) – We fully appreciate the reason for inclusion of paragraph 5 however the regulation does mean that it is perfectly possible for a buyer to acquire a property and discover on the day of moving in that not one single lock in the house working or indeed no locks at all.

Schedule 11

Again what is intended and who is covered by the phrase 'person involved in the sale'. This needs to be much more tightly defined. Clearly it must include lender for future buyer and must be drafted to avoid all potential conflicts of interest.

1(i) – is the description of complaints or redress procedures to cover not only the local authority who may have recorded an incorrect entry but also the search agent who may have interpreted the records incorrectly or recorded that interpretation incorrectly?

Paragraph 7 – it would appear that authorised searches need not contain the same terms as paragraph 4 of Schedule 11. This creates an unacceptable situation. A potential buyer will rely upon authorised and required searches to the same degree. They must all comply with the same standard.

Paragraph 8 – It is insufficient protection for the consumer in that it only requires insurance cover for searches to be provided by a person authorised for the purpose of the Financial Services and Marketing Act 2000. From the consumers perspective it is not only important that the insurer is properly authorised but the terms of the individual policy are adequate and appropriate.

Comment on the draft forms as set out in Schedules 4 and 5

Home Contents Form

We are concerned about this particular form and we believe that it requires substantial redrafting. We comment specifically as follows:

1. There are many items included in this form which it would never be contemplated were an option for the Seller to remove. In particular we would refer to windows and electrical sockets. The same comments apply to radiators, fireplaces, sinks, showers and toilets. The first part of the form ought to be restricted to those items which are commonly or more obviously removable.
2. Insofar as the home furnishings are concerned we make the general comment this form needs to be divided into rooms if it is to be of any use at all. Some rooms have carpets some do not.
3. Rugs need not be included as clearly they can never form part of the curtilage. Similarly sofas would not normally be included in the sale or beds or many other items that are defined in the list as removable. There is also reference to furniture such a dining tables and chairs which again would not normally be in any circumstances be included in a sale.
4. Home appliances would be better specified as to whether or not they were removed by the seller rather than taken.
5. We believe that the market already has established forms which are consumer friendly, meaningful, tried and tested over many years. These forms should be prescribed rather than the wholly inappropriate forms incorporated in the regulations. We do not consider the form as drafted in the regulations will commend itself to the consumer and is likely that it will remain unanswered and will be included in the HIP in blank format. This would be unfortunate as evidenced from the Bristol Pilot indicating that potential buyers did look at this particular form.
6. The form should provide for tick box answers.
7. It might be helpful to have a single box marked 'To be negotiated' to cover the entire contents. This might persuade Sellers to at least provide that information.

Home Use form

Our general comments in respect of this form is that we consider it to be overlong, difficult for the consumer to understand and many of the questions are so unspecific as to be meaningless. There should be separate forms for commonhold and leasehold.

We would comment on the bullet points on the front of the form as follows:

1. The statement is misleading

2. Buyers legal adviser, mortgage lender will ask a lot more specific pointed and comprehensive questions. Filling in the form will not save time later.
3. No comment
4. No comment
5. We have already expressed serious concerns about the reliability of information contained in a HIP. The information envisaged by this particular form is in practice ascertained from a number of sources. Some of the information can only be obtained from the Seller and others will require a review of historical documents and deeds relating to the property. Whoever ultimately physically completes the form it should be checked and authenticated by the Seller. We acknowledge that the difficulty of this approach is that it could delay and increase the cost preparing of the HIP and thereby make it increasingly likely that the form will be left blank.
6. No comment
7. No comment
8. This seems to be fairly meaningless advice. In practice the real advice that the seller will require (or whoever completes the form) is that they need to be satisfied that all of the information is accurate.

Seller's check of this form

If the form is answered the Buyer will presumably rely upon it to make 'an informed decision to buy'. Surely this should be made very clear.

We reiterate our view that this document must be signed by the Seller.

Specific enquiries

1. A potential buyer will have been able to ascertain this information without having to read Property Use form.
2. As above
3. It does not matter whether it is joint access, the key issue is whether or not the owner has any access. It is equally important to know whether or not there are any conditions on the access or any costs incurred for exercising access rights. There could also be rights over land which could not be identified as 'surrounding land' whatever that phrase means.
4. The question is not whether the new owner will have to pay a contribution. The issue is whether or not there is an existing liability which they will have to take over. There is also a difference between having an obligation to pay and actually having to pay.
5. The box 'yes' does not seem to serve any purpose. The real question that follows on from 4 is how much does somebody else contribute, who are they and what are the arrangements for recovering the cost.
6. This is too general.
7. There are different types of listing. If a question is to be asked then it needs to be more specific.
8. Services could be connected to the property but not to supplies from the Utilities. The buyer wants to know whether or not the property has main services not just if the

services are connected. The buyer also wants to know whether or not the services cross over other land.

9. No comment.

10. The question is unhelpful and probably almost impossible for a seller to properly complete. What the Buyer wants to know is whether or not the Seller has either had a dispute or if the seller is aware of a dispute.

