



The Law Society

**Home Information Pack Update: Towards 1 June 2007,  
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Local Government, 25 January 2007**

**Law Society response  
20 February 2007**

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The Law Society is pleased to respond to the consultation document published by the DCLG on 25 January.

This document sets out the Law Society's key general concerns and observations about the consultation as a whole and its timing. It then goes on to address a number of individual paragraphs, with more specific, detailed comment in each case, as appropriate.

## Key concerns and observations

1. Although the document is described as a consultation and responses are invited, we question whether or not it can properly be described as a true consultation. It falls short of the normal criteria that would be applicable in a true consultation exercise. Much of the document consists of the selective publication of parts of several limited, and ad hoc, surveys. It makes a number of unsupported assertions and attempts to present problems, which were highlighted by the Law Society and many other organisations when HIPs were first proposed, as new ones identified by the government as a result of the dry run.
2. The Law Society is fully committed to improving the home buying process, and many of the proposals the government are seeking to adopt are long-standing initiatives of the Law Society. The Law Society's TransAction Scheme, which was introduced in 1989, resulted in improved transparency in the market and promoted to the public the benefit of providing information concerning the transaction well in advance.
3. The home buying process is central to the British economy. The ability of the public to buy and sell a home with confidence is at the very heart of our social fabric. It is, therefore, unfortunate that the government should consider it appropriate to attempt to impose on the public a fundamentally flawed product and, in so doing, ignore advice and comment from informed stakeholders experienced in the market.
4. The fact that the government has had to reduce significantly the contents of the pack, and are now endeavouring to embark upon a consultation exercise a few months before 1 June, is clear evidence that Home Information Packs, as originally envisaged, will not improve the home buying and selling market. The single biggest reform which would improve the process would be the development of online searches by local authorities. As the Law Society urged the government, this was where their real initiatives should have been directed. The government's encouragement of sub-standard searches which provide little or no consumer protection, and are resulting in the payment of disguised and undisclosed commissions, is not a reform in any sense of the word. It is something that has been very detrimental and confusing to the market.
5. The government were warned several years ago that delays in the production of a local search would delay the marketing of properties. The dry run has merely confirmed what the government has been told previously on numerous occasions. The government has also been warned that delays in producing

leasehold information would produce a two- tier market. Those sellers with freehold properties would be able to market their properties a lot more cheaply and readily than someone with a leasehold property. This is not something that has come out of the dry run, it is something about which the government has been warned on numerous occasions.

6. Until the publication of this consultative document, the government has always made it clear that insurance-backed searches were not acceptable insofar as HIPs were concerned. Indeed, the regulations as drafted do not permit personal searches backed by insurance. It has always been made clear to the government that unless official searches could be provided universally online, a HIP with a search would significantly delay first day marketing.
7. Now that the government has effectively abandoned the Home Condition Report, HIPs can hardly be seen as a reform. The Home Use and Home Contents forms are poorly drafted and largely irrelevant insofar as the first day of marketing is concerned.
8. It is unacceptable that, at this late stage, the government should seek to introduce significant changes to the Regulations which they published some time ago. This is particularly so when the difficulties that the government are attempting to present as arising out of the dry run were clearly identified to them at the time when the Housing Bill was published, and subsequently during its passage through Parliament.
9. There have been many initiatives generated from within the industry to provide consumers with better information at the right time and to improve speed and certainty of transactions and reduce wasted costs. HIPs will not provide any additional benefits. The home buying and selling market in England and Wales has traditionally been one of the most competitive and innovative markets in the world. The way in which the government has attempted to enforce the introduction of HIPs on 1 June by forming close associations with new organisations will lead to reduced competition in the market and increased costs for the consumer.
10. The difficulties and problems within the house buying market are well known. The Law Society, for example, has always made clear to the government that, rather than spend millions of pounds on HIPs, its efforts and investment should have been centred on:
  - encouraging local authorities to provide online searches;
  - providing for the better regulation of lenders and requiring greater transparency in all aspects of mortgage products;
  - providing greater investment and commitment to electronic conveyancing;
  - providing much more effective regulation of estate agents, including adequate schemes for consumer redress, and ensuring that their actions and processes are fully transparent;
  - reducing the penal rates of Stamp Duty Land Tax (SDLT) which have increased consumer costs in five years from just over £1bn to £6bn. The payment of SDLT is the biggest single cost in the house buying process. It has a significant and detrimental effect on labour market mobility. It is

