

Response to DCLG Consultation - Home Information Packs Update: Towards 1 June

Comments from the Royal Institution of Chartered Surveyors

Introduction

These comments by RICS (The Royal Institution of Chartered Surveyors) have been prepared in response to the consultation Home Information Packs Update: Towards 1 June.

RICS is the world's leading professional body dealing with land, property and construction issues. It has 130,000 members worldwide, working in both the public and private sectors and in large and small organisations. Under the terms of the Royal Charter, RICS is obliged to act in the public interest in all aspects of its work.

1. Policy and implementation issues

We welcome the opportunity to comment on the consultation paper dated February 2007 on the introduction of Home Information Packs (HIPs).

2. Consultation process and content

Before commenting on detailed content, we must first question the adequacy of the exercise given the magnitude of the issues concerned and their potential effect on the public and on the property sector. In particular we are very concerned at both the limited consultation period and the lack, to date, of a Regulatory Impact Assessment for this exercise. A number of general "wishes" are expressed in the document without any real evidence or solutions. We remain concerned as to whether this paper represents evidence based policy. In addition, the consultation contains several self-evident statements and much extraneous information which do not help in taking matters forward.

3. HIP within the wider homebuying process

At every opportunity, RICS has voiced its support of reforms to the homebuying process to lend timeliness and certainty to the current system. Whilst we accept that there may be a place for a type of HIP as part of such reforming measures, it will address the failings of the existing system only in part; there are many aspects of the homebuying transaction which create uncertainty and delay which will be left untouched by the proposals for HIPs.

There is plenty evidence to support the belief that most transactions fail because one party pulls out. Aside from this, in our view, the chief systemic problems relate to the provision of searches and the availability of title and leasehold documents. The proposals set out in the consultation paper fail to offer solutions to these issues. Implementation of HIPs in any form must be in a responsible and measured way with full account taken of the evidence gleaned from the area trials. The fundamental matter which remains unaddressed is the need for government to engage fully with all stakeholders to address the overwhelming requirement to build

certainty and timeliness into the existing system. We are aware that any recommendations arising from such a review will offer medium/long term solutions rather than the short term “fix” that is being sought. However, we believe that the shortcomings of the current homebuying process call for a more comprehensive, longer term, considered approach than is being taken.

4. Evidence base

The area trials continue and the Department claims to have extracted some baseline data on which to base its decisions. In fact, we believe that there is a dangerous lack of evidence on which to base any further policy or implementation decisions. We question whether evidence from a trial in which the product is free can ever be considered robust. Since, however that is the current position, we consider that there should be no roll out of HIPs on a compulsory basis until full and robust evidence of the very limited trial is available. We recall a ministerial statement (Lord Rooker 16 November: Column 1370) from which we inferred that HIPs would not be implemented without full evaluation of the evidence obtained from the area trials/pilot study. We invite the Department’s confirmation that our understanding is correct and if so how this assurance has been fulfilled.

5. Dilution of HIP - Searches

The consultation paper identifies a number of problems associated with the introduction of HIPs but without proposing solutions. Chief amongst the difficulties quoted are the widely differing timescales within which local authorities provide searches. This situation will not be resolved by 1 June. The consultation acknowledges the need for transitional arrangements to be implemented enabling properties to be marketed without searches providing there is evidence that a search application has been submitted. Whilst we understand the rationale for this interim measure, it creates a situation where a HIP may contain no Home Condition Report and no searches. We now question the usefulness of such a pack to a prospective purchaser. Additionally, we can find no reassurance that during the transitional period measures will be taken to rectify existing shortcomings in the provision of searches. Accordingly, we have no confidence that a more satisfactory situation will prevail on expiry of the transitional period.

