



National Audit Office

August 2007

The following is the content of a letter sent by the NAO to the Royal Institute of Chartered Surveyors (RICS) in response to concerns they raised with us about aspects of the implementation of the Home Information Packs.

This note sets out the findings, conclusions and recommendations arising out of the National Audit Office's examination of the specific concerns you raised about the implementation of Home Information Packs. We intend to report to Parliament in 2008-09 on the overall effectiveness of the arrangements put in place by the Department to introduce Home Information Packs and to ensure sufficient qualified inspectors were available to implement the scheme. The report will also provide an early assessment of the impact of the packs and whether they are meeting the objectives of making home buying and selling a quicker, more certain and less daunting experience. This note does not address these wider issues.

1 Your concerns

In November 2006, you wrote to the Comptroller and Auditor General setting out a number of concerns about the Government's approach to the development of Home Information Packs, the regulation of Home Inspectors and the use by CLG (formerly ODPM) of consultants on the project, and requesting that the NAO examine in detail the issues raised. These can be summarised as follows:

- a) The use of consultants, who had a financial interest in a private sector company seeking to be approved under the regulatory scheme, on the development of the policy and the detailed regulatory scheme; and
- b) an unfair bidding process.

2 Basis for our findings

In order to examine these concerns the NAO has reviewed key documents from CLG and those submitted by the complainant. It has also met with relevant CLG staff, met with the complainant, reviewed subsequent information from the complainant and spoke to interested third parties. Annex 1 includes the detailed list of the key documents examined for this report. We found that a number of key meetings held by the Department were unrecorded and unminuted. The Department were unable to furnish us with timely information on a number of occasions because of a lack of formal records or because relevant staff were unavailable or had moved on.

3 Background

In spring 2003 the Government announced its intention to make it easier for people to buy and sell homes in England and Wales through a new home information pack. The 2004 Housing Act provided for the relevant Secretary of State to prescribe by regulation the documents that needed to be included in the home information pack and information which must be contained in those documents.

Home-sellers would be required to draw up Home Information Packs which will contain evidence of title to a property, copies of planning, listed building or building regulations consents, local searches and energy performance certificates and any guarantees of work on the property.

Initially the packs were also going to include Home Condition Reports, but this mandatory element was removed in July 2006.

The 2004 Act also provided for the Secretary of State to issue regulations to provide for aspects of the information in the Home Information Packs to be provided by individuals who were members of an approved certification scheme and for the Secretary of State to approve one or more such certification schemes. The role of the certification schemes is to ensure that Home Inspectors are fit and proper

persons who are qualified and insured to prepare Home Condition reports.

The certification schemes would be required to operate in accordance with standards set by CLG but ownership of the individual schemes would remain outside of the public sector.

It was originally the intention to see full implementation in June 2007. It was announced by the Housing Minister in May 2007 that this would slip to August 2007 because of the shortage of qualified assessors and a legal challenge by the Royal Institute of Chartered Surveyors (RICS). CLG now intend to introduce home information packs in England and Wales on a phased basis, starting with homes with 4 or more bedrooms. Homes with 3 bedrooms will be phased in after this, followed by all other homes.

4 Our Findings

- a) The use of consultants, who had a financial interest in a private sector company seeking to be approved under the regulatory scheme, on the development of the policy and the detailed regulatory scheme;

In 1999, DETR (a predecessor Department to CLG) issued a paper on Consumer Protection for the Home Condition Report Environment. Surveyors and Valuers Accreditation (SAVA), then part of the former Incorporated Society of Valuers and Auctioneers (ISVA) and RICS, submitted initial proposals to DETR to develop the Home Condition Report policy further. SAVA Ltd was established as an independent body in the first half of 2000 and it physically moved out of RICS in September 2000.

In January 2000, DETR appointed two consultants, Christopher Legrand and Richard Theobald of SAVA, by grant funding to provide support in the development of the Home Information Pack policy.

In 2003 both consultants publicly sold their majority "A shares" in SAVA, to National Energy Services Ltd (NES Ltd). The Department noted this was to enable them to concentrate on the growing work arising out of the development of the certification schemes. However the consultants jointly retained 48% of "C ordinary shares" in NES Ltd.

