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PROPERTY SEARCHES

**GOVERNMENT RESPONSE TO
OFFICE OF FAIR TRADING
(OFT) PROPERTY SEARCHES
MARKET STUDY**

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GOVERNMENT RESPONSE TO OFFICE OF FAIR TRADING (OFT) PROPERTY SEARCHES MARKET STUDY

Introduction

1. The Government welcomes the OFT market study of the property search market in the UK, which identifies some important issues where the market is not functioning as well as it could for consumers. The publication of the study is timely since it provides an opportunity to establish a plan to ensure that the market is working well for consumers when the Home Information Pack (HIP) is introduced during 2007.
2. The market study was launched by OFT on 8 December 2004 in response to complaints investigated under the Competition Act 1998. The OFT recommendations reflect the need for changes to the supply of information into the property search market in the light of the introduction of the HIP. Under the new Housing Act, from 2007 home-owners or their selling agents will be required to have a HIP when marketing homes for sale, and to make a copy of the pack available to prospective buyers on request. More information can be found at <http://www.odpm.gov.uk/index.asp?id=1150987>
The OFT's report concentrates on the provision of property search information by local authorities.
3. The report reflects that there is competition in the supply of compiled property information between Local Authorities (LA) and Property Search Companies (PSC). However, it notes that most of the raw data is held by LAs, with the result that the market could be subject to distortions that would adversely affect the end consumer.
4. It is the job of central Government to provide the right market conditions to enable fair and free competition. The Government is keen to establish what can be done, working with others, to address the issues identified by the OFT most effectively. This response is therefore the start of an ongoing dialogue that we hope to have with our delivery partners.
5. The remainder of this paper looks in turn at each of the recommendations and provides a joint government response. Where Scotland or Wales are taking a different approach this has been highlighted. The only recommendations directed at Scotland are at section F.

A. Extent of available information

Recommendation: We recommend that, by 2007, LAs make available all the unrefined information they hold that is needed to compile a property search for inclusion in a HIP to all those who ask.

6. Accepted. The government accepts that Local Authorities (LA) should make available all the unrefined information they hold that is needed to compile a property search for inclusion in a home information pack (HIP) to all those who ask. If LA's possess information and use it themselves to compile search responses it should be available to personal searchers.
7. Property search information provided by local authorities, and that will be required in a HIP, is of two main kinds. Firstly, information contained on the authority's Local Land Charges Register and, secondly, other property information kept by LAs which is used to respond to enquiries in form CON 29 Part 1 (standard enquiries of LAs). This is a non statutory form developed by the Local Government Association (LGA) and the Law Society covering information held by LAs that is not included on the local land charges register, but which is usually required by buyers during a property transaction. Although not required for HIPs, LAs also provide additional information in response to enquiries submitted to them on form CON29 Part 2 (option enquiries of LAs). The same issues arise in relation to this information and indeed the provision of search information on non-residential property which is not covered by the HIP legislation.
8. OFT use the term "unrefined information" to refer to the data held in LA registers and records. This data forms the basis of a search response compiled either by the LA itself or personal searchers. Personal searches are those undertaken by individuals or their agents of the unrefined information held by LAs.
9. It is proposed that most of the information provided in response to the CON29 Part 1 enquiry form will be a required component of the HIP. A consultation in England and Wales on draft regulations containing this proposal and associated guidance is currently taking place and ends on 30 December 2005.
10. It is already a requirement of section 8 of the Local Land Charges Act 1975 that any person may search in any local land charges register on paying the prescribed personal search fee.
11. Problems relating to the range of data available to personal searchers arise in connection with the information required to respond to CON 29 enquiries (CON 29 information). Whilst some CON 29 information must be made available under statute (the planning registers for example), there is no explicit right in statute for the public to have direct access to other information used to compile the search. ODPM will

provide guidance for LA's in England and Wales on how to implement a more cost based approach to fees in time for the introduction of HIPS on 1 June 2007. This should also cover best practice on the holding and management of information by LAs as some information may not be currently held in formats that facilitate sharing. Costs are covered in more detail below.