11. The question is incomplete. The Buyer wants to know whether or not they have the free running of services across adjacent land and whether or not they have access to adjacent land for maintaining the services. Question 11 seems to muddle the issues.

12. The issue is whether or not neighbours have a legal right to access. Not whether or not they need it. Plenty of people might need access as it would be more convenient for them but they do not have a legal right of access.

13. The question is again very unspecific. The Buyer would want to know if there has been a problem in respect of a previous owner of which the current owner was aware. The real issue is whether or not the seller has any knowledge at all about there being an access problem to the property. The question is also very unspecific. It does not for example distinguish between access for the benefit of the property or access over the property.

14. This again is so unspecific as to be meaningless. The Buyer would not be interested to know whether or not a brick barbecue had been constructed on the patio. This would come within some people's definition of building works. Is the construction of a patio building works? The real question is whether or not any works have been carried out to the property which required the various consents contained question 15.

16. For the sale of most freehold properties this question is utterly irrelevant. The real question to ask is whether or not any third party consent was required and if so was it obtained in writing.

17. See above.

18. The question needs to be specific to the Seller. Has the Seller applied for planning permission?

19. This is an inappropriate question except for a property which is partly under construction.

20. The question is too unspecific. The real issue is whether or not such a person would be legally entitled to make a claim rather than just to be able to make a claim. Anyone is able to make a claim whether or not they legally justified in doing so. To the lay-person the use of the word 'rights' is far too unspecific and is meaningless.

21. This is an unnecessary and inappropriate question.

22. How can a seller possibly answer this question. The question that needs to be specifically asked is whether or not the seller is aware of any complaints being made about the use of the property.

23. Again how can the seller possibly know if one neighbour on one side of the property has made a complaint about some else on the other side the property. The question needs to be specific to the Seller. Has the Seller had cause to make any complaint? The question needs to be as to whether or not they have cause for complaint rather than have they made one.

23. Why should the Seller provide this information at the very early stage of offering the property for sale.
30. The Seller needs to be specifically asked whether he or she is aware of any.
31. How can a seller provide copies of regulations that will be made.
33. It is not the current address that is required it is the registered address.
34. The question should ask whether the Seller or unit holder last received a communication for or on behalf of the common hold association.
36. The same issue arises.
38. As above
56. This should have been included in the HIP in any event.
57. The question needs to be asked whether or not the Seller is aware of any negotiations.
58. Proposals by whom?
59. Will the average buyer know what a 'shared equity basis' means.
60. It is unlikely that the freehold interest would be available on its own. The question ought to be about a share in the freehold interest.
61. Again this ought to be on the basis of information known to the Seller.
63. The average buyer would probably think above means the floor above as opposed to a superior lease.
64. If the property is just being offered for sale, even if a landlords consent is required, it is unlikely that any application would be made to the landlord at this stage. No landlord would give consent except on behalf or in respect of a specific buyer who may well be required to provide references.
65. Surely the question ought to be to provide copies of all regulations which affect the use and enjoyment of the property.
68. This would presumably include receiving a Christmas card from the landlord.
69. How will the Seller know whether or not the landlord is intending to appoint an agent.
70. Again this is presumably designed to cover Christmas cards.
71. How can the seller answer as to the future.
72. The Christmas card principle applies again.
75. It may be that some years ago some ground rent was not paid. The question is whether or not the seller is aware of any current arrears.
76. Many leases provide that ground rent is payable without demand. No invoice is actually issued particularly for very small amounts of ground rent.
79. Again the Seller will not know in respect of anything prior to their ownership. The question needs to focus upon arrears known to the Seller.
81. We have already made the comment about inadequacy of the thirty-six month period cut off.
82. The Seller can only speak about whether or not there is an actual reserve fund included within the service charge arrangements. It is unlikely the reserve fund will be

specifically for the property. A reserve fund normally is in respect of the building of which the property forms part.

83. The Seller will not be able to answer this question and will have to presumably seek further advice.

85. The question can only relate to that of which the Seller is aware.

86. As above.

87. This information may not be available to the Seller.

88. As above.

91. The real question is whether or not the premiums have been paid.

It is our view that this particular document as drafted will not provide meaningful or reliable information to the Buyer. We have two further comments. The form is overlong and we suspect its very lay-out and format will deter many sellers from completing it. This will almost inevitably lead to the HIP not containing the relevant information.

Furthermore there is no point in questions being asked in the HIP which may well have to be repeated in a more direct and detailed manner as part of the conveyancing process.

A form seeking information of the type envisaged should be shorter, more precise and be limited to key questions. It must also be in a much more readable and understandable format. We would also re-emphasise the point that we have made in our general observations at the beginning of this response. The HIP must contain information which will conveniently fit into the full conveyancing process which will follow once the Buyers offer has been accepted. Any property information supplied in the HIP must be in a format that is consistent with enquiries that will be made by the average diligent Buyer. It must also be in a format that will permit additional more specific additional enquiries to be made which are relevant to the individual property. The HIP must be part of a 'joined up' house buying process and this particular form as currently drafted is in our view unlikely to make any contribution to that process.