

# Hip hip hooray?

Despite rumours of delays, the process for the introduction of home information packs (HIPs) is moving forward rapidly. HIP providers are investing in marketing, home inspectors are paying for training, and the government is increasing its work with early adopters of the scheme.

With the regulatory statutory instrument being laid before Parliament by spring and the dry run already underway, this radical change to the property buying process is assured. While pressure groups continue to campaign against their introduction, most have accepted the reality and are now investigating the impact that HIPs will have on their business.

## Current position

The Home Information Pack Regulations 2006 (draft) were published in November 2005 and provide more details about HIPs, as defined in the Housing Act 2004. Consultation on these regulations finished on 30 December 2005, and there has been strong feedback from the property industry.

The regulations seem practical, although concerns have been raised about some documents being declared as *authorised* rather than *mandatory*.

The government department responsible, the Office of the Deputy Prime Minister (ODPM) also announced in November that it is developing the home inspector certification scheme, due for completion in mid 2006. This will ensure that home inspectors are regulated and enable them to obtain effective professional indemnity insurance cover.

With a few commercial providers producing HIPs already, the ODPM has confirmed that the dry run has begun and is taking an active role in collecting feedback from these companies. This phase will continue throughout 2006, with the ODPM taking a more proactive role in early 2007.

## Regulation detail

The regulations cover the contents of HIPs, the process, eligibility of properties and the responsibilities of the parties involved.

## Content classification

The regulations outline which documents must (required), may (authorised) and may not (prohibited) be included in HIPs. All required or authorised documents must have the ODPM HIP logo on every page.

How radically will home information packs change conveyancing and what effect will they have on independent solicitors? **Peter Ambrose** investigates

- contents—required, authorised and prohibited documents
- certification schemes; insurance; and updating

### Required Contents

These must be included and the HIP is not complete without them:

- index;
- home sale statement;
- home use form;
- home contents form;
- official copies of the register;
- local authority and drainage searches;
- home condition report;
- energy performance certificate; and
- any leasehold documentation.

### Authorised contents

These include searches that are commonly used today such as environment, flooding and mining, as well as additional office copy entry documents, warranties and translations.

### Prohibited contents

This reduces the confusion over approved versus unapproved documents; no other

documents may be included in a HIP.

### Draft contract—not required

The lack of standardisation made inclusion impractical.

### Environment search—not obligatory

The Law Society recommends its members carry out an environmental search for all transactions although the Council of Property Search Organisations (CoPSO) estimates they are used in only 70% of cases. However, despite this, they were not made mandatory due to a lack of standardisation.

### Additional Land Registry documents

Only the official copy of the main document is mandatory. Documents referred to in that document remain optional, but authorised.

### Home information forms—added

It was expected that the Law Society protocol

forms would be included. However, the Law Society and the ODPM have not been able to agree on their use, so three new forms have had to be created:

- sale statement—summary of the details concerning the property such as type and possession status;
- home contents form—similar to the fixtures fittings and contents form; and
- home use form—similar to the sellers property information form.

The principle of *caveat emptor* still applies, so these forms may be left blank.

**Certification and liability**

The certification of HIP contributors and home inspectors is of concern. Although there are no plans for a certification scheme for contributors, work is well underway for the home condition report (HCR).

The wording of the HCR has been improved and will be published in February 2006. The certification scheme for home inspectors is under development and is due to be completed by summer 2006.

Finally, a certification scheme for search companies has been proposed—the Search Industry Accreditation Scheme (SIAS) to regulate the quality of search information that they provide.

The regulations dictate that the “responsible person”, ie the vendor or estate agent, is responsible for the accuracy of a HIP. This is questionable in practical terms and the liability will invariably fall to the HIP provider. However, as in most cases the buyer’s solicitor must check the contents, they have a duty of care to their clients. Every HIP contributor must have sufficient professional indemnity insurance to cover a potential lost property sale.

The perceived risk of a lack of regulation is mitigated by the fact that most HIPs will be provided by an estate agent. The estate agent redress scheme that is part of the regulations will ensure that agents take the issue of quality seriously as consumers will seek redress through them for any problems with a HIP.

**Personal searches**

The regulations allow personal searches to be used in a HIP. While they are a cost-effective way of complying with the legislation, they raise several issues.

*Lender acceptance*

According to the Office of Fair Trading, only 60% of lenders rely on personal searches for the 75% of transactions that require a mortgage.

*Quality*

The lack of regulation of personal searches (SIAS notwithstanding) means the quality is variable. There have been a number of negligence cases against personal search providers.

*Solicitor reliance*

Those solicitors that do not rely on personal searches will re-order authorised searches, slowing the process and increasing the costs.

**Updating a HIP**

A HIP is a snapshot of a property at the time it is commissioned. While no document over three months old—apart from HCRs completed within the previous year—may be included, there is no time limit on their validity. It is only when solicitors or lenders need to rely on the information that this becomes an issue. While the *Council of Mortgage Lenders Handbook* recommends lenders only use searches that are less than six months old,

some only accept three months, as do most solicitors.

A HIP can become out of date as it may take over three months to reach exchange. A HIP provider has no obligation to update this information. However, as the documents are stored electronically, updating them will be technically straightforward, along with the index. Some local authorities can check changes to existing searches at a reduced cost which will lessen the impact.

All HCR’s completed up to one year prior must be documented and included. It is unclear how this will be regulated in practice.

**Independent solicitors and agents**

The impact of HIPs on independent estate agents and solicitors is not clear. Initial fears that corporate agents would provide HIPs at no charge appear to be reducing, as it becomes apparent that firms cannot absorb the upfront costs involved and now discuss deferred loan agreements. Indeed, lending institutions may offer credit agreements to smaller HIP providers too, who can then work with local estate agents.

Companies offering HIP provision tend to avoid discussing leasehold and unregistered properties in detail. This is because the process is often complex, time-consuming and as they cannot provide undertakings, they will not be able to provide this service. In these cases, the solicitor becomes a vital service provider (see case study).

Most HIPs will only meet the minimum standard required, which may be unacceptable for exchange. Solicitors that establish relationships with quality HIP suppliers to provide additional assistance will see their position strengthened.

**Conclusion**

In the same way that anti-money laundering requirements were initially seen as burdensome, HIPs will become enshrined in the buying and selling of residential property. By reducing the number of time-wasters and accelerating the slowest parts of a chain, the buying process should be more predictable than before. Solicitors that actively pursue opportunities to work with HIP providers will benefit from sustainable conveyancing revenue in the future.

**Peter Ambrose is a director of The Partnership, a HIP provider. Website: [www.thepartnership.limited.com](http://www.thepartnership.limited.com)**

**Case study—leasehold property**

Working with Strutt & Parker, The Partnership produced a leasehold HIP for a large central London flat which introduced new issues, particularly concerning the HCR.

The challenge for leasehold HIPs is obtaining the necessary documentation in a timely manner. While the regulations allow a property to be marketed with the HIP incomplete, this is not ideal. In this case, the flat was two properties combined so there were multiple leases. The lease was not available from the Land Registry so a solicitor was required to obtain this information.

The property had been on the market for a few days and the vendor’s solicitor had already obtained much of the documentation. This reduced much of the time and effort involved and its impact is not underestimated. It also eliminated the delays caused by Kensington & Chelsea’s expected return time of 15 working days for their authorised search.

The inspection took several hours to complete which included a visual inspection of the external condition and communal hallways.

The 14-day deadline was met. However, under normal circumstances, it is unlikely that the searches or the management information would have been available in this time.