- skewing the market around the SDLT's thresholds and is now preventing many first time buyers from entering the market.
- removing the anachronism of Chancel Repair Liability, as recommended by the Law Commission.
11. The housing market requires a number of parties to work together to facilitate the successful completion of transactions. The fact that there are independent parties serving the different needs of the consumer as part of the overall process provides crucial consumer protection. The "one-stop solution" that the government has promoted in other areas of Financial Services has resulted in serious problems for consumers such as pension, mortgage and endowment mis-selling.
  12. As has been made clear to the government on numerous occasions compulsory HIPs will not alleviate in any way the problems caused by chains of transactions.
  13. E-conveyancing – the Law Society has long advocated and supported electronic conveyancing and has done much work with the Land Registry and other agencies. Much more progress could have been made towards the early stages of e-conveyancing but for the distraction to the industry caused by the compulsory introduction of HIPs on 1 June.
  14. Consumer redress. The Law Society has long lobbied the government to introduce proper redress arrangements for estate agents. It is only very recently the government has taken any action.
  15. The Law Society believes that the introduction of a Residential Property Code, promoted by the Law Society and supported by all of the major stakeholders, would be an effective way of improving the home buying and selling process, without the need for HIPs.

**The comments below relate to the individual numbered paragraphs in the consultation document.**

2. The document of 25 January achieves none of the objectives set out in this paragraph.
3. The Law Society is responding.
4. No comment.
5. The services provided by many in the housing market are extremely price competitive. It is the major items of expenditure related to the property transaction, namely SDLT, VAT and search fees, which are such a burden to the consumer.
6. The Law Society very much supports the greater availability of information on energy efficiency, carbon emissions and green issues generally. The Law Society supports the availability of such information in the conveyancing process. The government has misinterpreted the EC directive on energy performance certificates by seeking to introduce them compulsorily at the point of marketing as opposed to the point of sale. This has undoubtedly contributed to the problems that are now being encountered with the implementation of Home Information Packs on 1 June. As a result of

successive government planning policy in recent years, there is a significant shortage of houses compared with flats in many areas, particularly the South East. This shortage of supply has contributed to significant increases in the cost of such properties which, in turn, has resulted in the consumer being more focused upon buying a house (as opposed to a flat) in a desirable area, often related to the availability of schools, than paying proper or any regard to green issues. Despite the compulsory introduction of EPCs, it is unlikely that the consumer will place much significance on the energy performance information alone, whilst the shortage of properties in appropriate areas for consumers exists.

## **Box 1: The HIPs Baseline Survey**

Many of the figures contained within this box have been included on a selective basis only and the Law Society does not believe that they truly reflect market conditions.

7. There are problems with the current home buying and selling process. The Law Society has endeavoured to draw the government's attention to the problems for some time. The government is mistaken in believing that compulsory HIPs would solve these problems. It is clear that they will not.

### **Incomplete information**

- This is true and the Law Society supports any initiative which will make more information available.

### **Asymmetric information**

- There is no reliable evidence that a significant number of transactions fail at a late stage because of problems with a survey.
- There are many commercial and personal reasons why consumers – both buyers and sellers – wish to keep information concerning their particular transaction confidential.

### **Principal-agent issues**

- This is not true. Consumers have a much greater awareness of what is required in the home buying and selling market than the government appreciates. Nearly all the “disbursements” such as SDLT, bank charges and Land Registry fees are fixed by government and third parties. Solicitors have no choice but to pass them on to consumers. Reduction in the cost of local authority searches, whilst to be welcomed, will have virtually no effect, on the overall cost of moving house. It is quite wrong to suggest that it will.

