



COUNCIL of MORTGAGE  
LENDERS

NORTH WEST WING, BUSH HOUSE,  
ALDWYCH, LONDON WC2B 4PJ

tel: 0845 373 6771

fax: 0845 373 6778

website: [www.cml.org.uk](http://www.cml.org.uk)

## **Home information pack update: towards 1 June**

### **Response by the Council of Mortgage Lenders**

#### **to the department for Communities and Local Government**

**21 February 2007**

#### **Introduction**

1. The Council of Mortgage Lenders (CML) is the representative trade association for the residential mortgage lending industry. Our 161 members currently account for around 98% of the UK residential mortgage market.
2. The CML's overall aim is to maintain a favourable operating environment for lenders and, as part of this, to ensure that where legislation is introduced, we help the government to minimise the potential negative impacts for the industry and consumers. We welcome the opportunity to comment once again on the government's plans for the introduction of HIPs. This response has been prepared by the secretariat in consultation with members.
3. Within the CML's membership, we have members who are both for and against the principle of HIPs. As an organisation, therefore, we have stood back from the argument of principle and concentrated instead on the practical implementation issues. The part of the HIP that would have had most impact on lenders businesses would have been the home condition report (HCR). Lenders were planning how they would have been able to link to the HCR register and make use of the HCR in valuation and underwriting processes. Since the government's decision in July 2006 to make HCRs voluntary lenders are not taking these plans forward and have little expectation to interact with HIPs at all, except where they have separate estate agency businesses. It is unlikely that it will be used in the lending process at all.
4. However, we remain concerned about the overall impact of HIPs on the housing market, which will impact on lenders indirectly, particularly if what remains of the package of proposals is implemented inefficiently.

#### **Executive summary**

5. Our key messages:
  - We do not believe that the baseline research provides compelling evidence to justify the current proposals for HIPs.
  - While we fully support the principle behind energy performance certificates (EPCs), we do not believe that the HIP is the most desirable, efficient or cost effective way of delivering them. We believe the current proposals 'gold plate' the requirements of the

European Directive in a number of ways. The Better Regulation Commission shares these concerns.

- We remain concerned that there will not be sufficient energy assessors on 1 June across England and Wales covering all regions sufficiently to meet local demand. If this is the case, it will cause significant local market disruption if people cannot market their properties without an EPC.
- Regulatory impact assessments (RIAs) still have not been produced for the updated proposals for HIPs, or for EPCs. This makes it difficult to assess whether the approach taken is proportionate, accountable, consistent, transparent or targeted. The proposal to publish the RIAs in late March does not give time for proper scrutiny before the proposals are implemented in June.
- We are willing to explore the possibilities for green mortgages. However, there is no standard definition of a green mortgage and little current consumer appetite for such products. We believe that other incentives for people to make energy efficiency improvements, such as council tax rebates, together with readily available EPCs at all points during homeownership rather than just during the house transfer process are much more likely to make a difference.
- The problems with local authority searches are not new and should have been resolved well before HIPs were introduced, as should the issue that personal search agencies are not allowed full access to information. The consultation paper gives no certainty as to when or how these issues will be resolved or how it will be monitored and enforced.
- In the interim, we welcome the new proposals that the lack of a local authority search should not delay marketing. However, we are concerned that allowing incomplete personal searches to be covered by insurance could mean that the buyer's conveyancer considers that they cannot be relied upon and will ask for an official search adding to delay and expense.
- The consultation paper notes that take up of HCRs in the area trials has only been 60% so far and that is when the government is funding them. Lenders will not link to the HCR register when take up of voluntary HCRs is so uncertain. Valuation processes will therefore continue as now and this will mean an ongoing cost for the buyer.
- We believe that there should be a properly funded, independent dry run of HIPs. The timetable does not allow sufficient time for the current trials to deliver complete and robust evidence on which to proceed and therefore further changes are likely.
- We, therefore, call on the government to postpone the introduction of HIPs until the trials are complete, the outcomes reviewed, and the issues above resolved.

