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## Meeting of the Executive Member for Neighbourhood Services and Advisory Panel

6 December 2007

Report of the Director of Neighbourhood Services

### HOME INFORMATION PACKS

#### Summary

1. On 1<sup>st</sup> August 2007 new legislation was introduced which requires sellers of residential properties to provide certain information about their home known as 'Home Information Packs' or 'HIP'. This report seeks member approval to adopt a policy for enforcement of the legislation.

#### Background

2. The 'HIP' provisions stem from the government's manifesto commitment to improve the home buying and selling process for consumers. The legislation is aimed at ensuring that information needed to make informed decisions is available at the beginning of the process. The inclusion of the energy efficiency information is the result of a European Directive and it is aimed at contributing towards the reduction of carbon emissions from homes.
3. The Home Information Pack (No.2) Regulations 2007 (made under the Housing Act 2004) requires that certain information must be included (required) and some information may be included (additional) in the HIP. Examples are contained in Annex A to this report. The legislation defines a 'responsible person' whose duty it is to 'have the pack', 'provide a copy on request', and 'ensure the contents of the pack are authentic'. In most cases the 'responsible person' will be an estate agent, but they may also be a private individual who is marketing their own home. Where the 'responsible person' is an estate agent, there is also a duty on them to belong to a redress scheme to enable complaints to be investigated. Two independent redress schemes have been approved so far, those being the Ombudsman for Estate Agents and RICS' Surveyors Ombudsman Scheme.
4. All properties with four bedrooms (or more) first marketed after 1 August 2007, and three bedroom properties first marketed after 10 September 2007, must have a HIP. Properties first marketed before this date are not required to comply. Further legislation is anticipated that will have the effect of requiring all properties on the market to have a HIP.
5. Local weights and measures authorities (trading standards officers) have responsibility for enforcing the legislation. Officers have a range of options for

dealing with breaches from offering help and advice, to issuing a fixed penalty notice (currently £200). If an estate agent fails to comply with their duties, this may also be treated as an 'undesirable practice' under the Estate Agents Act 1979. Under this Act, the Office of Fair Trading could decide to take action, including the issuing of a 'banning order', if it felt that was as appropriate course of action. There are however no criminal sanctions for a breach of the Home Information Pack (No.2) Regulations 2007, therefore the options of a caution or prosecution are not available.

6. An example of the fixed penalty notice that may be issued is attached in Annex 2. There are also details about how to appeal against the issue of the notice, ultimately which may be made to the County Court. If the responsible person fails to pay the fixed penalty the authority may pursue the debt through the civil courts.
7. It should be noted that it is not intended that the 'responsible person' be held accountable for the accuracy of the information contained in the HIP, unless they have reasonable cause to believe that it fails to comply. The legislation therefore recognises that the 'responsible person' is simply collating information from other sources e.g. UK Land Registry, Energy Assessors etc. A fixed penalty charge should not therefore be issued where the information is inaccurate, only where the HIP is incomplete.
8. Trading Standards Officers have undertaken advisory visits to estate agents in the city to discuss the legislation and the methods they employ to comply. At the time of writing, there have been no concerns raised and no complaints received about estate agents failing to comply with their duties in York.

## **Options**

9. Option 1. Members note the report and recommend that officers issue fixed penalty notices where appropriate. This would be when previous advice from officers has been ignored. This procedure being in accordance with the Environmental Health and Trading Standards Enforcement Policy (approved by Members in September 2005).
10. Option 2. Members note the report and do not enforce the legislation.

## **Analysis**

11. Option 1. Enables officers to undertake a 'proportionate' and 'consistent' approach to enforcement. The application of the enforcement policy would ensure that all formal action is consistent.
12. Option 2. The local authority has a duty to enforce the legislation. If option 2 is approved the council would be in breach of the legislation.

## Corporate Priorities

13. The HIP legislation links into the corporate priority 'to improve the quality and availability of decent, affordable homes in the city' and to 'Improve the health and lifestyles of the people who live in York'.

## Implications

14. **Financial:** There are no financial implications associated with this report, activity will be undertaken within existing budgets.
15. **Human Resources:** There are no Human Resources implications associated with this report.
16. **Equalities:** There are no equalities implications associated with this report.
17. **Legal:** The City of York Council has a duty to enforce the HIP duties under the Housing Act 2004.
18. **Crime and Disorder:** There are no crime and disorder implications associated with this report.
19. **Information Technology (IT):** There are no IT implications associated with this report.
20. **Property:** There are no property implications associated with this report.
21. **Other:** There are no other implications associated with this report.

## Risk Management

22. In compliance with the Council's risk management strategy. There are no risks associated with the recommendations of this report.

## Recommendations

23. That the Advisory Panel advises the Executive Member to approve Option 1 in relation to the enforcement HIP legislation.

Reason: The approach ensures that the council meets its duties under The Housing Act 2004, and that any breaches are dealt with proportionately in accordance with the enforcement policy adopted by Members in September 2005.

## Contact Details

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Report Approved  Date 12/11/2007

Specialist Implications Officer(s): None

Wards Affected:

All

### Background Papers:

Environmental Health, Trading Standards and Licensing Enforcement Policy  
(September 2005)

The Home Information Pack (No.2) Regulations 2007

Energy Performance of Buildings (Certificates and Inspections) (England and Wales)  
Regulations 2007

### Annexes

Annex A: Home information Packs – Required and Authorised Information.

Annex B: Example Fixed Penalty Charge Notice