### **Externalities**

- The concept of “no sale no fee” is a cornerstone of a modern property market. Consumer attitudes to HIPs would seem to indicate that they expect HIPs to be provided on a similar basis. There are many consumers who benefit from a “no sale no fee” approach. This is particularly true of those who may be selling for financial reasons, have negative equity or no realisable assets other than their home. If the transaction falls through, many of these people

would find themselves with a liability to a selling agent and a HIP provider which they could not meet.

### **Duplication**

- It is a fact that very often searches are resold by a failed buyer's solicitor to the new buyer's solicitor. This may not be appropriate of course if the search is stale.

### **Lack of Price Competition**

- This comment is disingenuous. It is true that estate agents' commissions continue to be charged at more or less the same percentage rate as ten years ago, but the costs of marketing, including advertising have significantly increased. As a result of the ups and downs of the property market, agents need to maintain an appropriate profit level to sustain them through the highs and lows of the market. A much bigger impact financially for consumers is this very point in so far as it relates to the level of SDLT. The government has kept the same percentages and rate bands despite the significant rise in property prices. The result is that SDLT is, by a very considerable margin, the largest cost in the whole house moving process for consumers. The introduction of HIPs will have no effect whatsoever on reducing the cost of moving home and may well increase it.

### **Co-ordination failures**

- As we have indicated, pension, endowment and mortgage mis-selling is a direct result of a large organisation controlling all parts of a market. The fact that different professionals bring different perspectives is a strength of the market, not a weakness.
8. This is not correct. Apart from SDLT, many costs paid by the consumer in the house buying process have reduced significantly in proportion to the value of houses. Competition for the provision of services in the house buying market is fierce. It has reduced the cost of services and provided a wide choice of service provider to the consumer. Buying a house and obtaining a substantial mortgage which needs to be repaid over the working life of a home buyer is, on any interpretation, a complex series of transactions and must be treated as such.

## **Section 2: Making home buying and selling better and greener**

9 – 10 No Comment

### **1. HIPs including Energy performance Certificates and searches from 1 June**

#### **(a) Energy Performance Certificates**

11. The Law Society supports the concept of more information for home buyers on green issues.

12 – 19 No comment

#### **(b) Title documents, the sale statement and leasehold documents**

20. The Law Society's TransAction Scheme which was launched in 1989 has always promoted the importance of having important information relating to the sale of property available at the earliest opportunity.

21. This is consistent with the Law Society's TransAction Scheme, introduced in 1989.

22. The Law Society has made it clear to the government for some time that the inability of a seller of a leasehold title to have the lease available at the point of marketing would severely restrict the seller's opportunity to market their property at the time they wished to do so.

23. This is the basis of the Law Society's TransAction Scheme introduced in 1989.

### **2. Reforms to Searches**

24. The Law Society has long lobbied the government to require local authorities to invest in online technology so that official searches could be provided speedily.

25. The Law Society and other stakeholders have warned the government for some considerable time that a requirement to have searches in a HIP on the first day of marketing would severely restrict the ability of a seller to put their house on the market at the time they wished to do so. The government had been aware of this problem for some considerable time and has failed to address this issue.

26. Competition between authorised local searches and those provided by a number of unregulated personal search providers has resulted in considerable confusion to the consumer.