12. If access should remain a problem in relation to CON 29 information the Office of the Deputy Prime Minister (ODPM) will consult on the best way of achieving equal access for all.
13. We also note that as part of the Council for the National Land Information Service (C-NLIS) mandate to encourage the growth of the market for the provision of property information electronically and to facilitate participation by a wider range of service providers and end-users, C-NLIS has begun a detailed study of the market which may provide additional information in taking matters forward.
14. We understand that this will encompass access to and availability of authoritative source data, compiled and unrefined data and the manual and electronic search processes. C-NLIS does not intend to replicate work already being undertaken on pricing. It is anticipated that this study will be completed by the end of the current financial year.
15. The OFT report also considers barriers to the timely provision of unrefined information to personal searchers. This is dealt with at recommendation 4 below.

B. Terms of availability

Recommendation: We recommend that LAs make their unrefined property information available to third parties on terms that do not advantage their own compiling activities over competing compilers.

16. Accepted. The Government accepts the general thrust of this recommendation as any distortion of the charges made for, or access of the unrefined data may adversely affect the market for compiled property information. This recommendation covers both the fees charged for unrefined data and the turnaround time taken to process requests for information. The issue of turnaround times is covered later.
17. The study provides two options for the pricing of unrefined data:
 - a. That central government set uniform fees. This could be at a price that reflects the costs of an efficient LA or an average LA or alternatively the fee could be set at zero
 - b. That LAs set their own fees at a level that covers their costs.

18. The Government in England favours option (b) of allowing LAs to set their own fees. Enabling LAs to set fees which recover costs reasonably incurred, will provide more flexibility than a centrally set fee, given that these costs could vary between authorities.
19. It should also reduce incentives on LAs to restrict the availability of information, resulting from costs pressures when they are unable to recover costs. This approach is in line with recent trends to devolve decision making to a local level where appropriate. It also is consistent with Government policy in England and was expressly stated in the local government White Paper “Strong Local Leadership Quality Public Services”.
20. In relation to CON 29 information, the fees would cover those elements which are not currently required (or implied) by statute to be made available free of charge. A decision on whether this option proves viable will be informed by work being undertaken by the Chartered Institute of Public Finance and Accountancy (CIPFA). This overall approach is supported by the Welsh Assembly Government.
21. This general approach is also consistent with amendments to the Local Land Charges Act 1975 enacted, but not implemented pending the outcome of this market study. These will allow LAs in England to set fees for local land charge services (except personal searches) which recover up to, but not in excess of their costs of providing the relevant service.
22. In Wales the power to set the fees for all local land charge services has been transferred to the National Assembly for Wales. It is the current intention of the Minister for Finance, Local Government and Public Services in Wales to recommend to the National Assembly that these fees should be set centrally.

C Price transparency

Recommendation: Central government should provide clear guidance for LAs on how they should recover the costs of providing property information in compiled and unrefined forms and, if LAs are to set their own prices for these two services, how they should set these charges to avoid distorting competition in the supply of local property searches.

23. As stated above it is the Government’s preferred option to permit LAs to set fees for unrefined property information linked to CON 29 searches locally. The final decision will be informed through the collection and analysis of much more detailed information on all the elements that make up a property search. Fees for local land charge services in Wales will be set by the National Assembly for Wales.

