

BIRMINGHAM TRADING STANDARDS HOME INFORMATION PACK ENFORCEMENT EXERCISE 2009/2010

Supporting Information

The Home Information Pack (Hip) provisions in Part 5 of the Housing Act 2004 derive from the Governments manifesto commitments to improve the home buying and selling process for consumers by ensuring that the information that buyers and sellers need in order to make informed decisions is made available at the beginning of the process.

Under the provisions of the Housing Act 2004 a Hip, sometimes called a Sellers Pack, has to be provided before a property in England & Wales can be put on the open market for sale. The Pack is a set of documents about the property: an Energy Performance Certificate, local authority searches, title documents, guarantees, etc. The requirement for Hips became mandatory in late 2007. The requirements to the regulations have been amended with the latest addition being April 2009.

Trading Standards services nationally have been tasked with enforcing the legislation. See *Appendix 1*.

The only enforcement tool is a £200 penalty charge notice, which is only enforceable through the civil courts. This is imposed when for example a HIP is not in place for the sale of a property being marketed.

In the vast majority of cases it is the estate agent that will be responsible for ensuring that a Hip is produced, but individual private sellers must also comply.

If Trading Standards do take action and issue penalty charge notices, they are obliged to inform the Office of Fair Trading (OFT). This could lead to the estate agent being banned by the OFT from continuing to act as an estate agent.

Methodology

The exercise was conducted as part of Birmingham Trading Standards commitment to its annual service plan. The exercise essentially set out to gauge whether Home Information Packs were at first instance being made available, whether one existed for the property requested, whether they were being provided in the format prescribed by the regulations and whether the contents were accurate, particularly in relation to local search information.

Additionally, the scrutiny of each of the Hips also included checking against other important criteria, The Hip and Search codes of Practice, both of which will be discussed later within the body of this report.

The enforcement exercise set out to test approximately 25% of the estate agent market within the Birmingham boundary. Teams of Trading Standards staff went to previously identified estate agents, selecting properties being marketed and requesting Hips to be sent to the lead officer within Trading Standards. As a result, forty Hips were requested from as many agents across the city.

In eventuality only thirty-seven were received and examined because one property selected was found not to require a Hip since it had been marketed prior to the regulations coming into force. A further two agents were unable to provide Hips on request and were subsequently issued with penalty charge notices.

Once the lead officer within Birmingham Trading Standards had received all thirty-seven Hips, they were then forwarded, either electronically or via hard copy to the Property Codes Compliance Board (PCCB) for inspection and checking.

Each Hip was then subjected to a series of checks on the validity, accuracy and completeness of the information provided against the four essential criteria listed below:

- The extent to which the Hip was compliant with the regulations. See link for the regulations:
- http://www.opsi.gov.uk/si/si2007/uksi_20071667_en_1
- The extent to which the Hip was compliant with the Hip code. (*representing best industry practice*).
- The extent to which the searches within the Hip were compliant with the search code. (*representing best industry practice*).
- Whether the Hip was produced with the necessary diligence and/or “Good Practice” in mind.

Clearly for the purposes of the exercise, the greatest weight was placed on whether the Hips as a whole complied with the Hip regulations, although compliance with both the Hip and Search codes were also seen to be of some considerable importance, more so if the Hip provider subscribed to either or both.

For each of the Hips an excel spreadsheet was produced detailing the number of checks applied (areas) across the four essential criteria listed above along with a commentary. Any non-conformity was highlighted in red and total numbers of non-conformities were listed on the bottom of the page e.g. (35 areas / 22).

Generally speaking the higher the non-conformities against the areas checked, the more likely it would be that the Hip would be found to be unsatisfactory.

Clearly in conjunction with the PCCB, this exercise has been the most comprehensive enforcement exercise undertaken by any trading standards authority nationally. It gives an insight as to the level of compliance within the Home Information Pack market as it is today.

If a HIP pack is to provide any value to consumers at all, it needs to be accurate and contain reliable information. This is exactly what this exercises set out to determine.

In order for the results of the exercise to be presented in a meaningful way, so that they would be easily digestible, a grading system was conceived so that each Hip would be scrutinised using the same criteria and a grading apportioned accordingly.

The process of grading every Hip meant that each area/heading checked within the Hip was attributed a weighting from one to three. Each heading was then considered with regard to the Hip regulations; Hip and Search code and weighted accordingly dependant on its importance – one being least important, two being reasonably important and three being very important, See weighted scores checklist *Appendix 2*.

Once each Hip had been weighted under each of the essential criteria mentioned earlier, the resultant scores were then added up and a percentage figure worked out for firstly the regulations out of 93, the Hip and Search code out of 55 and 59 respectively.

Each was then graded as being Satisfactory (100%-80%), Reasonably Satisfactory (79%-65%) and Unsatisfactory (64%or less).

Final gradings are shown in *Appendix 3* for all the Hips checked.

Birmingham Trading Standards (BTS) and the PCCB HIP Enforcement Exercise.

Notes: Of the 37 HIPs received in this enforcement exercise, 20 were produced post 6th April 2009 and 17 where pre 6th April 2009.

Of the 37 HIPs received 21 had searches produced post 6th April 2009 with 16-produced pre 6th April 2009. The significance of the 6th April was that amendments to HIP Regulations came into force on that date (and both the HIP and Search Codes were also revised at that time) and the inspection process therefore took this into account. Pre 6th April HIPs and Searches may not meet current requirements and were therefore reviewed using the Regulations and Codes in force at the time the HIP was produced.