The consultants formed a new company Property Industry Research Ltd (PIR Ltd) and CLG appointed PIR Ltd by Single Tender Action in 2005 to develop the Home Information Pack certification scheme. The Department believed single tender action was appropriate because work undertaken to date by PIR Ltd gave them unique expertise and knowledge which would prove a vital resource to help resolve any problems around the products and processes, especially during the monitoring and testing periods before full implementation.

On 25 May 2006, RICS raised the Department's attention to a potential conflict of interest. The Directors of PIR Ltd developing the certification scheme on behalf of the Department continued to retain a financial interest in NES Ltd, the parent of SAVA which was a company seeking approval to run a certification scheme. RICS had submitted as evidence copies of entries from Companies House showing that the both Mr Legrand and Mr Theobald still had C Shares in NES.

CLG state they used reasonable judgement and checked the allegation of perceived conflict of interest by telephoning Christopher Legrand and then following up the call by email correspondence in June. The email exchange shows that Mr Legrand gave written assurances that a financial gain would not result from the C Shares held. Mr Legrand told the Department that the Consultants' share options in NES were based on a fixed price and that the value of the shares would not change with the value of SAVA. The Department took this information at face value. There is no evidence on file that the relevant policy team sought advice from CLG's financial team. They failed to investigate further with Companies House, although good corporate governance would indicate this would have

been prudent. The information taken at face value from the consultants then formed the basis of the response to RICS by CLG in June 2006.

The response from CLG to RICS on 8 June explained why the Department had concluded that no conflict of interest existed, saying that the shares were held for the sole purpose of providing security for deferred payments due following the sale of SAVA to NES and that the value of the shares was fixed. The letter went on to state, "even if there were any perception of a conflict of interest, it would need to be seen in the context of PIR's input forming only part of the total framework of advice that underpinned recommendations for approval of certification schemes". The level of input however does not detract from the fact that a potential conflict of interest had arisen and had not been investigated fully.

RICS continued to raise the issue about the potential conflict of interest with CLG in further letters dated 9 and 24 August and also in meetings with the Department.

Both the consultants were available to provide advice to potential applicants to run certification schemes on the development of their applications. The Building Research Establishment Ltd (BRE) and SAVA took advantage of this advice. RICS told us that they declined this assistance because they did not wish to share sensitive commercial information with the consultants whom they continued to believe had a financial interest in one of the other potential scheme applicants (SAVA).

Christopher Legrand attended the initial panel held on 9 October which assessed the SAVA application to become a certification scheme. This makes the conflict of interest even more material, although CLG told us he had no sway with the panel in making the decision. The Department told us that Mr Legrand's role on the panel was that of expert adviser, and provided the NAO with a copy of the scoring matrix, but no formal minutes were taken at the meeting so the NAO cannot determine whether or not he was involved in the decision making.

RICS again wrote to CLG on 10 and 19 October to raise the issue about the potential conflict of interest and to cover some other issues regarding the certification scheme. CLG told us that if RICS had submitted more substantive evidence at this time, they would have undertaken a fuller investigation. RICS told us that they believed it was the responsibility of the Department to make the necessarily robust investigation into the conflict of interest. On 25 October, RICS telephoned CLG and suggested that a search at Companies House regarding the consultants would provide additional information.

RICS independently appointed Baker Tilly on 27 October to examine the potential conflict of interest on their behalf.

CLG appointed Grant Thornton on 30 October to review whether there were grounds for a possible conflict of interest. Grant Thornton concluded on 31 October that the appointment of SAVA to run the first certification scheme would appear to be integral to SAVA's carrying value in the accounts of National Energy Services Ltd (SAVA's parent company) and therefore had the potential to increase the share options held in National Energy Services Ltd by the two consultants.

Once confirmation of the conflict of interest had been received, the Department acted quickly to suspend the employment of the consultants. They were suspended on 1 November, and their contract was terminated on 6 November.

When CLG suspended the consultants a new panel, chaired by a CLG Official re-assessed the SAVA application on 2 November and concluded that the original application had met the criteria. A further panel with an independent chair from the Office of Government Commerce was then run on 3 November and SAVA's approval was confirmed.

On 9 November, the Baker Tilly report was sent to the Department from RICS which had the same conclusions as the Grant Thornton report.

