

NEW DELAYS TO SELL YOUR HOME

New restrictions on advertising your home for sale

The Home Information Pack rules apply to England and Wales. From 6 April, a seller must have a completed Home Information Pack before putting their home on the market. Previously, they merely had to commission a Pack, which can take many weeks to assemble – especially in the case of complex leasehold properties. This is the end of the so-called ‘first day marketing’ provisions.

From then, a HIP must have the following documents as a minimum requirement before marketing can begin:

- Index
- The new Property Information Questionnaire
- Energy Performance Certificate (requiring an internal inspection of the home)
- Sale Statement
- Land Registry documents.

All other required documents, such as local property searches and any lease (where applicable), must be included in the Pack within 28 days of the first point of marketing. Government documents explain:

“What can’t you do?

Under the new rules, **the agent cannot use information to start marketing the particular property until a HIP meeting the minimum requirements is available. This includes the erection of sale boards**, newspaper advertising and the automated daily uplift of information about properties coming on the market from estate agent databases to their websites and on-line property portals, which identify the property and the location. Estate agents are therefore strongly advised to review their administrative processes and use of software to ensure they achieve compliance” (p.2).

DCLG, *Industry briefing note: Changes to Home Information Packs*, 16 March 2009
<http://www.communities.gov.uk/publications/housing/hipindustrybriefingnote>

New delays in obtaining property searches

In another change to the HIP rules, Home Information Packs will also take longer to produce. From 6 April 2009, every property search “must be complete”. Previously, insurance could be taken out to protect against the delayed searches missing vital data. This previous provision was introduced because of the delays in obtaining information from local authorities.

NEW UNTRUSTWORTHY “PROPERTY INFORMATION QUESTIONNAIRES” RED TAPE

From 6 April, all Home Information Packs must have a new ‘Property Information Questionnaire’ that must be completed by the seller before the home is advertised.

The questionnaire includes questions on past history of flooding, past insurance claims, treatment for dry rot or damp, when electrical wiring was last checked, if planning permission or building regulation approval was given to past structural alterations and rights of access. However, there is no external checking of the accuracy of the form, and in all those cases, the seller can merely tick a box “don’t know”.

Sample questionnaire - DCLG, *Property Information Questionnaire (PIQ) - General version*, December 2008
<http://www.communities.gov.uk/publications/housing/propertyinformationquestionnaire>

Duplication of time and expense

Buyers’ solicitors will not accept the Property Information Questionnaire as part of the conveyancing process, as Ministers have admitted. It just duplicates work and is no substitute for proper documentation.

Hansard, 17 December 2008, col. 793W.
<http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm081217/text/81217w0007.htm#08121774001849>

Estate agents take no responsibility

The Government guidance admits that estate agents will effectively no obligation to ensure that the Property Information Questionnaire is accurate and is not misleading. Their only obligation is to sure that the Pack physically has a Questionnaire included.

“Agents will have no liability under either the HIP Regulations or the Property Misdescriptions Act 1991 for the information contained in the PIQ, provided that the form is completed solely by the seller and the agent has no reason to believe the answers are wrong” (p.3).

DCLG, *Industry briefing note: Changes to Home Information Packs*, 16 March 2009
<http://www.communities.gov.uk/publications/housing/hipindustrybriefingnote>

Lawyers' charter: sellers face being sued by buyers

The only recourse to a misleading Property Information Questionnaire is to undertake legal action, Ministers have admitted.

Hansard, 16 December 2008, col. 591W.
<http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm081216/text/81216w0011.htm#0812172002742>

Friday Property Lawyers, one of the UK's leading specialist residential property law firms, have warned that sellers will end up being sued for damages by buyers and potential buyers.

“The PIQ, unlike the HIP, is subjective and complex. The way the law is set up will see **many sellers will fall into a trap** when completing the PIQ, legally exposing themselves to financial claims should any information in it be deemed inaccurate by a buyer relying on the information. Crucially, a buyer can take this action without ever entering into a contract with the seller. Prospective buyers can, and will, sue for damages, including all expenses incurred.”