1. Home Information Packs

A weighted scoring system, for 'exceptions' to the requirements under HIP Regulations was agreed to allow BTSO to grade the HIPs into three categories, **Satisfactory**, **Reasonably Satisfactory** and **Unsatisfactory**.

2. ALL Firms (Registered and Unregistered) and HIP Regulations

Using the weighted scoring the gradings of the 37 HIPs reviewed against the HIP Regulations were:

GRADE	GRADING %	No. FIRMS	TOTAL %
Satisfactory	100 - 80	19	51
Reasonably Satisfactory	79 - 65	7	19
Unsatisfactory	64 or less	11	30

3. HIP Code Registered Firms and HIP Regulations

Of the 37 HIPs reviewed, 23 of the providers were registered with the Property Codes Compliance Board as subscribers to the HIP Code. Using the weighted scoring the gradings of the 23 firms against the HIP Regulations were:

GRADE	GRADING %	No. FIRMS	TOTAL %
Satisfactory	100 - 80	16	70
Reasonably Satisfactory	79 - 65	4	17
Unsatisfactory	64 or less	3	13

4. Search Code Registered Firms and HIP Regulations

Of the 37 HIPs reviewed, 29 of the HIPs included Searches provided by Search firms registered with the PCCB as subscribers to the Search Code. When reviewed against the HIP Regulations and using the weighted scorings the gradings of the 29 firms were:

GRADE	GRADING %	No. FIRMS	TOTAL %
Satisfactory	100 - 80	17	59
Reasonably Satisfactory	79 - 65	4	14
Unsatisfactory	64 or less	8	28

5. Unregistered HIP Firms against HIP Regulations

Of the 37 HIPs reviewed 14 were produced by Firms not registered with the Property Codes Compliance Board as subscribers to the HIP Code.

GRADE	GRADING %	No. FIRMS	TOTAL %
Satisfactory	100 - 80	3	21.5
Reasonably Satisfactory	79 - 65	3	21.5
Unsatisfactory	64 or less	8	57

6. Unregistered Search Firms against HIP Regulations

Of the 37 HIPs reviewed 6 included Searches provided by Firms not registered with the Property Codes Compliance Board as subscribers to the Search Code.

GRADE	GRADING %	No. FIRMS	TOTAL %
Satisfactory	100 - 80	0	0
Reasonably Satisfactory	79 - 65	0	0
Unsatisfactory	64 or less	6	100

7. Common Faults HIPs – All Firms

1. Complaint / redress procedure not included.
2. No Consumer Information – Code Requirement.
3. No company contact details – Company Act.
4. Technical Issues with the search (mostly Schedule 6 related)
5. HIP Index related

8. Common Faults – Search Firms

The searches that fell into the 'reasonably satisfactory' and 'unsatisfactory' categories the common failings where:

1. Failed to fully meet HIP requirements under Schedule 6. (Search technicalities)
2. Failed to fully meet HIP regulations relating to Source of Information
3. Failed to fully meet HIP regulations relating to Complaints / Redress
4. Failed to include the current Consumer Information, which is a Code requirement.

9. Trading Standards Personal Search Content Review

In addition to the main exercise, a small sample of Personal Searches were compared with Local Authority data and this detailed investigation focused particularly on the accuracy of the information/content included in the search. In summary, the investigation confirmed that all the searches sampled were accurate and substantially compliant with the relevant HIP regulations and with the Search Code where applicable. It did identify some technical errors and/or omissions in some searches. These issues are being addressed with the search firms and Local Authorities concerned, and appear to result from a lack of diligence rather than from deliberate attempts to short-circuit the provisions of the Regulations.

10. Action by Birmingham Trading Standards

Following the conclusions of the exercise it is the intention of Birmingham Trading Standards to formally contact both the Search companies, Hip providers and the Estate Agents involved in this exercise with a view to informing them of their individual results. Any non-compliant companies will be asked to take corrective action as a matter of urgency. Equally, those companies that were found to be satisfactory and compliant will also be informed accordingly.

Main Enforcement Provisions for Trading Standards Under Part 5 of the Housing Act 2004

- It is the duty of every local weights and measures authority to enforce the HIP provisions.
- There are powers to require production of Hips for inspection.
- Where a breach of duties is believed to have taken place, a penalty charge notice may be issued (i.e. enforcement staff have a discretion as to whether to impose a penalty charge).
- A penalty charge of £200 has been set which can be repeated if the breach is repeated.
- Appeals against the notice are considered by the County Court.
- The penalty charge is only recoverable as a civil debt by local authorities.
- Upon conviction a person who obstructs an enforcement officer, or purports to act as one, is liable to a fine (not exceeding level 5 on the standard scale).
- Enforcement authorities may inform the Office of Fair Trading (OFT) of any suspected breach of the duties and in any case, must inform the OFT when a penalty charge is issued.
- A breach of the HIP duties is considered to be an undesirable practice under the Estate Agents Act 1979 and the OFT could decide to take action, including the issue of a banning order.
- Enforcement officers are not expected to check the accuracy of documents within a pack in detail - the legislation provides that penalty charges do not apply where the responsible person has reasonable grounds to believe that the content of a document complies with the legislation. However, enforcement officers should check that the index and sale statement are in order, and that all the documents, which are required for the property, are in the pack.