

Personal searches of the local land charges register and other records held by local authorities

Good practice guidance for local authorities and personal searchers

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Acknowledgements

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Contents

Foreword

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In September 2005 the Office of Fair Trading (OFT) published 'Property Searches – A Market Study' which explored the working of the market for property searches and how this was serving consumers. The OFT made two specific recommendations on access to local authority held data necessary to compile a property search:

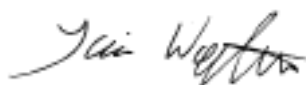
- *Extent of available information – “We recommend that, by 2007, local authorities make available all the unrefined information they hold that is needed to compile a property search for inclusion in a Home Information Pack to all those who ask”; and*
- *Terms of availability – “We recommend that local authorities make their unrefined property information available to third parties on terms that do not advantage their own compiling activities over competing compilers.”*

The Government endorsed these recommendations which contribute to achieving a level playing field between the local authority and personal search sectors in delivering property search services.

When making decisions about buying and selling a home, consumers expect to have all the necessary information as early as possible in the process to enable them to make informed choices. From 14 December 2007 Home Information Packs (HIPs) were required for all properties. Property searches are an essential and therefore mandatory element of the Pack and enable consumers to make those informed decisions about a particular property. Improvements to the arrangements for the provision of searches are an essential component of our wider home buying and selling agenda. HIPs has provided a spotlight on existing practices in relation to searches and the Government is committed to working with the industry and local authorities in pushing forward with further reforms.

HIPs will continue to give rise to intensified competition between local authorities and personal search companies, as those compiling packs will be competing in a new market place on quality, speed and price. The guidance in this document therefore aims to promote good practice and good working relationships between local authorities and personal searchers in delivering property search services. It will be accompanied by guidance on charging for property search services.

HIPs will cut costs and reduce delays in the home buying and selling process. Everyone in the property search sector has a role to play in this to ensure that these benefits are realised. This is what consumers rightly expect and without open and prompt access in delivering property searches we will be failing them. I expect this guidance to be adhered to, particularly in terms of working together to provide prompt access to all the information that consumers rightly expect to inform their decisions. I would therefore encourage you to prepare for this change as quickly as possible.



Iain Wright
Parliamentary under Secretary of State
Communities and Local Government

Good practice guidance for local authorities and personal searchers

Content

The Government completed the roll out of Home Information Packs (HIP) on 14th December 2007. All home buyers and sellers will now benefit from important information about their new home. Information such as property searches are included in the HIP, paid for by the seller, to provide consumers with the necessary information to enable them to make informed decisions when buying a home. Property searches are therefore an integral part of the home buying and selling process.

HIPs have already led to improvements in the delivery and cost of searches, with significant reductions in the cost of searches, and in some areas, substantial reductions in the delays in producing searches. However, there are still wide variations in costs and services and we want to see further improvements for consumers. This guidance on access, coupled with our work on charging, aims to ensure better quality and timeliness of information, and improve value for money for consumers.

Definitions

This guidance adopts the following definitions:

Land Charges Search: a search of the Local Land Charges Register carried out by the local authority on behalf of a third party in accordance with the Local Land Charges Act 1975 and the Local Land Charges Rules 1977.

Personal Land Charges Search: a search of the Local Land Charges Register carried out by a third party in person in accordance with the Local Land Charges Act 1975 and the Local Land Charges Rules 1977.

Local Enquiries Search: A search of information prescribed in the Home Information Pack (No 2) Regulations 2007 (the information required to complete a local search is contained in Schedule 7 – traditionally referred to as Con29 Part 1 enquiries).

Local search: A land charges search and a local enquiries search conducted by a local authority.

Personal local search: A land charges search and a local enquiries search conducted by a third party.

1 A m o t e G d n c e

- 1.1 A search of the Local Land Charges Register and a Local Enquiries search are both required in a Home Information Pack (HIP). These are important features of the home buying and selling process and can be undertaken by a local authority, a property search company (PSC) or a member of the public. The authoritative information required to compile these searches is mostly held by local authorities.
- 1.2 This guidance sets out good practice for local authorities and personal searchers on the conduct of a personal search of the Local Land Charges Register and of other records held by local authorities for inclusion in a property search.
- 1.3 In particular, this guidance is intended to:
 - address the Office of Fair Trading recommendation that local authorities make available all the unrefined information they hold that is needed to compile a Local Enquiries search and that this is done on terms that do not advantage an authority's own search activities over personal searchers;
 - promote good practice and good working relations among local authority staff and personal searchers while recognising that working arrangements vary greatly between local authorities;
 - confirm that all the information should be made available to personal searchers wanting to complete a Local Enquiries search;
 - assist local authorities in providing access for personal searchers to both the Local Land Charges Register and other records, while at the same time allowing staff to manage and update those records;
 - provide an overview of the legislation which applies to property searches and the duties of local authorities in facilitating these searches; and
 - ensure that local authorities do not act anti-competitively.
- 1.4 This guidance has been developed by a Working Group comprising representatives of local government, property search companies, home information pack providers and central government.

