



## **Response to the Draft Home Information Pack Regulations 2005 December 2005**

### **Introduction**

1. The Council of Property Search Organisations (CoPSO) is the major trade association for the property search industry. Members provide a broad range of property search reports including local, environmental, drainage and water data and in 2004 produced over 1.5m searches.

CoPSO is committed to:

- A competitive search market
- With quality standards
- Delivering faster and better-informed property transactions.

### **Response to the Regulations**

2. This paper sets out CoPSO's comments on the draft HIPs regulations and concentrates on:

- The failure to adopt a clear decision-making process
- The questions raised in the recent email form ODPM on searches
- Clauses 8 and 9, together with Schedules 11, 12 and 13, which specifically relate to searches undertaken as part of the home buying process.

3. Prior to the regulations being published, CoPSO was invited to comment on an earlier draft and a copy of this initial response is available on request.

### **Overall Comment**

#### **Need for clear criteria on which searches should be 'required' or 'authorised'.**

4. Over the past 9 months, CoPSO has consistently advocated that there needs to be clear criteria set for deciding which searches should be 'required' for inclusion in the HIP and which should be 'authorised'. The Government has failed to meet this request leading to uncertainty and frustration across the search industry (including Government agencies providing search information) and a concern that a fair and considered approach is not being adopted.

5. When the local search and drainage and water search were included within the draft regulations as 'required' searches, a precedent was set for 'required searches' being those most commonly used in conveyancing transactions. This also tied-in with the policy objective included within the Government's initial consultation paper in 2003, namely that 'standard' searches should be included within the HIP. However this approach has been thrown into question following the proposal that a flood search should be 'required' for inclusion and a contaminated land search 'authorised'. Flood searches are not commonly sought and therefore

cannot realistically be termed a 'standard' search, whereas contamination reports are used in nearly 70% of transactions and therefore is quite clearly a 'standard' search.

6. Clear criteria needs to be established for deciding the categorisation of searches, before any further decisions are taken on the inclusion of searches in HIPs. This will provide a certain starting point for the introduction of HIPs in 2007 and for any changes to the regulations in the future. For a Government initiative which has been 10 years in the making, the process deserves to be within a framework which is clear to all the parties involved in the 1.3m property transactions each year.

### **Questions from ODPM**

7. In a recent email from the ODPM, CoPSO was invited to comment on whether:

- Contaminated land information should be included in HIPs
- A flood search should be 'required' within HIPs
- There are any searches which have not been included within the regulations
- Both required and authorised searches should be subject to the same standards.

### **Contaminated Land Information: Inclusion in HIPs**

8. CoPSO has already made a strong case for the inclusion of contaminated land information as a 'required' search in HIPs and has produced a standard search. This is based on:

### **Consumer Protection**

- Contaminated land information plays an important role in the home buying process in informing buyers, lenders and conveyancers of environmental factors which could adversely affect a property. The search is cost-effective, property-specific, easy to read and includes a formal risk assessment by a professional environmental consultant.

### **Professional Guidance**

- The Law Society recommends that solicitors consider contamination risk in **every** conveyancing transaction. This approach is also adopted by the Council of Licensed Conveyancers.

### **Existing market take-up**

- An estimated 70% of residential conveyancing transactions now include a contaminated land screening report and this is expected to rise to around 80% in 2006.
- Contamination has a similar risk profile to flood, in that it potentially effects up to 5% of UK property. It is important to note that the risk of contamination is not limited to specific geographical areas and therefore is relevant across the UK landmass.

## **Stakeholder and Government Support**

- The CML, the Law Society and the Environment Agency (the latter of which has also developed an environmental report which conforms to the standard CoPSO is proposing) and the Association of Home Information Pack Providers all support the inclusion of contaminated land information in the HIP. This position was also confirmed by DEFRA at a joint meeting with CoPSO on 21 December 2005.
- We have been advised that the Standing Conference on Land Contamination (representing local authorities) believes that a contaminated land search should be required in each HIP.

## **Interaction with the Home Condition Report**

- We understand that the Home Condition Report will require the home inspector to comment on the potential for contaminated land. As the inspector will not be an expert on land contamination, there is a strong case for the inclusion of a contaminated land search in the HIP to assist and inform the inspector.

9. Together these factors reinforce the important role currently played by environmental searches in protecting the homebuyer, lender and conveyancer and also both the stakeholder and Government support for this position.

## **Flood Search**

10. Until the Government establish criteria for deciding which searches should be 'required' or 'authorised', it is extremely difficult to comment on whether a flood search should be a 'required' search and so included in every HIP. If the Government does decide that the risk of flooding across the UK necessitates a 'required' search, then a similar approach must be adopted with the other environmental risks which share a similar propensity of risk when measured against statistical and geographical analysis, for example, contaminated land.

11. From CoPSO analysis, there are no statistical grounds – such as the number of homes at risk or other such measures, that enable a clear line to be drawn between the various environmental risks and therefore we believe that if flood is required, all other environmental issues should also be required.

