



HIPs – don't look back in anger

On the anniversary of the ditching of the Home Information Packs, legal expert **Graham Dorman** remembers the good points.

It is a year now since the suspension of Home Information Packs was announced by the Coalition Government. HIPs were introduced in England and Wales on 1st August 2008 but suspended by the new Government from 21 May 2010, apart for the requirement for sellers to produce an Energy Performance Certificate. Conceived as the ideal vehicle for smoothing our congested and complex conveyancing process, the reality was a scheme so watered down by practical constraints that HIPs degenerated into an expensive hurdle for sellers and an irrelevance to buyers.

Devil's Advocates in the industry do agree, however, that some aspects of HIPs were actually quite helpful in making the market run more efficiently. These were the elements that forced Sellers to focus on what Buyers would be looking for and enquiring about, thus making sure that those issues were addressed well in

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advance of any substantive transaction.

The failure of HIPs was unsurprising, falling as it did between several stools. Some of the HIPs regulations were undoubtedly onerous and simply increased sellers' costs with little discernable benefit. It is also true to say that the content of many HIPs left important questions unanswered, thereby failing to provide the

initial boost of information to a buyer that the legislators hoped would speed up the conveyancing process.

Indeed, the complexities of the home buying process are such that the system cannot be uniformly speeded up, as property professionals have long been pointing out. If a buyer and a seller are both fully committed and finance is in place, a property sale can be very swift. More often than not, however, the personal agendas of the buyer and the seller, delays in property chains and the currently experienced problems in securing mortgage offers get in the way of otherwise achievable time frames.

In a housing market shaken by the economic downturn and the defensive positions adopted by mortgage providers, sellers now need to work much harder than they did previously to attract and reassure buyers and pre-empt the problems that so often derail a transaction.

With 30 years' experience as a Non-Contentious Property lawyer, I am convinced that some of the more sensible pre-marketing elements of HIPs were beneficial and should still be adopted as best practice to help homeowners to sell their homes more quickly and with greater certainty. These will help sellers to present their properties to best advantage and ensure that buyers do not encounter any unwelcome surprises which they could use to justify withdrawing from a transaction or wriggle on the agreed price, just when it is regarded as a 'done deal' by the seller and estate agent.

SMOOTHING THE PATH TO COMPLETION

The HIPs experiment was not entirely pointless if we hold on to the principles it set to smooth the path to a successful sale by laying the groundwork properly in advance. Ten specific issues which sellers should carefully address in advance of marketing their property, to quickly attract and retain serious buyers are as follows:

Ensure that all the land is registered at the Land Registry. A 'clean' registered title is much easier to sell than an unregistered one, not least because fewer and fewer conveyancers have experience of unregistered conveyancing. In addition, if the buyers are from abroad they may be alarmed by an unregistered title, because nationals in most EU countries will be used to guarantees of ownership and may be spooked by the lack of registration.

Check whether any changes have been made to the property that may have needed Planning Consent or Building Regulations checks and, if so, are those consents, approvals and completion certificates available? If not, legal advice should be obtained with regard to effecting indemnity insurance.

Is all the land that is used and enjoyed by the seller within the boundaries of the legal title? If this is not the case then legal advice will be required as to ownership of the land and possible claims to it by adverse possession. Insurance cover can usually be obtained, but time scales involved are often tight so it is always best to do this before the property is placed on the market.

Does the property enjoy any undocumented rights of way, drainage easements or other such factors? The period of the use of the right may be

relevant and indemnity insurance may be required. Legal advice on these issues should be sought beforehand to allow sellers to either deal with the issue pro-actively, or at least have an answer ready for any nervous buyer.

Is the property accessed over common land or a village green? This could lead to problems in respect of access by vehicles and early legal advice should be sought as to the position and the legal remedies which are available.

Do you know who is responsible for all the boundary features? Ensure that all of the walls, fences and hedges are in a sound state and carry out routine maintenance in agreement with your neighbours before putting the property on the market. If a third-party needs to give permission for repairs or maintenance, provide full details to your solicitor at the outset.

Are there outstanding disputes with neighbours which might derail a sale? Disagreements should ideally be resolved prior to marketing a property as sellers are legally obliged to disclose any disputes.

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Agents and solicitors who are fully briefed on any hostilities well in advance will be able to advise on the best way to handle the issue and deal directly with prospective buyers' concerns, particularly where arguments stem from personality clashes rather than a simple disagreement over an issue.

Sporadic problems such as the likelihood of flooding or even the noise created by a regular public event or festival held nearby will need to be addressed. Any objective data or historical documentation that you can provide up front on the level of impact or risk such events may have will give buyers the reassurance of knowing that the home or investment property being purchased is as it appears to be.

Choose your agent with care. If you have already had success with an agent, perhaps as a result of purchasing your existing or second home through them, keep faith in that person. The phrase "I sold this house to Mr and Mrs X and they have been very happy here" will be reassuring to a nervous buyer in this fragile market.

Finally, involve your solicitor fully before putting your property on the market, as this will avoid any unseemly and expensive rush later. The solicitor can draw up the Sale of Agreement and help you to organise the documentation which your buyer will want or need. If you are selling your second home, or an investment property, the tax aspects will also need to be addressed and unless your solicitor is happy to deal with these aspects of the sale it would probably be sensible to seek advice from your accountant on Capital Gains Tax, Inheritance Tax and VAT issues, if they arise.

While sellers and property professionals seek ways to overcome the challenges of the current housing market, the pre-emptive handling of these issues by sellers will not just oil the wheels of individual transactions but, beneficially, of the whole housing chain too. HIPs may have failed spectacularly in their attempt to do this but if sellers and their advisers are prepared to adopt a more proactive mindset, the nugget of wisdom at its core could yet prevail as the answer to the bottlenecks of conveyancing.

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