



Home Information Pack Update: Towards 1 June

Response

1. This paper sets out the Council of Property Search Organisation's (CoPSO's) comments on the proposals set out in the Government's recent consultation paper *Home Information Pack Update: Towards 1 June*. CoPSO is the leading trade association in the private search sector and the only one to represent a broad range of search organisations providing local, environmental, mining, drainage and water data. This unique position enables CoPSO to put forward views from across the search sector.

Executive Summary

- **The HIP Regulations must facilitate a competitive market for all the searches in the HIP, including local, environmental, drainage and water reports and exclude monopoly providers of data.**
- **Allowing search firms to use insurance only where they have tried to retrieve the data for 14 days, will lead to extensive abuse by some local authorities who will keep firms waiting until day 13 before telling them that they cannot have access to the information. This will severely delay the delivery of personal searches. The data required for local searches is clearly set out in the HIP Regulations and each local authority should publish what information they cannot make available and why by 1 June. If data is available, it should be used in the search, if not, insurance should be allowed from day one. There is no need to wait 14 days if the data is known not to be available.**
- **The HIP Regulations must place a duty on the HIP provider to include searches in the HIP after the 28 day period has elapsed, to avoid searches remaining constantly ‘on order’ and leaving the consumer without vital information.**
- **There is a real danger that local authorities will introduce extortionate pricing for local search data, unless Government takes immediate action to address the 700% increases in fees recently being considered by some authorities generating increased costs for the consumer on the introduction of HIPs.**
- **Capacity to deliver local searches in HIPs, can only be achieved if local authorities take immediate action to allocate appropriate resources to meet the increased demand for personal searches. The total demand for local searches can only be met if local authorities also provide their own search services efficiently.**
- **Any changes to the content of the local search in Schedule 9 of the Regulations, must only be introduced where all the data can be readily accessed by both local authorities and personal search organisations on an equal basis.**
- **The Government needs to take a more strategic approach to the long-term reform of the local search sector and to lay the foundations for this via the work proposed on access to data and pricing. Many local authorities are inefficient in producing local searches, consistently fail to provide the client with what he wants (a one stop shop for all searches) and the sector is riddled with restrictions and prohibitive fees. A new market needs to play to the respective parties’ strengths, with local authorities collecting the data and providing fair access at a consistent price (where charges are proved to be legal), and allowing the private search sector to compete on service and price. All players win, not least the consumer with a more value-for-money search service.**

Reforms to searches

Paragraph 26: CoPSO welcomes the Government's recognition that competition between private search companies and local authorities has helped deliver a better and faster service for consumers. This principle runs throughout the private search industry and reinforces the fact that the consumer is best-served by a competitive market which delivers lower prices and improved service delivery, which are always found wanting in monopoly sectors.

Paragraph 26: The private search industry campaigned long and hard for the reforms embodied within the OFT's recommendations. Work on implementing these reforms has been extremely slow and therefore the Government's confirmation that action will now be taken to deliver these changes is firmly supported.

Paragraph 27: Access to information

2. CoPSO has played a central role in assisting Government produce the draft guidance on improved access to local search data. However it is essential that the final guidance:

- Includes a requirement to allow access to search data within 24 hours or within 48 hours at a maximum.
- Is promoted at the highest level within each local authority, to ensure compliance across local government.
- Is fully implemented by all local authorities, before the insurance option for unavailable data is withdrawn.
- Is monitored for compliance, to inform any future decision on whether legislation is required to place access to data on a statutory footing.

3. We agree that the poorest performing local authorities should be targeted for reform, to avoid significant delays in compiling local searches in HIPs. CoPSO is currently developing a capacity model which includes data on, for example, local authority turn around times for both official and personal searches, staffing levels and appointment times. CoPSO will share this data with Government to assist in identifying those local authorities which consistently fail to adhere to good standards of practice.

Charging for data

4. CoPSO supports the Government's decision to seek new tenders for the production of a final charging methodology and guidance by independent experts. It is essential that the private search industry is directly involved in this exercise at every stage and that all the options put forward by the OFT on pricing are considered in detail. The Government should complete this exercise as soon as possible. Local authorities should be required to publish their prices for both their official searches and un-compiled data so pricing is transparent.

5. The search industry remains concerned at the potential for abuse by local authorities in setting extortionate fees for access to data, in advance of the charging guidelines coming into operation. A prime example of this is the 700% increase in the fees which some local authorities are understood to be considering for the official local land charges search, in preparation for deregulation in April this year.

