

# **Submission by the Council of Property Search Organisations to the Office of the Deputy Prime Minister on the Consultation Paper – Contents of the Home Information Pack**

## **Introduction**

1. In March 2003, the Office of the Deputy Prime Minister (ODPM) published “Contents of the Home Information Pack”, a consultation paper inviting views on the documents and the information to be included in the proposed Home Information Pack that home sellers and their agents would be required to have available when homes are marketed for sale. The ODPM has invited comments by 30 June 2003.
2. This paper is the submission of the Council of Property Search Organisations (CoPSO). CoPSO is a newly established trade association set up to represent the interests of the growing number of private sector organisations that provide property information reports. Currently, the Association has seven members (Richards Gray, One Search Direct, STL, Landmark Information Services, PSA, PSG and Sitescope). The Council is seeking to expand its membership to cover the whole of the sector. CoPSO requires its members to have professional indemnity insurance and will introduce a mandatory code of practice.
3. Property search organisations assist the house purchase process by providing the results of necessary searches of information held by local authorities and other public agencies more efficiently than the authorities and agencies can provide them themselves. The companies are retained mainly by conveyancers acting on behalf of purchasers. Property search organisations are now involved in around 40% of all house purchase transactions.
4. It follows that property search organisations have a major interest in the information to be included in the Home Information Pack (HIP) and in the manner in which that information is to be provided. They are also well placed to comment on whether the government’s proposals will achieve their desired effect.

## **Executive summary**

5. CoPSO’s key points are –
  - The concept of HIPs is still debatable, particularly given the developments in the house purchase market over the last five years. It would be sensible to review the concept. The remainder of the comments assume that HIPs will be introduced as the government intends.

- At the time marketing commences the responses to standard searches should be no more than three months old and it should be a matter for the parties to consider when the information requires updating.
- Responses to a search of the local land charges register should form part of the standard search information provided in the HIP.
- In principle, responses to the additional enquiries set out in form Con 29 part 1 should form part of the standard search information to be included in the HIP but this information needs to be reviewed as some of it is not of significant relevance.
- The HIP should include a report on environmental matters but should not stipulate who the providers of such a report should be.
- The person who makes the HIP available, in practice generally the estate agent, will be liable to home buyers for any incorrect information in the pack. The government should not attempt to stipulate who should be able to provide that information but rather should ensure that publicly held information is freely available and accessible through a number of competing channels.
- The activities of property search organisations are essential to the smooth operation of the housing market and there should be no attempt to exclude them from the process.
- The insurance arrangements that property search organisations carry is a commercial matter between them and their clients and not relevant to the consumer or to the government.
- The government should initiate a review of the contents of form Con 29.

### **The concept of HIPs**

6. There is general agreement that the house purchase process is complicated and at times can be unduly prolonged. There are also a number of aborted transactions which impose significant costs and frustration. There are several reasons for this –
  - House purchase is the largest transaction that people undertake and the process inevitably requires careful planning and thought. People do not buy houses on impulse and many are quite content for the process to take some time.
  - Each house is unique, both in itself and in respect of the environment surrounding it. The purchase decision is therefore more complex than for a standard good or service.
  - A decision on whether to buy or sell is based on a whole range of factors relating to the property, the environment and the personal circumstances of buyer and seller. People frequently change their minds.
  - The transaction involves a number of different components and if anything goes wrong in any one of the components the whole

transaction can fail. The components are not confined to housing matters. They include employment, relationships and health.