Conclusions

- The Department employed consultants with a clear conflict of interest.
- The department did not take sufficiently timely action to investigate the continued concerns raised by the correspondent. Departmental staff relied on assurances from the consultants themselves that a conflict did not exist. They should have taken more robust action when first informed to collect independent information to verify what they were told
- At least three letters to the Department from RICS did not receive a written response. Good governance would see full replies being sent out within 10 days, or if that is not possible, at least holding responses.

b) an unfair bidding process

When the government announced HIPs, the Secretary of State allowed for any number of certification schemes to be developed. The approval of private sector companies to run certification schemes is not a bidding competition. A consequence of the decision in July 2006 to make the home condition report a voluntary component of the pack was to create a situation in which the demand for home condition reports – and hence for home inspectors and certification schemes to certify them – was very uncertain. Against this background the issue was whether any private sector organisation would be prepared to make the investment necessary to set up a certification scheme without government support rather than a bidding process for a lucrative business opportunity. It was only later that there was any sense of competition across the sector to be the first approved certification scheme.

The certification schemes for home inspectors are required to operate in accordance with standards set by CLG. The clarity and transparency of these standards were key in ensuring a level playing field between potential scheme applicants for the right to run certification schemes. As was the publication of clear criteria against which the Department would assess applications.

In designing regulatory schemes Departments are expected to adopt the Hampton principles for better regulation. These principles require proportionality, accountability, consistency, and transparency in the design of new regulations.

Draft scheme standards were originally circulated by the Department to potential applicants in April 2006 and were published on 14th June. These initial standards failed to adopt the Hampton principles in a number of respects, being very detailed and prescriptive rather than goal-based and proportionate. These published standards were criticised by the Better Regulation Executive and the Better Regulation Commission for being excessively prescriptive and two of the potential applicants informed the Department that they did not believe the standards were achievable.

CLG acknowledged the need for alternative standards once the mandatory element of Home Condition Reports was removed and from July 2006 the CLG website noted that revised scheme standards would be published in September 2006.

On 26th September CLG e-mailed the potential scheme applicants a draft set of proposals for a “lighter touch” application process explaining that these proposals were necessarily tentative and had not yet been approved by Ministers. These lighter touch standards involved an alternative approach that delivered the same outcomes, but were less prescriptive. The onus would be on the scheme applicant to demonstrate how they would offer equivalent consumer protection to the earlier standards whilst acknowledging that areas such as insurance cover, monitoring, and dealing with

complaints needed to be revised. This approach was approved by the Housing Minister on 3 October 2006.

DCLG told us that whilst the potential applicants were all aware of the decision to assess the schemes using a lighter touch approach, none of them were aware of the actual scoring matrix and full approval process the department would be using to assess the applications as this was not made available at the time of the Housing Director's email.

RICS told us they were not informed either formally or informally that the proposals set out in the e-mail of 26th September had been approved by the Minister and were now the basis for a formal application for accreditation. The Department have confirmed that it did not issue formal notification to any of the potential scheme applicants of this decision.

CLG told us that SAVA had taken the decision to apply for scheme accreditation using the original standards as they had over 1200 potential home inspectors who were keen to gain accreditation. SAVA submitted numerous applications during the period March to September which were subsequently rejected by the Department. Once Ministerial agreement was gained for a lighter touch process, SAVA were better placed than the other applicants to quickly develop a further application and were then subsequently the first scheme to be approved on 9 October, the day their final application was submitted. CLG have confirmed that they arranged the approval panel in light of the anticipated application from SAVA.

RICs told us that if they had received notification that the draft lighter touch standards had been approved as the basis for an application they would have been in a position to submit their application at the same time as SAVA. Both RICS and BRE were waiting for a formal notification of the new draft standards before applying for scheme accreditation.

RICS requested a copy of the scoring matrix and process after the SAVA application had been approved and this was forwarded to them on 16 October. RICS and BRE subsequently submitted applications in early November and were approved in late November and early December respectively using the same criteria against which the SAVA application had been assessed.