### **The current state of the housing market**

6. The baseline research on which the policy of HIPs had been built dated back to 1998. The CML has consistently called for this to be updated to provide an up-to-date baseline on which to determine the success or otherwise of the policy once implemented. It is unfortunate that the updated baseline research was only published in January 2007, less than six months before HIPs are due to be implemented.

7. The new baseline research finally revealed, for the first time, the key performance indicators that the government will be using to assess the success of HIPs.

8. It also confirmed that the average sale took 6 ½ months from marketing to completion and that 25% of sales take 8 ½ months or more. And it showed that it takes an average of 81 days from an offer being agreed to a contract being exchanged. This suggests that the process is slow.

9. However, the research also showed that 75% of all buyers and 70% of all sellers are fairly or very satisfied with the buying and selling process with 57% of buyers and 51% of sellers fairly or very satisfied with the length of time it takes. Although it was difficult to calculate exact figures for the transaction failure rate, it appears that this was in the region of 21-25%.

10. Little detail is provided in the baseline research about the reasons for transactions failing, beyond the fact that 57% failed due to a collapse somewhere in the chain and 20% failed as a result of a survey. This makes it difficult to assess whether HIPs will reduce the future transaction failure rate. Even if some of the chain break downs were due to surveys we do not understand how the conclusion is reached that 46% of all transaction failures are due to survey-related issues.

11. If the key problem is the length of time the transaction takes then this is likely to be improved by the proposals for e-conveyancing being taken forward by the Land Registry. It would also be improved by improving turnaround times for local authority searches. While it is clear that problems remain in the home buying and selling process, in our view the baseline research does not provide compelling evidence to justify the current proposals for HIPs.

### **Energy Performance Certificates (EPCs)**

12. It is interesting that the emphasis of home information packs has switched from improving the home buying and selling process to tackling climate change and promoting energy efficiency. This was clear from the announcement by the Secretary of State when launching the consultation exercise.

13. We are fully supportive of the principle behind the introduction of EPCs, and the need to improve the energy efficiency of homes. However, we believe that the HIP is not the most desirable, efficient or cost effective way of delivering mandatory EPCs and in fact "gold-plates" the requirements of the European Directive. We have recently received a letter from the Better Regulation Commission confirming that it shares our concerns.

14. The government proposes that the EPC should be included as a mandatory part of the HIP. When HCRs, including an EPC, were going to be a mandatory part of the HIP, this was logical as there was little additional work to be done to conduct an EPC at the same time as a HCR. However, the HCR is now to be a voluntary element of the HIP. We do not believe that there will be significant take up by consumers, and evidence from the area trials so far suggests that take up is only 60%, even when it is being paid for by the government. We believe the EPC goes further than is required by the Directive in a number of ways.

#### **a) Timing and validity of the certificate**

15. The Directive requires that the owner should make an EPC available to the prospective buyer before the property is sold. The government, however, is insisting that the EPC is included in the HIP **prior to marketing** and is also suggesting that the EPC is attached to the estate agents' particulars. If the EPC could be commissioned at any point

before sale, for example to coincide with the mortgage valuation process which happens later, this would:-

- be more effective and timely for the buyer;
- be cheaper to produce;
- not require an additional visit to the property;
- dovetail more flexibly with existing processes, and importantly
- still meet the requirements of the Directive.

16. The Directive makes provision for EPCs to have a validity period which "shall not exceed 10 years". However, the government is requiring a new EPC to be produced each time a property is sold even if it is within 10 years. This looks particularly odd given that the government is proposing that EPCs undertaken on private rented sector homes should have a validity of 10 years. There does not appear to be any justification for the different treatment of the home ownership and private rented sectors.

#### **b) Qualification and certification of energy assessors**

17. We are also concerned at the level to which the government is requiring energy assessors to be qualified and accredited. The government's current approach creates an unnecessarily complex, time consuming and expensive barrier for experienced professionals which will deter many from entering the market.

18. While we accept that there should be a recognised standard so that people can compare EPCs, the standard should be accessible to as wide a range of providers as possible so that there is choice and competition for consumers. This may also encourage existing homeowners to have energy surveys and to improve the energy efficiency of their homes.