27. (a) A proper level playing field between the two types of providers is to be encouraged. The Government appears only to be concerned to ensure that HIP's can be provided pre-marketing - they are not demonstrating any concern to provide buyers with the information they need in order to decide whether or not to proceed, or whether or not to proceed at the originally agreed price. As sellers are procuring searches, they will not have information as to the specific requirements of the buyer and will not know (or care) which additional ( part 2) Con 29 search enquiries ought to be made. It is clear that in addition to the wholly unsatisfactory current charging system, some local authorities are not in a position to provide replies to part 2 enquiries raised independently of the main part 1 search. As it is likely that Part 1 Con 29 searches will be carried out on behalf of the seller, Part 2 Con 29 searches will be carried out in the main on behalf of the buyer. They will be carried out by different parties. From 1<sup>st</sup> June buyers need to know that these additional parts of searches can be carried out efficiently and independently of the Part 1 Con 29 search by **all** local authorities and what the cost of doing so will be. Currently this is not the case
- (b) It is imperative that there is a transparent and fair charging system for both Part 1 and Part 2 Con 29 enquiries .The proposal to seek tenders for the production of a final charging methodology and guidance by independent experts is noted but this should have been done years ago when the Law Society raised this as an obstacle. Parity between the private and public search providers is sought, not only on cost, but on quality of results and ability to rely on them and be satisfactorily compensated in the event of loss.
28. The Law Society also welcomes attempts by the search industry to adopt a meaningful and worthwhile code of practice. However, much work is still needed in this regard.

### **3. Home Condition Reports**

29. Sensibly, the government has all but abandoned the concept of the Home Condition Report in a HIP. We, therefore, see little purpose in commenting in detail on this particular section. The government was warned by all stakeholders from the outset that the Home Condition Report would not find favour with consumers who would neither wish to be liable for the cost when putting a property on the market without a buyer, nor to accept the delay in marketing caused by the need to prepare a report. It is unfortunate that government failed to listen to these warnings earlier.
30. As they appear to have been abandoned no comment is required.
31. The Law Society awaits with interest the result of the government's promotion.

### **4. E-conveyancing**

32. The Law Society has long been a supporter of the concept of improving the conveyancing process by taking advantage of electronic processes. Many firms of solicitors have been leading innovators in developing the relevant processes.

- This is to be supported and encouraged.
  - Compared with the other difficulties in the housing market, problems emanating from the “registration gap” are virtually non-existent. Although immediate registration on completion is to be encouraged, it will provide no significant benefits to the consumer.
  - Transparency in all aspects of the system is to be encouraged. The Law Society has reservations as to whether all consumers will wish to have full transparency in their own individual transaction.
  - The crude system by which SDLT is charged to the consumer leaves little or no room for inaccuracy.
  - Whilst the development of e-conveyancing will undoubtedly improve the process, it will not “reduce substantially the time taken in conveyancing processes”. There are many reasons why transactions can take longer than these strict administrative processes dictate. Moving house is a very complex process for home owners. Individual family agendas, such as holidays, illness, business commitments and family finances have a profound effect on the time the house moving process can actually take.
33. The Law Society supports the general principles of e-conveyancing and has done much work with the Land Registry and other agencies.

## **5. Consumer Redress**

34. The Government’s proposals for introducing a proper redress system in respect of estate agents is long overdue. The legislation is defective because it does not require estate agents to disclose the receipt of referral fees.

## **6. Future market-led developments**

35. The reality is there are very few government-led initiatives. Nearly all of the initiatives that have produced benefits to consumers have been introduced by the market of its own accord.
36. Any meaningful improvements brought by change are to be welcomed.
37. The contents of the Home Information Pack which is to be introduced on 1 June have been significantly reduced from the original specification. The government had been warned about the need for these changes some time ago.
38. Very sensibly, the government has effectively abandoned the Home Condition Report.
39. The high levels of SDLT have significantly reduced the numbers of consumers who are able to buy their first home. The HIP as currently envisaged will provide little or no benefit.
40. The new businesses which are being established will make no improvement to the house moving process. All they do is to add cost to the process, much of which is being concealed from the consumer.
41. The Law Society’s view is the market should be developed.

## **Section 3: Ensuring the smooth introduction of HIPs in June**

### **Dry Run and Area Trials**

- 42-47 No comment
48. The government were warned several years ago that delays in the production of a local search would delay the marketing of properties. The dry run has merely confirmed what the government has been told previously on numerous occasions. The government has also been warned that delays in producing leasehold information would produce a two-tier market.
49. The Law Society looks forward to seeing the independent report on the trial.