6. Use of Energy Performance Certificates to prop up the HIP

Conversely, the proposal that the HIP must include an Energy Performance Certificate from the outset when a property is first marketed is based on the premise that this will become a buyer’s decision making tool at an early stage in the process. There is no evidence to support this view. We believe that this is a costly, bureaucratic and non-green solution and that a more flexible market led approach should be adopted in order to keep the cost down for the consumer and reduce the number of visits to homes. Such flexibility would encourage the market into making the EPC into a useful tool rather than a necessary evil in the context of a transaction. The EU Directive on the Energy Performance of Buildings does not require the Energy Performance Certificate (EPC) to be supplied at the point at

which the property is first marketed. What is more, the Directive allows for a life span for the EPC of up to 10 years. It seems to us that requirement to include the EPC in the pack now merely props up the rather empty HIP.

7. Supply of Domestic Energy Assessors

We continue to be concerned that insufficient trained Domestic Energy Assessors will be available to undertake the required inspections, exacerbating the effect of the requirement for an EPC to be obtained before marketing. We are reassured to note that DCLG is beginning to address this matter by adopting a more proportionate approach to the qualification and training requirements but we remain concerned that there will be an adverse effect on the market while sufficient inspectors are trained. There are insufficient remaining working days available to train the requisite number of inspectors by 1 June. This concern in the context of Home Inspectors was one of the main reasons behind the requirement for a Home Condition Report to be abandoned last year.

8. Title documents; leasehold documents

Delay is occasioned often by the unavailability of title and leasehold documents. In the case of freehold titles this is so particularly where a property has not changed hands for a long period and there has been no opportunity to register the title. Documentation may have been mislaid over the lengthy period of ownership. We accept that this is a declining problem and with the increasing reach of registered title it will, in time, disappear completely. Leasehold titles, however, present an altogether more difficult challenge. Owing to the complexities of leasehold tenure, there is ample opportunity for documentation to be mislaid/unavailable at a crucial stage in the transaction. Frequently, information regarding service charges, projected maintenance, for example, is not immediately to hand. Such information will often be held by managing agents who need to be contacted, increasing delay.

Whilst the consultation paper acknowledges these problems, it does not offer any remedies. To require leasehold documentation to be provided at the outset as a component part of the HIP is to introduce a potential for market failure whilst seeking to address other problems. Properties will not be marketed where this information is unavailable. Again, we believe this is a matter for the industry to tackle, with one possible approach being an agreed code of practice.

The industry has proposed a range of solutions to these broad problems and we urge the Department to consider these as a matter of urgency:

- From 1 June a HIP may be taken up voluntarily by sellers but would not become mandatory unless, after sufficient time to assess the impact of this package of measures, significant improvements in the buying and selling process have not materialised. Only when persuasive, properly evaluated evidence is obtained from the area trials should HIPs be implemented.

- Industry should be invited to work together to encourage property information to become available as early as possible in the sale process. This could usefully include further development work on RICS short form of HCR.
- Before introducing a mandatory HIP Government must sort out the problems relating to local authority searches and leasehold information (the latter with industry assistance through codes of practice)
- EPCs to have a 10 year lifespan and to be produced at any time up to exchange / completion. Non transactional EPCs to be encouraged.
- A code of practice for estate agents constructed by industry to be in place by 1 June 2007 or soon after (RICS and NAEA are currently developing this initiative).
- Substantial gains to be made from smooth implementation of e-conveyancing.

9. **Detailed Comments**

Incomplete information

DCLG expresses concern about homeowners' lack of information about fuel bills and carbon emissions. This is an environmental matter and not an issue of market failure. The reduction of carbon emissions has not, to date, been an objective of HIPs.

Asymmetric information

The cost, delay and failure rate of transactions referred to here should be addressed largely by e-conveyancing. HIPs will not assist in resolving these issues.

Principal-agent issues

Consumers have access to cut price conveyancing services and there is plenty of competition in this market.