24. The OFT has noted that there is a wide variety of charges made for the supply of CON 29 compiled searches and that there is a lack of transparency about the costs that these charges reflect and that they do not always reflect the cost of providing the service. It also notes that some authorities appear to be subsidising the cost of providing access to personal search companies from the charges made for compiled responses to CON 29 enquiries. Work is underway with CIPFA to establish an agreed cost base and methodology for calculating the costs of maintaining and providing access to records, which will give an accurate cost recovery level for unrefined data fees.
25. It is envisaged that the result of this work will be the publication of detailed guidance, which will sit below a high level set of principles to be published by central government, as to which costs should be recovered from fees. This should identify which costs should be met from fees. Further, more detailed, guidance would explain how this is to be achieved.
26. The issue is complicated further by the legislative landscape in the area of CON 29 fees. Some search information is held in statutory registers that the public has traditionally been given access to free of charge while other information is not on public registers and is provided at the LA's discretion. In the latter case, a fee may be charged for providing the information and this should have regard to the costs in dealing with the enquiry. If the work CIPFA is undertaking provides compelling evidence to suggest that unrecoverable costs incurred by LAs in servicing personal searches are significant and distorts costs there may be grounds for ODPM and the National Assembly for Wales to consider a wider long-term review of this area.
27. ODPM is considering the repeal of the Local Authorities (Charges for Land Searches) Regulations 1994 and relying on the later more specific legislation enabling best value authorities to set discretionary fees (section 93 of the Local Government Act 2003). The 1994 regulations have not had the intended effect with regard to LAs setting discretionary fees that reflect actual costs.
28. As noted above, legislative provision has been made, but not yet implemented to enable LAs to set their own fees for local land charge services, excepting personal searches. In doing so, LAs will be required to have regard to guidance issued by the Lord Chancellor. As far as is appropriate, it is intended that this guidance will draw on the principles and guidance already adopted for the setting of fees under section 93 of the Local Government Act 2003 and, those to be adopted in relation to the setting of CON 29 fees. A similar approach across all local search services should help to maintain a level playing field and avoid unnecessary burdens on LAs. To this end in considering the methodology for setting CON 29 fees, CIPFA will also be looking at

how the same principles might be applied to fees for local land charge services.

29. Her Majesty's Courts Service (HMCS), an Agency of the Department for Constitutional Affairs, and responsible for policy on local land charges, expects to consult stakeholders on the content of this guidance and aims to implement provisions enabling LAs to set fees for local land charge services in time for the introduction of the HIP. Before implementing these provisions, HMCS will also need to consider with stakeholders how fees for personal searches can best be set centrally by the Lord Chancellor in a way that reflects the approach adopted for other local land charge services. In the longer term, it will be possible to consider further legislation to devolve to LAs the power to set fees for personal searches of the local land charges register.
30. In Wales the Welsh Assembly Government intends to consult on the level of fees it intends to set for searches, including a personal search, of the Local Land Charge Registers. It intends to undertake this consultation during 2006.
31. The Government accepts that if LA's in England are to set their own fees for property information services in accordance with the relevant legislative provisions and guidance this will require independent monitoring. Any monitoring system would need to be robust, but proportionate to the size of the market.

D. Turnaround times

Recommendation: We recommend that LAs and ODPM agree a revised BVPI that encompasses requests for unrefined property information and ensures that LAs do not favour their own needs for unrefined information to compile local searches. The Welsh Assembly should include a similar target in the framework for LAs in Wales.

32. Accepted. The current Best Value Performance Indicator (BVPI) only applies to a combined search of the local land charges register and CON 29 Part 1 enquiry by local authority staff i.e. a compiled full local search. It measures actual turn-round times against a benchmark of 10 working days for the processing of the enquiry forms. ODPM agrees that the terms of this BVPI need to be reconsidered in the context of home information packs.
33. ODPM will seek to agree with the LAs in England and the industry how best to measure LA performance in dealing with requests for both unrefined property information and compiled searches. One or more indicators may be needed. It will then consider which of these might be incorporated within any new set of published national indicators. Any

agreed indicator(s) will reflect the needs of the public, rather than of the LAs, in line with the principles underlying the reforms in the home buying and selling process.

34. The Welsh Assembly Government is responsible for setting performance measures in Wales, and is developing a new performance measurement framework for Welsh LAs. The Welsh Assembly Government will consider the development of an effective performance measure in this area during its annual review of the wider framework.