19. The arrangements for the new certification scheme(s) also appear unduly cumbersome and ways are only just being found to accommodate existing professional/regulatory bodies. It is also unclear whether the database of EPCs and HCRs is fully up and running. These issues taken together mean that it is highly unlikely that there will be sufficient domestic energy assessors across England and Wales covering all regions sufficiently to meet local demand to produce EPCs from 1 June 2007. This will further undermine the credibility of HIPs, and potentially cause market disruption in a period that is usually very active.

20. At what point will the government assess whether there will be sufficient energy assessors in place for 1 June and what contingency proposals are there if problems arise? Property professionals are investing on the basis of the government's current plans. Significant wasted costs will be incurred if the government makes a late change of the implementation date.

#### **c) Regulatory Impact Assessment**

21. A regulatory impact assessment has not been produced for the delivery of EPCs. Nor has there been an updated regulatory impact assessment for HIPs since the government decided to make HCRs voluntary. This makes it difficult to reach a final conclusion on whether the approach taken is proportionate, accountable, consistent, transparent or targeted. The government intends to produce these alongside the regulations being laid in late March. This does not give sufficient time for proper external scrutiny before the proposals are implemented in June. And, as noted above, our view based on the available information and proposed timetable is that any impact assessment would raise serious concerns about the costly infrastructure which is being put in place.

## **Green mortgages**

22. While the government is keen to encourage the provision of more 'green mortgages', it has yet to define what it means. We are willing to explore the possibilities but there are no standard definitions badged in this way, and only four lenders currently offer the product. Several of these are carbon offsetting arrangements rather than encouraging energy efficiency measures in the home. Even these products can cause unintended problems, as highlighted in recent media articles. Consumer demand for green finance products is currently small.

23. A report in 2005 from the Centre for Sustainable Energy "Making mortgages energy efficient" considered whether financial incentives combined with an energy efficiency report would encourage home owners to be more energy efficient. The report concluded that:

*"We are faced with an indifferent home-buyer and a mortgage market unconvinced by the commercial potential of promoting sustainable energy use in their products. Changing this will require concerted effort to tackle this consumer indifference and to bring to the market competitively priced mainstream mortgage products which make it simple and enticing for the home-buyer to take action to improve sustainable energy use."*

24. The report also reviewed take up in a number of countries where 'green' products were available and found that take up was poor.

25. We were pleased to note that the consultation paper discusses finding other ways to incentivise people to make energy efficiency improvements, including council tax rebates. We believe this, combined with readily available EPCs at all points during homeownership, are much more likely to achieve the policy aims that the government desires than development of 'green' mortgages. However, we remain ready to start discussions on this with the government.

## **Reforms to searches**

26. We are pleased to note that the government acknowledges the problems generally that surround the local authority search which we, and others, have raised consistently over a number of years. Problems about speed, availability of information and cost have been with the industry for a very long time and should have been dealt with well in advance of the introduction of HIPs. Whereas guidance is welcome it needs to be introduced as a matter of urgency and needs to be strongly and effectively policed. The consultation paper gives no certainty about when or how this will be introduced or how it will be monitored and enforced. This should be clarified.

27. In the interim, we welcome the proposals which will allow sellers to market the property where a local authority search (both the local land charges search and the additional enquiries) has been applied for but is awaited. A local authority search should not delay marketing of the property.

28. However, we are concerned about the proposals related to personal search organisations. If there is a problem with personal search agents having access to complete information then this should be resolved by reform rather than insurance. We understand that the information in question might relate to highways and planning. Both of those are important issues for both lenders and borrowers.

29. It is not clear what the current extent of the problem is. The consultation paper does not specify:

- how many local authorities are affected;
- what information is in doubt;
- whether it is the same information that cannot be provided to personal searchers at each of those local authorities; and
- whether the information shortfall varies depending on the local authority.

30. We note that insurance is meant to cover that "information gap". However, home buyers and lenders want certainty not insurance. We do not have an active knowledge of this insurance market and given the short time frame for this consultation have not had the opportunity to research it. However, it seems unlikely that should there be a successful claim there will be a pay out to both lender and borrower in which case one party would lose out.