7. Transactions fail for a variety of reasons and not necessarily the reasons that people give. For example, if someone wishes to pull out of the purchase of a house because they decide they do not like the property or the neighbours they are more likely to blame a survey report or difficulties in obtaining mortgage finance. Having said this, it is accepted that an unreasonable high proportion of transactions fail because of problems that occur between exchange of contracts and completion and that, for many people, this period is unreasonably long. Accordingly, any measures that reduce the period are to be welcomed.
8. The government has sought to address this problem through requiring those marketing homes to compile a Home Information Pack comprising the information that is needed to complete the transaction. It is accepted that this will impose some additional cost (although this should be fairly limited for those buyers who are also sellers) and that it will introduce some delay before houses go on the market to compensate for the reduction in delays after a house is on the market. It is not yet proven that the solution addresses the problem or that the costs are outweighed by the benefits.
9. If the parties wish to complete a house purchase transaction quickly, this can usually be done. The major stumbling block is information held by local authorities. While many authorities are able to provide this information in days, a number take weeks or even months. There has been a market solution to this problem. Many conveyancers now employ property search organisations to undertake the necessary searches using data held by local authorities and other public agencies. This does speed up transactions. However, some authorities restrict access to their data, frustrating this perfectly reasonable market mechanism from being effective. It would have been more sensible for the government to address this problem before embarking on HIPs. The government may argue that the National Land Information System (NLIS) does precisely this. However, NLIS is a voluntary arrangement under which, broadly speaking, the most efficient local authorities will become even more efficient, while the inefficient authorities will remain equally inefficient.
10. The research on which the case for HIPs is based was carried out in 1997 and 1998. The world has moved on a lot since then, in particular much more use is made of electronic means of information retrieval and communication. It is noted in this respect that the Council of Mortgage Lenders, the representative body for the mortgage lending industry, has questioned the practicality of HIPs. In its evidence to the Select

Committee on the Office of the Deputy Prime Minister, the CML said: “We are concerned that if the government does not raise its game in terms of addressing the practical concerns that we and other stakeholders have raised in connection with the way the proposed Home Information Packs will work in practice, the government’s aim of reducing the problems with buying and selling homes will not be achieved.” The Law Society is sceptical and opposes making the pack mandatory. The National Association of Estate Agents is opposed to HIPs, arguing that the technology improvements which have occurred help to make HIPs unnecessary. The Local Government Association is also opposed. The Government therefore appears to be going ahead with a proposal notwithstanding outright opposition or significant reservations by the trade associations representing the major groups of professionals in the market. This opposition is not based on self interest but simply on the practicality of what is being proposed.

11. This government, like every other government, is firmly committed to deregulation, although in practice the regulatory burden seems to grow ever stronger. Currently, the house purchase process is unregulated. When HIPs are introduced the process will be subject to detailed regulation governing the circumstances in which properties can be put on the market and the information that is to be provided. HIPs will also require a major change in the way that the house purchase process is conducted with responsibility for assembling information switching from the purchaser’s conveyancer, in practice a solicitor, to the vendor’s estate agent. There is no reason to think that estate agents will be less efficient than solicitors but the changeover may well be disruptive. The implications of this need to be fully thought through. The vendor will wish to deal with only one party, his estate agent. But some of the information needed for HIPs can be obtained only through solicitors and other conveyancers. Presumably, estate agents will have to make arrangements with solicitors. It is not clear how the process will finish up, but it seems unsatisfactory that the driver is not the marketplace but rather a regulatory requirement.
12. Finally, it is worth making the point that the concept of HIPs assumes a mechanistic process that simply does not apply in practice. That is, the government seems to be assuming that people decide to buy or sell houses and then do so, and wish to do so in the shortest possible time. In many cases, properties may be put on the market on a tentative basis, with the owner intending to sell only if an exceptionally good offer is received. In a quiet market in particular, properties may regularly be put on and off the market because people want to sell but are not prepared to accept a price below what they consider to be reasonable. Many people do not want to rush the house purchase transaction and there is no imperative to buy a house and move in to it the next day.

Many transactions are timed to complete at a date to suit house buyers, for example, the end of a week or a month or before or after a major holiday period.

13. CoPSO suggests that the concept of HIPs be revisited, bearing in mind that the research data is now six years old and could easily be ten years old by the time HIPs would be introduced.
14. Having made these points, CoPSO is working on the assumption that the government is determined to introduce HIPs and therefore will work with ODPM to ensure that this is done in the most efficient way possible so as to benefit buyers and sellers houses. CoPSO believes that its members will be able to facilitate the introduction of HIPs.