Office of Fair Trading Market Study

- 1.5 During 2005, the Office of Fair Trading (OFT) carried out a market study into the provision of home information packs (HIPs) by local authorities. The study was conducted by a team of OFT staff and external consultants. The study found that the majority of local authorities had not yet started to provide HIPs, but that those that had done so were providing them in a variety of ways. The study also found that there was a need for a national standard for HIPs.

- potential for restrictions in the sale of property searches with a recommendation that LAs should offer personal searchers access to information on comparable terms to those that LAs adopt themselves when they compile local searches;
- level of consumer awareness about property searches.

1.6 To address any restrictions on the inspection of data, and to ensure that personal searchers have access to all the required information for inclusion in a property search, the OFT made the following recommendations which have been endorsed by the Government in the response published by DTI:¹

Access to data

That by 2007, local authorities 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.

Terms of availability

That local authorities make their unrefined property information available to third parties on terms that do not advantage their own compiling activities over competing compilers.

Charges

Central government should provide clear guidance for local authorities on how they should recover the costs of providing property information in compiled and unrefined forms and, if local authorities 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.

1.7 The OFT report also stated that central government should consider the case for legislative change if a best practice approach failed.

Implementation

1.8 This guidance replaces the previous guidance, “Personal searches of the local land charges register and Inspection of other records open for public inspection by local authorities; Guidance for local authorities and personal searchers” issued by the Office of the Deputy Prime Minister in March 2005.

Review of legislation applying to property searches

Access to information (requirements to act reasonably)

2.1 Personal searchers could access all the information required for a property search by:

- undertaking a personal search of the Local Land Charges Register, and
- inspecting other records held by local authorities.

¹ Property Searches: Government Response to Office of Fair Trading (OFT) Property Searches Market Study, December 2005.

- 2.2 A local authority must act reasonably in fulfilling its duty to allow access to records open for public inspection. It must not act in a way that inhibits or prevents reasonable access. This reasonable access should also extend to all information required to complete a Local Enquiries search. In some cases legislation contains specific requirements e.g. the planning register, requires authorities to make the register available for inspection by the public at “all reasonable hours”. This means that, subject to any reasonable management system put in place by the authority, members of the public, including personal searchers have the right to inspect these records during the authority’s normal working hours.
- 2.3 A local authority should provide access to information on terms which are the same

- related manual registers or inspecting plans as allowed for by Rule 7 of the Local Land Charges Rules 1977 (which provide that an entry in the Register may consist of a reference to an entry in any existing record required to be maintained by statute which contains the necessary particulars and is open to public inspection);
- the Register contained in an electronic format via a computer terminal;
- a pre-printed extract from the Register.

2.10 In addition to searching in the Local Land Charges Register many personal searchers may also wish to inspect other records open for public inspection, although it should be noted that this does not form part of a personal search of the Local Land Charges Register.

Inspect on other non-registered or local records

- 3.1 The OFT recommended that, in addition to undertaking a search of the Local Land Charges Register, that LAs make available all the unrefined information they hold that is needed to compile a property search to all those who ask. Some of this information can by law be inspected free of charge, examples include the register of enforcement notices, stop notices and breach of condition notices (sections 69 and 188 of the Town and Country Planning Act 1990), together with the register of public highways (section 36 of the Highways Act 1980).
- 3.2 In addition to information which can be inspected free of charge on a public register, the OFT recommended that a local authority should make available all other data they hold which is required to complete a Local Enquiries search. A local authority may charge for providing access to this data where a statutory power exists. In circumstances where charges are applicable they must not seek to distort competition in the supply of property searches.

Environment Information Regulations

- 4.1 The EIR apply to 'environmental information' as defined by those Regulations. This is defined rather broadly and it is possible that some of the information required to complete a property search may be 'environmental information' and the requirements of the EIR may apply. Local Authorities will need to make an assessment of whether information requested is environmental information depending on the nature of the information in any particular case. The EIR require that a local authority should respond to requests for environmental information as soon as possible and within 20 working days.

Competition Act 1

- 5.1 Attention is drawn for the need for local authorities to ensure that they fully comply with the Competition Act. In particular they will need to ensure that competition is not prevented, restricted or distorted (Chapter I, Part1) and should be aware of the provisions of the Act regarding the abuse of a dominant market position (Chapter 2 Part 1).