31. Quite a few of our members have informally indicated to us that once industry regulation is in place they will be far more willing to accept personal searches than at present. We understand that Council of Property Search Organisations (COPSO) Code of Practice and guidance is now in place. In the next edition of the CML Lenders' Handbook (effective from 1 June 2007) lenders will be able to say whether they will accept personal searches if the search is carried out in accordance with named guidance.

32. Clearly while there is doubt about the information that personal search organisations have access to, that decision will be more difficult for lenders to make. Even if lenders are content to accept personal searches despite this information gap, conveyancers might well decide that a personal search will not afford adequate protection to the buyer and will commission an official search. This could mean two searches in the transaction and would not therefore assist speed and efficiency in conveyancing.

33. It is not clear what is meant by the proposal in paragraph 56 of the consultation paper. It says insurance will be limited to those parts of searches for which private search companies cannot gain access to the authoritative data within 14 days. How does this 14-day period relate to the 28 days within which searches should be acquired? And what happens after April 2008 if the information gap issue has not been properly resolved?

34. It seems to us that the simple answer is for government to legislate so that there is a level playing field between official searches and personal searches.

35. On the cost of the search the recent consultation on local land charges fees for official searches suggested that local authorities are entitled to recover the cost of providing the service. There is therefore no incentive to improve productivity – the worst performing local authorities can recover everything and charge the highest fee. This seems very unfair to the consumer.

### **Home condition reports**

36. We were surprised by the figures in the baseline research that suggested that 40% of people relied on the lender's valuation. It was our understanding that a greater proportion of people relied on the valuation and did not commission their own survey. In the limited time available we have undertaken our own survey of lenders which showed that 85% of surveys conducted for house purchase loans were mortgage lender valuations and 12% were home buyer surveys. Only 3% carried out a more detailed full structural survey or other surveys.

37. This suggests that the baseline research is flawed. Either people did not understand the question that they were asked, or did not remember the type of survey they had. This needs to be considered carefully in any subsequent research.

38. We also take disagree with the comment that the HCR *'has been designed so that it can provide data that can be fed directly into lenders' automated valuation models thereby avoiding the cost of a separate lenders' valuation survey in a substantial number of cases'*.

39. We have repeatedly emphasised that the likelihood is that valuations will continue broadly as now, and it is wrong to assume that significant cost savings will arise for consumers. This is particularly true now that HCRs are voluntary which, because there is no indication of what take up will be, means that lenders are highly unlikely to invest in systems to be able to link to them electronically. During the trials only 60% of packs to date contained a HCR, and this was when the government was paying for them. Lenders cannot make a business case to invest in systems to link electronically to the HCR register if only a small proportion of their customers are likely to have them.

40. We have consistently emphasised that, even if lenders were able to interact perfectly with HIPs and HCRs, this will not change the requirement on lenders to obtain a valuation before lending. A valuation provides an independent, reliable, indemnified and timely assessment of value. This is part of being a responsible lender and protects both lender and borrower. It is also a regulatory requirement.

41. The HCR does not contain a valuation and it does not contain important information that is needed to determine a valuation, for example, if the property is on a busy road or is in a particularly desirable location. The HCR will report on the condition of the property, but will not make any comment on its impact on value. In addition, a property may have been on the market for some time during which its value may have changed because the overall market has changed. It is, therefore, likely that in all cases an assessment of value will need to be made at the point of mortgage application.

42. In a high proportion of cases, a physical inspection will be required. This might include:

- high or low value properties;
- properties in rural or other locations where benchmarking of value is difficult;
- properties of non-traditional or unusual construction;
- older properties and properties where the borrower wishes to obtain a high loan relative to value (normally over 80%); and
- loans where the borrower has unusual characteristics, such as those where there are credit risk problems.

43. Research that we published in June 2006 'Mortgage lenders, HIPs and the future of valuations' showed that a physical inspection is currently used in 99% of applications for house purchase. Although the market may move more quickly than anyone can anticipate, lenders' best estimate then was that 40% of valuations will be automated five years after HIPs have been in place. As this research was carried out when HCRs were proposed to be mandatory we intend to repeat this research later this year to gauge lenders' current expectations for AVM usage.

