



The Application of HIP Regulations to Personal Searches

Statement and Executive Summary

- This joint statement is issued in response to CLG note 'Use of Insurance in Personal Searches' dated 30 October 2007 and with which we fundamentally disagree. The background to this statement is set out in more detail on the following pages.

Home Information Pack (No2) Regulations (HIPR)– Schedule 6(4)

- Personal Search Companies (PSCs) will adhere to the law in a professional way in discharging the responsibilities that their clients have placed upon them to search the LA registers and records on their behalf.
- They are committed to providing fully compliant searches and seek no more than is their legal right of inspection.
- This statement is being sent to all LAs and stakeholders in the local search industry to set the record straight on how the interim measures in HIPR Schedule 6(4) should be interpreted.

Use of Insurance in Personal Searches

- Information will be included in a personal search where it is available for actual inspection at the appointed time. If records are not available for inspection, the transitional insurance arrangements set out in Schedule 6 (4) of the HIPR can be adopted.
- Where a local authority provides copies of records by post, this does not comply with the requirements in the HIPR on the inspection of records and the insurance arrangements can be used.

Fees for Inspection of Records

- Where a fee is charged by the local authority for inspection of records, the local authority must stipulate the legal power under which a fee can be charged.
- The fee must not advantage the local authority's own search services over private search firms or distort competition in the supply of local property searches.

Legal Framework and Interpretation

- The approach adopted by PSCs is based on the HIPR and Counsels Opinion from Peter Mc Master, a barrister with specialist knowledge in this area.
- A copy of this legal advice has been passed to officials at CLG, who have subsequently agreed to reconsider their note.
- This position will be drawn to the attention of the search industry's regulator, the Property Codes Compliance Board (PCCB).

OFT Report

- Government must now, as a matter of urgency, press ahead with full implementation of all the OFT's recommendations to ensure that there is a level playing field and competition is not distorted.

Background to Statement

As members of the Government's Conveyancing and Property Searches Working Group (CPSWG), the bodies representing the personal search sector are aware that personal search companies (PSCs) and local authorities (LAs) are placing differing interpretations on the HIP (No2) Regulations 2007. This is particularly with reference to the use of insurance where a LA has a policy of not allowing other persons to inspect the records.

We have sought to co-operate with national and local government bodies to achieve a common solution in the interest of the consumer. It is in this spirit that we set out in this statement on how the HIP (No2) Regulations 2007 (HIPR) ought to be interpreted.

After the government response accepting all of the recommendations made in the Office of Fair Trading (OFT) Property Searches Report (2005), the CPSWG was set up to consider and bring about the implementation of the recommendations. The OFT report recognised that for many years LAs had abused their dominant position as data holders by distorting competition and thereby breaching the Competition Act.

One of the OFT recommendations was

"We recommend that by 2007, LAs make available all the unrefined information they hold that is needed to compile a property search for inclusion in a HIP to all those who ask. This must be done on terms that do not advantage their own compiling activities over competing compilers".

In practice, this meant that LAs should allow inspection of registers and records before the introduction of HIPs.

The CPSWG has produced access guidance, which is currently with ministers and is expected to be issued in the very near future. The access guidance states the definition of 'unrefined' as "all of a local authority's registers and records requiring inspection to answer the local search questions" and the definition of 'compiled' as "the answers provided in either a local authority or personal search report".

It was made clear to the CPSWG that whilst a small number of LAs were in a position to allow inspection, the majority were not. As the government wished to implement the HIPR as soon as possible, interim measures were discussed and implemented in the revised HIPR at Schedule 6(4).

We have sought legal opinion from Mr Peter McMaster, a barrister with specialist knowledge in this field, and in order to clarify the situation we are happy to share this legal advice. A copy is attached to this statement.

The HIPR Schedule 6(4) has achieved the governments objective of introducing HIPs in advance of access to data, and meets the OFT recommendation that "LAs do not advantage their own compiling activities over competing compilers".

The HIPR Procedural Guidance (PG), after every local enquiries question, states "Notes: This question requires the inspection of records to reveal*****" The inspection of records is crucial to the process of carrying out a personal search with the clients best interest at heart as outlined further in this report.

To comply with the HIPR and PG. PSCs (and any other member of the public) are required to "inspect records" to answer the enquiries. LAs should therefore allow third parties to inspect the records. If records are not available to be physically inspected the interim insurance arrangements set out in the HIPR Schedule 6(4) are to be adopted.

CLG and central government are aware that many LAs have a policy of not allowing other persons to inspect records and this is why they introduced the interim measures. Due to the slow progress of some LAs the interim measures will need to be extended for some time

to come. It should be noted that more LAs are now allowing others to inspect records and PSCs are encouraged by this more reasonable approach from those LAs.

PSCs business is to inspect records and compile reports. If they are not allowed to inspect the appropriate records this prevents them from carrying out their lawful business. All members carry professional indemnity insurance and cannot be held liable if they were to include answers in their report for which they had not inspected the records.

We recommend to PSCs that fees for inspecting records are paid, provided that the statutory power under which the fees are being levied is identified (as required in the access guidance) and providing those powers do specifically entitle the LA to levy the fees. This recommendation is based on our legal advice "If there is a class of information in respect of which there is a statutory power to charge that survives the Environmental Information Regulations, the right course in my opinion would be to require the charge to be paid and the information to be included in the report." (McMaster)

Our legal advice has identified that most, if not all, local enquiries information is environmental information and that "This information is to be provided free of charge, on request and as soon as possible. An arrangement under which the information is provided only by providing copies for which a charge is made is incompatible with the Regulations and is therefore unlawful." (McMaster)

21st November 2007