Conclusions

- In designing the certification schemes, CLG did not follow many of the better regulation principles. Initial standards as developed by the Department on advice of the steering group, facilitated by PIR were overly prescriptive. Many aspects of the later consultation did not provide a full 12 week period for response as suggested by Government guidance.
- Whilst the application for approval to run a certification scheme did not involve a competitive bidding process, there were clear advantages for the bodies in being approved first.
- RICS came to a perception that the process was unfair in part because of their belief that the department had responded inadequately on its concerns about the conflict of interest and in part because the Department did not make it sufficiently clear that the draft standards of which applicants were informally notified on 26th September were the basis for a formal application.
- CLG fell far short of appropriate practice in developing and publishing transparent standards for the lighter touch certification scheme and the associated approval process including the scoring criteria for considering applications.
- Communication with all the applicants was not as equal or open as it should have been.

Arising from our examination we have made the following recommendations to the Department:

- 1 Standard terms and conditions should require consultants to disclose any potential conflicts of interest. Disclosures should be required again on any reappointment.
2. Any potential conflict of interest brought to the Department's attention should be investigated fully by a senior responsible officer and acted upon accordingly. Advice should be provided by staff with appropriate expertise.
3. Consultants should not have a role in making decisions which could result in a contract being entered into between the department and a supplier.
4. Concerns raised by third parties about issues affecting propriety should be responded to more quickly and formally
5. Approval processes need to be open and transparent. There must be equal level of communication and opportunities provided to all potential applicants.
- 6 Even where officials are under pressure and decisions need to be made quickly; those decisions need to be formally recorded and transparent to those affected.
7. The criteria to be used by the Department to approve applications need to be clear, transparent and available to all potential applicants before approval panels are convened.
- 8 The meetings of panels convened to approve applications need to be formally recorded.

As part of its financial audit work, the National Audit Office intends to undertake further work to examine whether the weaknesses in procedures identified as a result of this work are more widespread within the Department. We intend to report to Parliament in 2008-09 on the overall effectiveness of the arrangements put in place by the Department to introduce Home Information Packs and to ensure sufficient qualified inspectors were available to implement the scheme. The report will also provide an early assessment of the impact of the packs and whether they are meeting the objectives of making home buying and selling a quicker, more certain and less daunting experience

Appendix 1

Key evidence reviewed but not retained

- The initial contract between SAVA Ltd and ODPM to assist with the development of the HIPs/HCR in January 2000.
- Correspondence regarding the sale of SAVA and the resultant formation of PIR Ltd.
- PIR Ltd contract with ODPM (CLG) renewed in January 2005 as a Single Tender Action
- Correspondence from RICS dated April 2006 raising issues about the proposed Scheme Regulations
- Correspondence from RICS to ODPM in May 2006 raising the issue about the possible conflict of interest between the consultants and SAVA
- Response from CLG in June to RICS's May letter regarding conflict of interest
- Correspondence from RICS to CLG in May 2006 suggesting some amendments to the regulation standards
- Announcement in July from CLG that the Regulations, Regulatory Impact Assessment and Certification Scheme Standards would be revised and details set out in September
- Two letters from RICS to CLG in August (9th and 24th) raising concerns about conflict of interest between the consultants and SAVA.
- Copy of outline application for scheme certification from SAVA to CLG dated 23 August 2006
- Email correspondence from SAVA to CLG re application for scheme certification dated 4 September 2006
- Press release from Housing Minister dated 21 September stating SAVA would be first approved scheme
- Email from CLG to potential applicants dated 26 September recommending lighter-touch standards for approving schemes
- Email from SAVA to CLG dated 27 September saying they were not in a position to submit application on revised standards
- Letter to CLG from RICS in September 06 seeking clarification that the consultants were not involved in assessing applications for scheme approval
- Ministerial announcement dated 3 October that revised standards could be adopted
- Email confirming SAVAs application received 9 October
- SAVA bid approved by original panel on 9 October
- Letter from RICS to CLG dated 16 October expressing concern that SAVA bid had been approved before CLG has issued revised standards or formally announced new process for scheme approval. Letter also raised issues about perceived conflict of interest

- Press announcement on 16 October that SAVA had been granted approval to run a certification scheme.
- FOI request from RICS to CLG in October 06 requesting information for criteria for certification scheme and other related documents
- CLG commissioned report dated 31 October from Grant Thornton on possible conflict of interest
- Letter from RICS to CLG dated 9 November sending in Baker Tilly Report re conflict of interest between Legrand and Theobald and SAVA
- File note from CLG recording phone call between Director of Housing and Mr Legrand on 1 November 06
- Copy of letters from CLG regarding the termination of PIR's contract