12. If only a flood search is required, it will lead to confusion about the relevance of environmental risks amongst property professionals and homebuyers. It will also leave the legislation wide open to a significant degree of criticism from consumers and the industry.

13. We also have a number of concerns regarding competition on this matter. The legislation must not create a potential monopoly for the provision of flood searches by the Environment Agency (EA). In addition, it remains highly questionable whether this is indeed the best or most comprehensive source of flood data – no evidence has been provided to demonstrate that this is the case. CoPSO would prefer the legislation to facilitate competition in the provision of flood searches, albeit based on the EA data. The cost of the search should also be reviewed. In its submission, the EA states that it will sell the data for £4.74. This is 100% more than the cost of the data to existing flood information providers and the data is free from government websites. Finally, it should be noted that the EA is currently developing its search provision services and has already increased the costs of their data to the private sector by well over 50%

in the past three years. This reinforces the need to avoid creating a monopoly situation via the HIPs regulations.

### **Additional searches to be included within the regulations**

14. CoPSO is unaware of any additional searches which should be included within clauses 8 and 9 of the draft regulations.

### **Search Standards: Required and Authorised**

15. CoPSO believes that both required and authorised searches included within the HIP should be required to meet the same quality standards, in order to provide robust consumer protection. Therefore there should be no differentiation between the searches.

16. Schedule 11, paragraph 4 sets out a series of terms for 'required' searches, that can be relied on by the buyer, seller and lender. These terms provide for searches to:

- be prepared with reasonable care and skill
- have insurance up to the value of the property

17. These provisions do not go far enough and leave significant gaps in consumer protection. For example, the regulations do not stipulate what risks should be covered under the insurance. In practice, the buyer, seller and lender would want to see:

- PI cover – if the search company is negligent
- Warranty cover where the information is incorrect and this is not through the negligence of the search company (eg, where data obtained from a public body is incorrect and there is no recourse to that public body)
- Run-off cover where the search company is no longer in business

18. Through our discussions with the major stakeholders in recent months on the development of a search industry accreditation scheme, these are the main risks which they want to see covered-off. We have subsequently worked with the insurance industry to deliver this protection for the accreditation scheme. The regulations need to be more prescriptive to replicate these protection requirements. CoPSO would be happy to work with officials on the wording for the regulations, to ensure that comprehensive cover is clearly stipulated.

19. The launch of the industry accreditation scheme in Spring 2006, coupled with prescriptive requirements within the legislation will reinforce the quality standards within the search sector in the run-up to the introduction of HIPs in 2007.

20. Against this backdrop of standards, CoPSO supports the need for a competitive search market and that the content of required searches only should be prescribed. All searches should also meet the criteria set out in paragraphs 15 to 19 above. However, further discussion is required on how the content of required searches can be readily updated, without the need for secondary legislation and the potential for including additional information in required searches as an enhanced value-added service for the consumer.

## **Part 2: HIP – General Provisions**

21. Clauses 4 and 6 - what is the definition of a ‘true copy’?

## **Part 3: Contents of Home Information Packs.**

### **Required and Authorised Pack Documents - Clauses 8 and 9**

22. CoPSO has welcomed the Government’s consistent support for a competitive market for the provision of information in HIPs, as long as providers meet the standards and criteria set out in the legislation. This position should be reinforced in any subsequent guidance issued by the Government, on the application of the legislation.

### **Schedule 11: General provisions on searches and search reports**

23. Paragraph 1 (b) - confirmation is required on whether the definition of ‘any person involved in the sale of the property’ includes the HIP provider, the conveyancer, the estate agent and lender?

24. Paragraph 1 (g) - confirmation is required on whether this would include details of the HIP provider, the search company and the seller?

25. Paragraph 3 (a) – A definition is required of ‘under any circumstances’. As the data required for completing some searches may be held by third party public or private bodies, there could be situations where the data cannot be obtained under reasonable circumstances. The inclusion of the term ‘under any circumstances’, would mean that data could not be excluded even in those situations where, for example, unfair terms/delays were applied for gaining access to that information.

26. Search companies remain committed to providing comprehensive search reports and it is clear that HIP providers, consumers, lenders and conveyancers will accept nothing less. Following publication of the OFT’s report promoting increased access to search information and the Government’s response, CoPSO fully supports that the primary focus should be on facilitating access in advance of the introduction of HIPs. In the Government’s response to the OFT’s recommendations, the introduction of an independent monitoring function is also outlined, primarily looking at access to local authority information. This is a very welcome approach. We would like to discuss this provision in the regulations further with officials, to get a clearer idea of Government’s expectations and to ensure that comprehensive search reports can be delivered.

### **Schedule 12: Local enquiries**

27. Following the publication of the OFT’s report on the Search Market and the Government’s subsequent support for the recommendations, CoPSO looks forward to working with the ODPM, as a matter of urgency, in securing access to the information required for a local search in advance of the HIPs dry run in mid-2006.