Lack of Price Competition

DCLG states that there should be greater competition in estate agency to keep costs down. As a matter of record, may we refer DCLG to "The Review of Housing Market Transactions : International Comparisons 1998" commissioned by ODPM. This report states "The study found that the total costs of buying and selling a residential property are lower in England and Wales compared with the other countries reviewed." We would point out that estate agents' fees are not a matter for DCLG; the market will find its own level (and fees in the UK are already

considerably below those in other markets). OFT and DTI have stated repeatedly that they are satisfied there is sufficient competition in the provision of estate agency services and we have used this argument to deflect calls for regulation of agents. The Consumer, Estate Agents and Redress Bill contains a requirement for estate agents to state the actual monetary cost of their fees and not simply the % of the purchase price; this will address the transparency issue. The level of valuations/survey fees is also raised. Again this is a matter for the market to determine and not Government. As a general comment professional and other fees are not the most significant costs in the process. A far more costly element in the house purchase transaction for an increasing number of people is stamp duty.

The home buying and selling process

There is a reference to consumers' difficulties in understanding the conveyancing process, the cost structure and alternative methods of obtaining searches. Whilst relevant concerns, these form no part of the issues currently under consideration and will not be solved by the HIP. Additionally, DCLG notes that where transactions fail buyers must carry abortive costs as fresh surveys/searches, for example, are commissioned by a subsequent purchaser. Of course this is correct but, again, the HIP does not address the issue.

It is stated that 60% of purchasers commission a survey. We question this figure and would ask for supporting evidence. Our own evidence suggests that the figure is much lower and we therefore question whether the term "survey" as used in this context includes "valuations" as well as "building survey" and "home buyers report". Of course these are not the same thing.

Making home buying and selling better and greener

DCLG states that HIPs will both assist in improving the homebuying process and the reduction of harmful carbon emissions. We would comment that reduction of carbon emissions was never an objective of HIPs and to use an existing policy vehicle to implement a new policy objective raises new issues that should be properly considered. In addition the potential extra journey to many properties to provide the EPC will offer little gain on the carbon emissions front.

It is proposed that the EPC should be attached to the estate agent's particulars. As the EPC will be contained in the HIP we consider that this duplication of information would offer no benefit to the consumer and would constitute a bureaucratic waste of paper.

Title documents, the sale statement and leasehold documents

We agree that delays in the production of title documents, may cause the transaction to be stalled. This is particularly acute in cases (we believe up to 20%) where the property is unregistered, creating a "postcode lottery". Nor have DCLG set out any proposals on how delays in the production of, for example, leasehold documents, might be addressed – we believe there is an urgent need to address the

issue of information provision by freeholders, landlords and agents in the context of leasehold sales.

Reforms to Searches

The time taken by some local authorities to provide searches will present a serious problem as these difficulties will not have been overcome by 1 June. (We note the transitional arrangements under which searches will not have to be included in the HIP – paragraph 52 “Enabling homes to be marketed quickly”). However, we note that guidance is to be issued on local authority provision of access to information by private search companies. Additionally, DCLG plans to identify and improve the performance of the least well-performing authorities. We would urge DCLG to do all they can to expedite these matters and not to make any requirement until they have been addressed fully at local authority level.

Home Condition Reports

We question the quoted figure of 40% of purchasers who rely on the “valuation survey”. We believe this figure is, in fact, much higher and would welcome details of DCLG’s supporting evidence. Additionally, we would point out that a “valuation” is carried out on behalf of the lender to check whether the property is suitable security for the proposed loan. An “RICS Homebuyers Report” is an inspection commissioned by the purchaser and a “building survey” is a similar type of inspection with fuller reporting. We query the stated two fifths of failed transactions being related to a failed survey/condition report.

We note that DCLG believes that the HCR has been designed to enable lenders to provide data to feed into lenders’ automated valuation models. We question whether lenders will agree with this assertion.

E-Conveyancing

We accept many of the observations made about the benefits that e-conveyancing will bring to the homebuying process. However, this is a quite separate matter and has no bearing on the HIP.

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