#### **Keeping search information up to date**

15. The proposal that at the time marketing commences the responses to standard searches contained in the HIP should be not more than three months old is supported. Similarly, the proposal that it should be left to buyers and their advisers to take a view on whether information provided in the pack needs updating is supported.
16. It is necessary to view this point in perspective. Obviously, it is important to ensure that information is up to date. However, much of the information that derives from local authority searches is not of critical importance to the house purchase process and can change quickly. For example, there can be a new proposal for a road immediately after contracts have been exchanged. Even so, it is wrong to assume that the local authority search reveals all the useful local information which potential house buyers need to know. The search is confined to the particular property and will not necessarily give details of planning permission in relation to neighbouring properties that might be relevant. Searches cannot, of course, give information on issues such as difficult neighbours which are far more important to most people than whether a cycle path is planned within a few hundred yards. Stipulating a time limit for the validity of search information would impose an unnecessary degree of regulation in such circumstances.

#### **Standard local authority searches**

17. In response to the specific questions –
  - Drainage enquires are appropriate for inclusion in the standard local searches to be included in the home information pack.
  - Environmental enquires are appropriate for inclusion in the standard local searches to be included in the home information pack but there should not be a requirement that these are produced by a single public sector agency.

- The provision of responses to standard search enquiries should not be restricted to local authorities but rather should cover any organisation which has appropriate arrangements in place to protect the interests of home buyers.
- CoPSO agrees that responses to a search of the local land charges register and to the additional enquiries set out in Form Con 29 Part 1 should form part of the standard search information to be included in the home information pack but that any other search enquiries made of local authorities should not. However, the Con 29 form is part of the problem, seeking much unnecessary information.

18. The final three points are of major concern to CoPSO members and are analysed in more detail below.

### **Who should provide searches?**

19. Currently, between 30% and 40% of all local authority searches are conducted by private companies. They are acting in competition with the official provider, that is the local authority. Local authorities have the advantage of being the “official” source of information. Against this, many are also not well equipped to provide search information efficiently and the issue tends to have a very low priority within local authorities. Property search organisations have the ability to spread overheads by operating among a number of local authorities and also are not subject to the usual constraints to which public sector organisations are subject.
20. Searches conducted by property search organisations are currently accepted by solicitors and other conveyancers acting on behalf of home buyers and by mortgage lenders. They are used by solicitors and conveyancers because of the quality of the service that they provide as against that provided by local authorities. It is important to understand why property search organisations have expanded so rapidly. Initially they were used by conveyancers in respect of those local authorities that provided an inefficient service. As the conveyancers found this service satisfactory they saw merit in doing bulk deals with search companies for all their searches. This guaranteed the conveyancers a fixed cost and timescale within which the search information would be provided. The efficient local authorities have suffered for that reason. This market development is hardly surprising. Chains of estate agents, lawyers and lenders operate nationally. Dealing with a single supplier of search information make practical sense for them.
21. It would, therefore, be wholly contrary to the government’s intention to speed up the house purchase process by removing a major channel through which the results of local authority searches are provided and

which, in itself, has encouraged many local authorities to improve the service they provide.

22. Having made these points, if the government is determined to go ahead, it is vital that it addresses a key problem of delays in obtaining information from local authorities. Paragraph 7 of the regulatory impact assessment on HIPs is relevant in this respect. It states that the government is proposing the following measures to ensure that HIPs can be put together quickly –
- “Lenders have agreed to provide title documents quickly – within five working days of a request from a solicitor or licensed conveyancer – and to monitor and publish details of their actual performance against this target;
  - We will expect strict observance by local authorities of their adopted target of dealing with standard search enquiries within a maximum of ten working days. Water companies have agreed to adopt and observe similar targets and the same will apply to other organisations that may provide search information for the home information pack”.