E. Retailing of property searches

35. The following 3 recommendations are aimed at C-NLIS, the overseeing and regulatory body for the National Land Information Service. The Government is not responsible for their implementation. However, in the spirit of providing a joined up response to the report C-NLIS have provided the following contribution. NLIS provides a route to a wide range of electronic information on all land and property in England and Wales.

Recommendation: We recommend that Local Government Information House (LGIH) remove all the exclusivity provisions contained in the hub and channel licences as soon as is practicable, and in any case for any hub and channel licences that are issued after the current set expire. In future LGIH should help LAs and the NLIS hub set objective criteria that are necessary to enable new electronic connections to be established, without unnecessarily limiting competition.

36. Accepted by C-NLIS. Following earlier discussions with the OFT, C-NLIS has removed all exclusivity provisions contained within the LA data provider licence.
37. The removal of Hub and Channel exclusivity is in line with the C-NLIS Business Plan and there are no plans for future licences to carry exclusivity clauses. C-NLIS discussed connectivity issues with the OFT as they were concerned to ensure that the connectivity, business processing and consumer protection lessons learnt during the initial C - NLIS development phase and covered off by C-NLIS through its range of back-to-back contracts, were passed onto local government.
38. C-NLIS hopes to work together with the Local Government Association (LGA) further on this point.

Recommendation: We recommend that LGIH should assign the fourth channel licence as soon as is practicable, and should explore the possibility of awarding additional channel licences.

39. Accepted by C-NLIS which is currently investigating the possibility of releasing more Channel Licences early in 2006.

In future LGIH should remove the limits on the number of hub and channel licences. It should seek to set objective criteria for all potential licensees to ensure adequate consumer protection without otherwise limiting the number of licences awarded.

40. Accepted by C-NLIS. This recommendation is in line with the C-NLIS Business Plan and discussions are underway to discuss the market requirements and the objective criteria needed prior to the release of new licences.

F. Information and redress

Recommendation: We recommend that information about the financial cover offered, such as indemnity insurance and whom to contact in event of a problem should be included with the searches in the HIP, and Purchaser's Information Pack (PIP) if introduced. The guidance material for the HIP should also make it clear that financial redress may be available for searches that are authorised but not required to be included in a HIP.

41. Accepted. ODPM is consulting in England and Wales on draft regulations and procedural guidance. These set out information that must be contained in all search reports included in the HIP. Information will be required on who carried out the inspection for the search and where different who prepared the report. The name of the person who is responsible for any errors will also be provided. A description of the procedures that the search provider has in place to deal with complaints will also form part of the information provided with the HIP. Suitable insurance arrangements must also be in place with an insurer authorised under the Financial Services and Markets Act 2000 (except in the case of LAs, who may decide not to ensure if they wish). However the current guidance does not explicitly require the insurance details to be mentioned in the search report. ODPM are considering further in the light of the OFT report and responses to the consultation exercise. The position with regard to the insurance status of authorised information will be informed by the consultation exercise.
42. Any connections either financial or personal between the provider of the search report and other persons involved in the sale of the property should be made known.

Recommendation: We recommend that a consumer information campaign on the different property search options be included as one element in the launch of the HIP, and the PIP in Scotland if it is introduced. This should also include how property searches can be conducted, what they cover and what information they provide.

43. Accepted. ODPM is responsible for the introduction of the HIP and will be mounting a widespread consumer awareness campaign prior to the

formal launch of the HIP in England and Wales. Current awareness surrounding property searches is low. The Government accepts that, in order for consumers to be fully informed the campaign should explain in simple language the types of property search available and the routes through which they can be obtained. In addition the ODPM plans to develop the existing HIP web pages to make the site more comprehensive and user friendly for non- professionals.

44. In Scotland the Scottish Executive is consulting with key stakeholders regarding the possible contents of the Purchaser's Information Pack (PIP). The current thinking is that the PIP may contain summary information rather than source documents, perhaps in the form of a pre-sale questionnaire to complement the Single Survey.

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