### **Transitional measures to ensure smooth introduction from June**

#### **Delivering Home Information Packs promptly**

50. The government has previously been warned that they would not be able to introduce Home Information Packs on 1 June 2007 containing local searches, without causing chaos to the market.
51. No comment

#### **(a) Enabling homes to be marketed quickly**

52. The transitional arrangement will produce even greater uncertainties and hardship to consumers. In an active market, it is highly likely that an acceptable offer will be made for a property within two or three days of it being put on the market. The buyer will then instruct their solicitor to begin the conveyancing process. The property cannot be marketed under the transitional arrangement without a search being ordered, whether or not the search has actually been supplied when an offer is accepted. Many buyers will prefer to commission their own search. Mortgage lenders universally have made it clear to the Law Society that they are not prepared to accept personal searches and will rely upon the discretion of the lender's solicitor. The Law Society's best practice has made it clear that, in nearly all circumstances, the only acceptable search so far as a buyer is concerned is an official local authority search. Many buyers will, therefore, have to purchase an official search. Irrespective of whether or not a personal search is provided by the seller.
53. We await the regulations.
54. No comment

#### **(b) Ensuring that private search companies can continue to operate**

- 55-56. No comment.
57. Whilst price competition is to be encouraged insofar as searches are concerned, it must be remembered that the SDLT charge in the average house buying transaction is now at such a level that, by comparison, savings

on searches are irrelevant so far as the cost to the consumer is concerned in respect of the overall housing transaction.

**(c) Properties that are already on sale on 1 June**

- 58. No comment.
- 59. Postponement of the relevant date is welcome, although there will be confusion in the market and the rush for the registration of properties for sale immediately before 1 June will cause significant problems in the market.

**(d) Ensuring that buyers can use HIPs easily to inform their choices**

- 60. Anything that can be produced to inform buyers in a meaningful way is to be commended. Many of the documents in the conveyancing process are complex. A summary which, for example, attempts to explain the effect of restrictive covenants or the detailed provisions of a lease, could be very misleading unless prepared by a qualified person. Sellers will be very reluctant to incorporate in a HIP anything which could be misleading.

**(e) Remarketing after a property has been taken off the market**

- 61. This proposal will add further confusion to the market.
- 62. There will be no benefit to a seller in refreshing documents and incurring further cost, if the property has been on the market a long time without an offer.

**Other issues and potential longer term changes to HIPs**

- 63. The Law Society supports this information being available provided that it can be given in an easily understandable form which can be evaluated by the average buyer. If not, it could cause serious difficulties for the housing market.

**(a) Flood and Ground stability searches**

- 64. The Law Society believes that further work and consultation is required in respect of these searches.
- 65. No comment.

**(b) Penalty Charges**

- 66. The Law Society had long questioned the effectiveness of the penalty.
- 67 -68 No comment.

**(c) Home Use and Home Contents Forms**

- 69. The forms originally proposed by the government were neither useful nor consumer-friendly. The Home Contents Form is particularly inappropriate for inclusion in a HIP. What may or may not be included within the property is the subject of private treaty between the seller and the buyer at the stage when offers are made and accepted. It is clear that very few sellers, if any,

will wish to complete this document for inclusion in a HIP. The Home Use Form will delay the preparation of the HIP and many sellers will be reluctant to provide this type of information without the benefit of legal advice.

70-71 No comment.

## **Section 4: Home Use and Home Contents Forms**

72. It is true that basic arrangements for the introduction of HIPs and Home Condition Reports have been in place for some time. What has been lacking is the detailed arrangements. The government has consistently ignored representations from stakeholders about the need to address the details. It is not surprising, therefore, that the government has been forced to reduce the HIP to such a limited number of documents at this very late stage.
73. The government's confidence that there will be enough Energy Assessors on 1 June is to be welcomed, but is not shared by the Law Society. If the government's confidence is misplaced then the market will be in chaos and consumers will be severely prejudiced.
74. No comment.