It is significant that, while lenders have agreed to provide documents within five days, local authorities are merely expected to observe their own adopted target of providing the results of enquiries within ten days. There is no reason for this difference in treatment. Having said this, it is clear that not all local authorities are able to provide information in a reasonable time period. For this reason it is essential that property search organisations should be allowed to put together information for the HIP otherwise the policy will fail.

23. There is a separate issue of the resource implications of the activities of PSOs.
24. It is recognised that there are some concerns that searches conducted by private companies may not be satisfactory. There are three separate areas where there are risks –
- The search organisation does not conduct the search properly or, in some cases, does not do part of the search at all, relying on the fact that few problems are likely to materialise.
  - In the event of anything going wrong, a private search company may not be in a position to be sued because it has no money or has gone out of business.
  - There is some information that is not held on publicly available registers and which, therefore, only the local authority can provide.
25. These three issues are all capable of being addressed satisfactorily in one or more ways –

- The consultation document suggests that the providers of search information for the pack should be liable to the buyer as well as to the seller. An option would be for the seller to have a right of action against the estate agent or other party who provides the HIP who will have taken the decision to use a property search organisation. This would be analogous to the present position whereby solicitors and other conveyancers retain private search organisations, this probably being unknown to their clients. If anything goes wrong, the home buyer has a right of action against his legal adviser not against a third party which has an outsourcing contract.
- The present position whereby some information is available only to local authorities and not to other organisations which need the same information for the same purpose is unsatisfactory and should be rectified. If information can be provided by a local authority to an estate agent or at present a solicitor there is no reason why it cannot also be provided to a private company acting on behalf of either of those organisations.
- A code of practice can deal with many of the other concerns and could require, in particular for absolute transparency, as to whether records have been searched or not.
- Most property search organisations have professional indemnity insurance to cover legal action against them. Without this their searches would not be acceptable to lenders or to solicitors and other conveyancers. The code of practice in the short term or the regulations to be made in the longer term could specify the appropriate level of professional indemnity insurance. However, this is not a public policy matter as the public is not affected. This is a commercial matter between them and the companies commissioning them.

### **Environment Agency searches**

26. Paragraph 2.9 of the consultation paper sets out very reasonable criteria for the information to be included in the home information pack. It is therefore surprising that there is a suggestion that a search provided by the Environment Agency should be included in the pack. It is certainly important that the potential home buyer has information about any environmental risks and liabilities associated with the property but the Environment Agency report does not provide such information. It gives a whole range of information, much of which the average house buyer would have great difficulty in interpreting. The report runs to ten pages. It is confined to factual information, much of which is either irrelevant or difficult for a house buyer to interpret. For example, how would the potential house buyer interpret the fact that there is an Environment Agency water obstruction licence in force for the property or within 500 metres of it? The comment section of the report helpfully notes that

“Area licences allow obstruction within an area specified on the licence”.

27. More importantly, the Environment Agency does not give a clear conclusion as to whether the findings of the report will adversely affect the value of the property or give rise to a potential future environmental liability. By contrast, the reports offered by commercial providers, such as Landmark and Sitescope, do so and give guidance on the steps that should be taken when the property has been identified. Also, the major commercial providers of environmental reports use old Ordnance Survey maps to identify potential contamination from past land use. This data is required to meet the recommendations of the Law Society’s warning card first published in June 2001 which sets out the duty of care owed by conveyancing solicitors with respect to environmental risks and liabilities. In only a few years Landmark and Sitescope have rapidly built up their business and now provide environmental searches for over 40% of all transactions.
28. It is also relevant to note that the Environment Agency is greatly increasing the charges it makes for data supplied to commercial search agencies. Providing for an Environment Agency report to be included in the HIP would give immense power to a monopoly provider of some information, not all of which is relevant to the home buyers.
29. CoPSO proposes that there should instead be a requirement for the HIP to include a report prepared by an appropriate competent organisation on environmental risks and liabilities in respect of the property.