6. CoPSO has recently instructed the leading law firm Herbert Smith to undertake a detailed and thorough review of the legal provisions set out in the Government's paper on charging for data, taking into account the size and maturity of the private search market when they were introduced

as well as the original intention of the provisions. The Government will be aware of the need to ensure that if local authorities are to charge for access to search data, there must be a firm and clear legal power to do so.

7. In summary, our position is that:

- The Local Authorities (Charges for Land Searches) Regulations 1994 (“The Regulations”) enable local authorities to charge for ‘answering enquiries’. But in practice, there is a distinction to be drawn between a personal searcher being granted ‘access’ to information and that person making further enquiries in relation to that information. The Courts are likely to adopt a restrictive interpretation of the scope of ‘answering enquiries’ in this context, and merely inspecting a public register is unlikely to justify a charge under the Regulations. Therefore, any decision by a local authority to levy a charge in this situation is likely to be ultra vires.
- In light of the existence of the ‘discretionary’ charging regime for property searches under the Local Authorities (Charges for Land Searches) Regulations 1994, any reliance by local authorities on section 93 of the Local Government Act 2003 in the alternative would be unlawful on the basis that it would be an improper purpose.

8. For the past 12 years, local authorities have shared the same interpretation of the Regulations as set out above, as they have accepted that they cannot make a charge when personal searchers request ‘access’ to the information alone. In practice, this has clearly not been deemed as ‘answering enquiries’.

9. On the review of the prescribed fee for personal searches, it is essential that the Government monitors how local authorities are setting their fees for the official LLC1 Local Land Charges search from April this year, when the calculation of the fee is devolved to local authorities. Recent reports have indicated that some local authorities are already considering setting fees at £50 – a staggering increase of nearly 700% which the consumer will have to pay.

10. This mirrors what happened when setting the fee for the official Con 29 local search was devolved in the early 1990s, and the fee rose from £35 to nearly £300 in some areas in just over a decade. The potential for abuse in this area is significant. Local authorities are required to base the fee on ‘cost-recovery’ but this principle is completely disregarded time and again. Local authorities do not have the requisite skills to calculate appropriate charges and the OFT’s report on the local search market reinforced this very point. Allowing local authorities to set the fees for personal searches, will result in the demise of the private search market whose existence the Government has already acknowledged delivers a better deal for the consumer.

Paragraph 28: Search Code

11. CoPSO welcomes the Government’s support for the development of the Search Code. The search industry has also demonstrated its early commitment to the Code, with search firms producing over 80% of personal searches already subscribing to it. Within the space of six months, the search industry will become one of the most regulated players in the home buying sector with the HIP Regulations prescribing what information must be included in the search and the insurance to be provided, registration via the Financial Services Authority so that search firms can deliver the insurance and finally adherence to the key commitments set out in the Search Code. There will no longer be room in the industry for search firms which do not want to adhere to good standards of practice. The private search business is putting its house in order and it is time that local authorities do the same.

Paragraph 52: Transitional Period

12. Feedback from HIP providers clearly demonstrates that personal searches will be a popular feature in the HIP and, in turn, local authorities will receive increased demand for access to data from personal search companies. Local authorities must increase their own resources to deal with the higher demand for personal searches and compile their own search efficiently, if local searches are to be provided promptly in HIPs. While the proposed 28 day period will assist in providing flexibility, it must not be seen by those authorities who have consistently refused to improve as an excuse to opt-out of increasing their resources. This provision has also inadvertently been applied to drainage and water searches, where it is widely recognised that delays in compilation are not an issue.

13. The Government must provide some clarity on the 28 day rule in the final regulations, to avoid abuses where searches may never be delivered and remain constantly 'on order'. There is already evidence that some HIP providers are asking search firms to simply produce a 'certificate' stating that the search has been ordered but on the understanding that the search need not be produced. As there is no enforcement process, the potential for abuse is high. The less scrupulous HIP provider will see this as an opportunity to reduce the cost of producing a HIP, in the knowledge that the buyer's conveyancer will eventually commission the searches. This runs directly contrary to one of the key objectives of HIPs, namely to make the home buyer and seller more informed about the property.

14. We recommend that Government address this position by requiring HIP providers to include a further statement in the HIP after the 28 day period has elapsed, stating:

- why the search has still not been included, and
- who the prospective buyer and seller can contact for progress on the search.

15. Without this, the impetus for producing the search will disappear.

Paragraph 62: Re-marketing after a property has been taken off the market.