Good practice

- 6.1 To ensure an efficient and best value service to the consumer there needs to be good local co-operation between local authority staff and personal searchers. This is the key to securing smooth working relationships and a fair and even balance between those who need access either for inspecting information and/or the maintenance of these records. It is good practice for local authorities and local personal search representatives to consult on and review working arrangements on a regular basis.
- 6.2 The following guidance on good practice by local authorities and personal searchers is designed to provide a solid foundation upon which mutually satisfactory working arrangements should be based.

Good practice guidance for local authorities

7 Information on local authority services

- 7.1 Local authorities should provide personal searchers with an information note setting out the authority's arrangements for accommodating personal searches of the Local Land Charges Register and access to local authority information for the Local Enquiries search. This information note should include the following:
- a schedule which sets out what registers/information for the Local Enquiries search are available from the authority, or at the relevant local authority department, including location and opening hours;
 - details about how the Local Land Charges Register is held, for example, in paper or electronic format;
 - any requirements for advance notice, including providing address details and plans;
 - any appointment requirements (including details for a specific officer and telephone number);
 - details of any charges for access to information and copies of documents, with reference to the statutory power allowing the authority to make the charge, together with information about methods of payment;
 - the name and address of an officer of the authority to whom comments, suggestions and complaints about the service should be made;

- details of information for Local Enquiries which are not held by the authority and for which a searcher should direct their enquiries to another organisation, together with an address and contact telephone number for that organisation
- 7.2 Copies of this information note should be supplied to personal searchers known to use the authority's facilities, and copies made available more generally on request and on the authority's website.
- 7.3 Where practicable and requested to do so, a local authority should provide the personal searcher with sight of the register entry (i.e. the actual entry on the register).

Appointments

- 8.1 Where an appointment system is operated for inspection of local authority information:
- appointments should generally be available on a 'first come, first served' basis. All requests should receive fair and equal treatment;
 - where local authority records are located in more than one department of the authority, those departments should operate common hours of access for public inspection;
 - appointment arrangements to inspect all the data required for a personal local search should be flexible and allow access to local authority records no later than the next working day. In exceptional circumstances where this is not practicable e.g. high demand or staff sickness, access should be made available no later than 3 working days from the date of the request;
 - appointment systems should be operated as flexibly as possible and should be reviewed on a regular basis.

Computerised records

- 9.1 Where the Local Land Charges Register is held electronically, there is a statutory requirement to make the relevant portion of the register available for inspection 'in visible and legible form'. In such cases personal searchers should:
- be shown how to operate the computer, be provided with simple operating instructions or have the computer operated for them by a member of staff. No charge should be levied for this over and above the fee for a personal search of the Local Land Charges Register;
 - not be expected to search a manual record, which is not, and does not form part of, the formal Register or record.

Copies of record entries

1 Local Land Charges Register

10.1 On the written request of any person and on payment of the prescribed fee (set by the local authority under the Local Land Charges Act 1975), the personal searcher shall be supplied with an office copy of any registration or any document, map or plan deposited with or filed by that authority in connection with a registration.

Other Documents

10.2 Copies of original documents, plans, maps or other items deposited with the local authority may be obtained on payment of the required fee. The fee will cover the authority's reasonable costs in providing the service. Where records are computerised, the copy may take the form of a printout. Where copies are not available at the time of the visit, they should be supplied as soon as is reasonably practicable.

Good practice guidance for personal searchers

Advance notice

11.1 Personal searchers should, where required, notify the appropriate local authority department as soon as possible in advance of a proposed visit, and provide the:

- name and contact details of the person or company who will be carrying out the search;
- address of the property and any other details (including a plan where necessary) to enable accurate identification of the land/property to be searched.

Appointments

11.2 Where the local authority operates an appointments system, personal searchers should:

- be prepared to make an appointment;
- acknowledge that appointment arrangements to inspect all the data required for a personal local search should be flexible and allow access to local authority records no later than the next working day. In exceptional circumstances where this is not practicable e.g. high demand or staff sickness, access should be made available no later than 3 working days from the date of the request.
- keep an appointment and notify the authority as soon as possible in the event that an appointment cannot be kept;
- observe any time restriction that is attached to the appointment.

Payment

11.3 Personal searchers should pay the required fee(s) (as set out in the information note), in a manner acceptable to the local authority, at the time the search is carried out.

Assistance from local authority staff

11.4 Personal searchers should be prepared and competent to carry out a search and inspection of local authority records, without assistance from local authority staff.

11.5 While local authority staff can provide access to the relevant records, it is the responsibility of the person carrying out the search to identify and record the relevant