#### **The contents of the Con 29 form**

30. The Con 29 form seems to be a combined effort by local authorities and solicitors, aimed at increasing the workload on each other, and bears little relationship to the needs of home buyers. Indeed, by providing unintelligible or irrelevant information and by increasing the scope for substantial delays to be inserted into the house buying process, the form as drafted is damaging to consumers.
31. It is helpful to go back to first principles and look at the factors which people take into account when deciding to purchase a property. The most important factors are the property itself, that is its physical characteristics, its immediate location, its condition and its price. It is significant in this respect that most people do not bother to make proper enquiries about the condition of the property and it also seems that there is comparatively little attempt to properly evaluate prices. This perhaps puts everything else in perspective.

32. There is then a second series of factors, all to do with the local environment. These include the physical appearance of the environment, the neighbours (in particular, the possibility of neighbours from hell), the quality of local schools, the availability of public transport and the possibility of major new developments close to the property. Some of these points, for example the environment and access to schools and transport, are properly emphasised by estate agents.
33. There is a third series of factors that people want simple assurance on, for example that they will have clear title to the property, there are no restrictive covenants which could adversely affect them, there are no notices served in respect of the property which could adversely affect them and that there are no major adverse environmental factors.
34. When judged against these factors, the Con 29 form seems not wholly relevant. It deals only with the third set of factors and seeks to provide very precise information about the circumstances at any one point of time. However, those circumstances can change immediately after exchange of contracts, so the relevance of having precise detailed information is perhaps overstated, particularly when that information may not be very important.
35. There is then a further factor, that if the information is deemed to be important to the public then it should be accessible to the public. Only a minority of the information required in Con 29 Part 1 has to be made available for inspection. This applies, for example, to planning permissions but not to building regulation approvals.
36. There are some obvious areas that could be taken out of Con 29 Part 1 entirely. The whole of Section 3(6) relating to traffic schemes pales into insignificance compared with the factors that people take into account when purchasing a house. Are people really bothered about cycle tracks, pedestrian crossings and vehicle width or height restriction? The information on nearby road schemes also seems to be excessive.
37. The information included in Con 29 Part 2 is even more esoteric. Entries in the Register of Applications, Directions and Decisions relating to the Consent for the Display of Advertisements, whether there is a pipeline within 100ft of the property or whether the area is an enterprise zone, urban development area, inner urban development area or simplified planning zone are less important to most home buyers than the colour of the toilet.

38. It is proposed as a matter of urgency that ODPM commissions a consumer based study of the information that home buyers need and then initiates a substantial reduction in the contents of Form Con 29 Part 1 and Part 2, with a view to reducing significantly the information required and also requiring that information to be made available on public registers.

#### **Access to information**

39. There is a general point underlying many of the comments made in this submission, relating to access to publicly held information. The Government's report *e.gov – Electronic Services for the 21<sup>st</sup> Century* established a key strand in the strategy for e-government should be to create a mixed economy for the delivery of services through the use of intermediaries from the private and voluntary sectors. The Office of the e-Envoy intends to focus intermediary involvement in nine service areas including land and property.
40. Already the experience of Landmark and Sitescope demonstrate how private sector organisations can analyse information held by public bodies and deliver reports efficiently and economically in a way that facilitate the house purchase process. Public agencies have a responsibility to gather and hold a great deal of information. They should concentrate on this, ensuring that the information is up to date and accessible. In some cases they are well placed to deliver that information but in other cases this is best done through intermediaries. This has been recognised in the NLIS project where the delivery channels are private sector organisations. Generally, in this as in other areas the public is best served by competition.
41. In the case of environmental reports the point has already been made that the Environment Agency seems to trying to exploit its monopoly power in respect of some information. In the case of information held by local authorities, the response of some authorities to the activities of property search organisations is to deny them access to local authority records. From a public policy point of view this must be regarded as unacceptable.

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