“Abolition of caveat emptor: The long-standing British legal principle of ‘buyer beware’ is effectively abolished by the PIQ. Previously, the onus was on the prospective buyer to ensure they protected their own interests. Now, the seller is responsible for protecting the interests of both themselves and (under the law) the buyer, incurring legal consequence if they do not. Buyers will take advantage of this, **making it common practice for buyers' lawyers to actively seek out discrepancies in the PIQ** in order to serve the interests of their clients, at a cost to all parties concerned.”

Fridays Property Lawyers, *Briefing note: Implications of the PIQ*, 27 March 2009.
<https://share.acrobat.com/adc/document.do?docid=7fd79797-1cf1-4ac5-a9ff-e35ec6e6b37a> (PDF)

PROSPECT OF £200 FINES

The Government is also pushing local authorities to be more aggressive into issuing fines for breaches of the new rules. Ministers have called for:

“Local trading standards agencies to identify specific cases of non-compliance and **enforce the requirements.**”

(Margaret Beckett, *Hansard*, 8 December 2008, col. 26WS)
<http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm081208/wmstext/81208m0001.htm#0812089001094>

HIPS ARE USELESS SAYS INDEPENDENT RESEARCH

- **HIPs unreliable and add to costs:** The independent Carsberg Review in June 2008 warned that HIPs were the “worst of both worlds”, adding to red tape and costs, but not providing reliable information. It warned that they were duplicating costs, since “a substantial number of conveyancers ignore its existence and re-commission searches on receiving instructions from their buyer client” (RICS, *Sir Bryan Carsberg's Review of Residential Property*, June 2008, p.42).
- **Buyers ignore them:** In May 2008, property firm MDA estimated that over half of all buyers' solicitors ignore the HIPs searches and commission their own “to maintain due diligence for their client” and make up for the deficiencies in the HIP – much of the search information is voluntary, meaning the seller has no financial incentive to pay to include potentially negative information about the property (*MDA Press Release*, 22 May 2008).
- **Short shelf-life to HIPs' searches:** The Council of Mortgage Lenders requires mortgage lenders to ensure that a search is not more than six months old at completion. Hence, any search in a HIP practically has an extremely short shelf-life, requiring buyers to commission their own, even if they did trust the selective

information in the HIP. In a falling market, when it takes longer to sell a home, this is a particular problem.

- **Minimal public knowledge and buyers don't care:** The Government's own research by polling firm GFK NOP has admitted:

Minimal public knowledge and interest in HIPs:

- "Amongst buyers and sellers: awareness, knowledge and understanding of HIPs poor; lack of engagement, experience and interest in the HIPs process" (p.6).
- "Superficial awareness of HIPS; minimal knowledge and understanding; not sufficiently aware / interested enough to ask to see HIP; rarely shown HIP; not seeing advantages of seller paying; In London, concern over HIP cost when selling property in future" (p.11).
- "Dismissive: don't see purpose... Neither buyers or sellers are proactively enquiring about HIPs" (p.13).

Packs are a waste of time:

- "[Amongst estate agents] Attitude: resigned... Majority perceive no benefit / tend to be negative / waste of time" (p.15).
- "Estate agents struggled to think of positive comments about HIPS" (p.17).

Buyers not consulting HIPs:

- "First time buyers: Little knowledge / indifferent... Buyers and sellers: More knowledge / dismissive... Estate agents: High understanding / resigned" (p.19).
- "Buyers/first time buyers: Majority not offered to see HIP; majority not asked to look at HIP; seen as ... long, boring, technical" (p.21).

Duplicating costs

- "Estate agents... Concern over houses being on market for an extended length of time and HIP becoming out of date before sale agreed" (p.26).
- "Portability of HIPs raises potential problems... Sellers may have to pay for multiple HIPs, if they change estate agents" (p.34).

Full HIPs presentation: <http://www.conservatives.com/pdf/SecretHIPsResearch.pdf>