16. Prospective buyers will not be able to rely on the content of search reports which are over 6 months old, if they are buying the property with a mortgage. The Council of Mortgage Lenders stipulates that searches must not be older than 6 months at completion and new searches will be required where this period has elapsed. Where a property is remarketed within 12 months, the cost burden released from the seller will now fall to the buyer, who should be clearly informed that this is the case and the extent to which they can rely on the information.

Competitive Search Market

17. CoPSO welcomes the Government's commitment to secure a competitive market for the provision of all searches in HIPs. Allowing any monopoly supply of data for search reports in HIPs, would not serve either of the twin goals of providing the consumer with choice and value as part of the reform of the home buying and selling process.

(i) Flood and Ground stability searches

18. Following extensive and detailed discussions during 2005, it was agreed by Government that flood, ground stability and other environmental searches should be 'authorised' for inclusion in the HIP and not required. If this position is to be reviewed, we urge Government to consider carefully what environmental information should be included in the HIP to protect home buyers

from being liable for high clean-up costs. The inclusion of flood and ground stability information alone does not go far enough in informing homebuyers about environmental risks and fails to recognise the threat from contamination.

19. Contamination poses a risk to both the health of the occupants and the value of the property. If contamination is found, liability for cleaning the site rests with the owner, and clean-up costs sometimes reach hundreds of thousands of pounds. Over 70% of housing transactions currently include an assessment of contamination using reports compiled by the private search sector.

20. Government should also review the position of both the Environment Agency and Coal Authority as its advisers on these issues. As Public Sector Information Holders, (PSIHs) both organisations stand to benefit significantly if the information they hold is required in HIPs. The EA came in for criticism in the recent Office of Fair Trading report into PSIHs, and the Coal Authority has a virtual monopoly over the use of Coal Authority data. Including environmental information as a mandatory element in the HIP requires detailed consideration, covering issues such as access to data and pricing. The private search industry should be directly engaged in this exercise, as major suppliers of environmental reports.

(ii) Drainage and water searches

21. Over the past two years the market for personal drainage and water searches has expanded significantly, offering an alternative to the search provided by the water companies. Private search firms compile these searches using data which is currently in the public domain.

22. In response to pressure from the Consumer Council for Water (CCW) (the consumer body representing water customers in England and Wales), additional questions have recently been included in the standard drainage and water search which now appear within Schedule 10 of the Regulations. These questions relate to, for example, low water pressure and sewer flooding, the latter of which consumers have advised the CCW is a priority issue for them.

23. Following the introduction of HIPs, the personal drainage and water search market can only continue if search firms are able to obtain this additional data for inclusion in the search report. As the water companies are now private organisations and this new data is not publicly available, it is recognised that commercial arrangements may be required to secure access to the required information. CoPSO has three of the major water companies within its membership, namely Thames, Severn Trent and Geodesys and each of these organisations has already encouraged search organisations to contact them to discuss access to data.

24. However, there is growing concern that this lead is not being followed by the other water companies. If access to this data is refused, these water companies will effectively become monopoly providers of the mandatory drainage and water search for all properties marketed in their area. This runs contrary to all other elements of HIPs provision, where there is competition on price and service for the benefit of the consumer.

25. We recommend that Government reviews this position immediately and formally approaches OFWAT for their views on water companies providing access to the data required for the drainage and water search in HIPs. In addition, Government should approach each of the water-only and water and sewerage companies to confirm their position on access to data for the drainage and water search.

Amendments to the HIPs Regulations

26. In recent weeks, CoPSO has had separate discussions with officials on the local questions included in Schedule 9 and if personal searchers can answer these.

Local search questions

27. Changes proposed to paragraph 3 of Schedule 9 of the Regulations include information about a building regulations certificate or notice issued in respect of work carried out under a competent person self-certification scheme. These will be introduced before the regulations have been passed bringing the public registers of this information into operation.

28. The situation could arise where local authorities:

- have compliance certificate data and charge prohibitive fees for it before the formal public registers are in place;
- do not provide this data to personal searchers (as there is no requirement to do so until the registers are established) and claim that their searches are more comprehensive as a result.

29. There must be a level-playing field from the outset on price and access, if new requirements are to be included.

30. We strongly recommend that these changes are not made until the registers are formally in place **or** that Government makes it absolutely clear that this information need only be included once the registers have been introduced. Clarification is also required on whether the registers will be retrospective, together with confirmation that both the private search sector and local authorities will provide the same data.

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