

## **Statement in support of the Requisition of even date for a Special General Meeting**

### **Definitions**

**Requisition** the requisition issued by the Member of even date.

**Statement** this statement made by the Member in support of the Requisition.

**PLAG** The Property Lawyers Action Group.

**HBSC** Home Buying & Selling Council

**DPMSG** Digital Property Market Steering Group

### **Interpretation**

Words commencing with a capital letter shall have the meaning ascribed to them in the Requisition.

### **Statement in Support of Requisition**

The Member makes the Statement.

#### *Standing of Solicitors*

Since the Legal Services 2007 Act (**Act**) an emasculated Society has stood back, as successive governments have run down the various branches of once respected civil and criminal legal systems, thereby diminishing both the rule of law and the role played by solicitors.

#### *PLAG*

PLAG, a values-based organisation, came into existence last year because of the failure by the Society to defend the vital role of solicitors in conveyancing. At the heart of PLAG's concerns was the idea, blindly accepted by the Society, of sellers being required to provide 'Material Information' (**MI**) before a property was listed for sale.

#### *MI*

There are significant doubts concerning the lawfulness of the guidance issued by National Trading Standards (**NTS**) regarding MI because of a lack of legal capacity on the part of the NTS.

MI is a bundle of data, a legal title, searches, and other material, including answers to a questionnaire, which masquerades as a 'single source of truth'.

### *Some MI Flashpoints*

- Companies are already emerging to provide MI. Are such companies exposing the public to unnecessary liabilities?
- It is naïve to suppose that because of MI potential sellers will necessarily go to their solicitors first, to get help on the TA6.
- Complex litigation could arise if an agent was sued for negligence and sought an indemnity from a solicitor, especially if the data was fragmented, because of the different 'actors' in the process.
- The conveyancing system under MI changes fundamentally. Instead of interrogation by a buyer's lawyer of carefully verified replies given by the seller/seller's lawyers to enquiries, there would be a single pack of potentially flawed data.
- The TA6 will significantly increase the risk of claims for 'innocent' misrepresentation.
- MI means that a seller, would find it much more difficult to defend a claim under The Misrepresentation Act 1967, if the buyer was claiming the seller had made a misrepresentation, even if made innocently.
- MI represents in its effect, a re-engineering of conveyancing 'by the back door.'
- Because of MI there will be more claims for 'contractual' misrepresentation because a buyer does not have to prove 'reliance'

### *Criminalisation of replies to enquiries*

Current consumer protection laws (**CPRs**) make estate agents, solicitors, and sellers **criminally** liable for an 'unfair commercial practice,' a 'misleading action,' or a misleading omission, a point made by the Society itself in its 'Practice Note' on CPRs (**Practice Note**). Curiously, however, many solicitors are not aware of the existence of the Practice Note.

Despite strict liability for such criminal offences, astonishingly the Law Society appears to have accepted the principle of even higher levels of criminal liability being imposed on solicitors and some sellers merely by giving incorrect replies in the poorly drafted and over-long TA6 form.

Even non-solicitors see this form as part of a 'reincarnation' of the infamous 'HIPS' that discouraged sellers from marketing their properties and was rightly repealed by the Minister, Eric Pickles, in May 2010 to protect the property market.

### *Recent Actions by the Society*

PLAG considers that the Society has many questions to answer including:

1. Who authorised the Society to enter membership of HBSG?
2. Who authorised the Society to enter membership of the DPMSG?
3. Did the Society take appropriate external advice on whether NTS had the 'vires' to issue its MI guidance to estate agents?
4. In light of comments made by other members of HBSG by what authority did the Society agree to an apparent dilution of the future role of property solicitors in conveyancing?
5. When did the Practice Note on CPRs first appear on the Law Society website?
6. When was the Practice Note published in the LSG?

### *Criticisms of the Society*

The Society received warnings of the vastly increased risk of criminal offences being committed because of MI but despite such advice, it gave no advance warning to the profession, so that solicitors could put in place appropriate safeguards, to protect themselves. Furthermore, the Society has, to quote the vernacular, 'doubled down on its belief in MI, despite being advised of the increase in criminal liability for its members. This is extraordinary.

The 'criminalisation' of conveyancing undertaken by solicitors could be the start of the criminalisation of other areas of legal practice if the Society fails to change course.

PLAG is aware of other non-solicitor groups taking legal action in respect of MI, which makes the Society's failure to protect solicitors even more difficult to comprehend.

The Director of Strategy of the CLC has recently written that in effect, solicitors must in the future share 'sovereignty' over conveyancing. He also claimed that:

"DPMSG is best placed to identify what information is needed throughout the process."

Why did the Society concur as a member of such a group that undermining the solicitors' historic leading role in conveyancing was consistent with its core duty to support those of its members practising property law?

Solicitors and their predecessors have been at the forefront of conveyancing for centuries based on principles first mentioned in Magna Carta. The recent actions of the Society in the context of conveyancing represent a betrayal of its obligations to property solicitors. So, the confidence which ought to

be there in the leadership of the Society no longer exists amongst its members.

This is why the Member calls on the Council to consider the Motion.

Full names of Member: .....

Roll Number: .....

Signature of Member .....

Date of Signature .....