44. Lenders are exploring the possibility of using AVMs in appropriate cases but this is a complex risk-based decision and one which lenders will not rush into.

### **E-conveyancing**

45. We are pleased to note the recognition of the changes that e-conveyancing will bring to the home buying and selling process. We have consistently supported the changes that e-

conveyancing will bring, and suggested that this will do more to streamline the home buying and selling process than HIPs. We continue to work actively with the Land Registry on e-conveyancing, but suggest that the CLG need to continue to coordinate their activity with the Land Registry in a systematic way.

### **Consumer redress**

46. We support moves to improve consumer redress in the home buying and selling process.

### **Future market-led developments**

47. The mortgage industry is not static and developments include the use of automated valuation models in appropriate cases and the introduction of point of sale offers by a number of lenders. We were pleased to see that only 4% of buyers were dissatisfied with the time taken by their mortgage lender compared with 11% dissatisfied with their solicitor and 43% with the time overall. We believe the market will continue to make improvements and the government should leave this to the market to determine.

### **Dry run and area trials**

48. We have consistently asked for a properly funded, independent "dry run" of HIPs. It remains our belief that the current area trials are important and should be fully taken into account before implementation of a new regime. The consultation paper acknowledges that the first independent report on the HIP trials will be received in February but further evidence from the trials and evidence on *'the impact of HIPs, and in particular HCRs, transaction times and failed transactions will not be available until later in the year'*.

49. If HIPs are implemented on 1 June, this does not allow sufficient time for the trials to deliver robust and complete evidence on which the government could confidently proceed knowing it is putting in place a long term solution which will deliver real benefits to future home buyers and sellers.

50. Launching HIPs before there has been a proper evaluation of the area trials has always seemed in our view both premature and unnecessarily risky to the overall project aims. We believe that the government should set a date by which it will confirm that it is its view that the current June implementation date will be achieved without market disruption. A late announcement of a change of date would be very unhelpful and wasteful for businesses, so, if there are any doubts about market impact or property industry readiness, the implementation date should be deferred (and the decision announced as soon as possible).

### **Transitional measures**

51. We are pleased that the government has recognised the difficulties in obtaining the necessary documents to have a complete HIP on the first day of marketing. However, our comments about whether there will be sufficient domestic energy assessors to produce EPCs for the first day of marketing are relevant here.

52. We also believe the transitional arrangements will cause confusion in the market place as people will not know at any point in time which documents should be in the pack or whether there should be a pack at all (if the property has been listed before 1 June). This will also make it very difficult to police the arrangements.

53. We are also concerned that there will be no requirement for the pack to be updated if the property is remarketed by the same seller within one year of the original marketing date. This will make parts of the pack virtually meaningless, especially if it is one of the 25% of properties that then remains on the market for more than 8 months. This means that some documents might be nearly two years old at the point where the property is sold. Most conveyancers acting on behalf of their buyer and lender clients will not accept searches that are more than 6 months old. This means that there will be a requirement for repeat searches in a large number of cases.

### **Other long term issues and potential longer term changes to HIPs**

54. It is not clear why the debate around which searches should be required and which authorised has been reopened. We understood that it was not possible to include in the regulations a statement to the effect that a pack should include all relevant searches, which was our original preferred route. It is not clear why flood and ground stability searches have been chosen above other searches where it is also clear which areas need to have them, for example, coal mining searches. We do not believe this debate should be reopened while so many other uncertainties remain.

### **Conclusion**

55. As noted in the introduction, lenders consider that HIPs are less directly relevant to their lending businesses than they were previously. But our concerns about whether the policy will deliver the promised consumer benefits, the timetable and the implementation process remain real and significant.

56. Given the significant uncertainties that remain and the doubt that HIPs will deliver the intended benefits we call on the government to delay introduction of HIPs until the trials are complete, the outcomes properly reviewed and uncertainties resolved.

### **Further contact**

57. This response has been prepared by the CML in consultation with its members. Comments and queries should be addressed to Jackie Bennett, head of policy at the CML, telephone: 020 7438 8931, email: [Jackie.Bennett@cml.org.uk](mailto:Jackie.Bennett@cml.org.uk).