



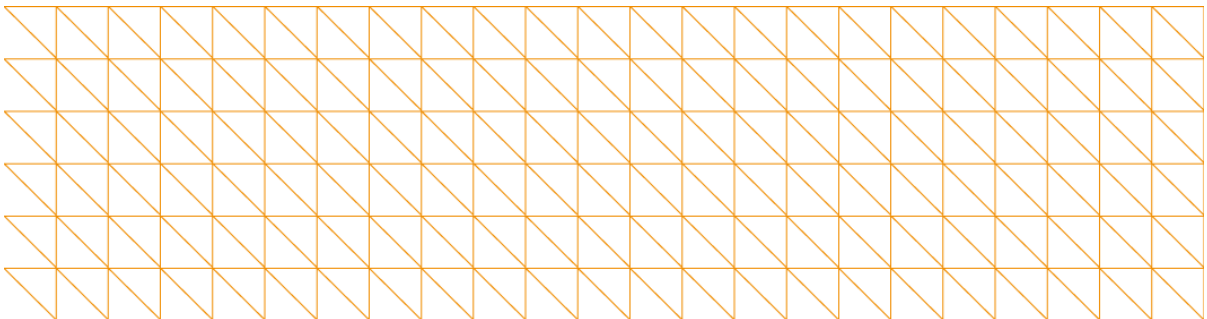
Local authority property search services – charges for property search services

The fee for a personal search of the local land charges register

Response to consultation

CP(R) 13/09

16 September 2009





Ministry of
JUSTICE

Local authority property search services – charges for property search services

The fee for a personal search of the local land charges register

Response to consultation carried out by the Department of Communities and Local Government and Ministry of Justice.

**This information is also available on the Ministry of Justice website:
www.justice.gov.uk**

About this consultation

To: Local authorities, personal search companies and others.

Duration: From 18 January 2008 to 18 April 2008

Enquiries (including requests for the paper in an alternative format) to: Charles Stewart
Ministry of Justice
102 Petty France
London SW1H 9AJ

Tel: 020 3334 3212

Fax: 020 3334 6457

Email: charles.stewart@justice.gsi.gov.uk

Contents

Executive summary	3
Introduction and contact details	4
Background	5
List of abbreviations used in this document	6
Summary of responses	7
Responses to specific questions	10
Conclusion and next steps	21
Consultation Co-ordinator contact details	22
The consultation criteria	23
Annex A: Impact assessment	24

Local authority property search services – charges for property search services
Summary of responses

Executive summary

The fee for a personal search of the local land charges register in England is set by the Lord Chancellor, with the consent of HM Treasury, under the Local Land Charges Act 1975.

The consultation paper Local Authority Property Search Services published on 18 January 2008 sought views on how and by whom the fee for a personal search of the local land charges register should be set and at what level it should be set. This paper contains a summary of the responses to the consultation and the Government's response to the comments made in relation to local land charge search fee issues.

In relation to the provisional proposal that the fee for a personal search of the local land charges register should be set by local authorities in England, LAs strongly favoured local fee setting on a cost recovery basis, while the private sector search companies supported a centrally set fee. The private sector did not disagree with cost recovery as a basis for setting the fee, but took a narrower view of what costs should be included. In view of the lack of consensus, the Ministry of Justice has no current plans to take forward the devolution of the power to set this fee.

In the light of the responses received, the Government has concluded that the fee for a personal search of the local land charges register should be increased from £11, the level at which it was set in 2003, to £22. This increase balances the interests of LAs, the private sector and consumers. The new fee will come into force on 1 January 2010.

Introduction and contact details

This document is the Ministry of Justice post-consultation report for the consultation paper, Local Authority Property Search Services – Charges for Property Search Services.

It will cover:

- the background to the report
- a summary of the responses to the report
- a detailed response to the specific questions raised in the report
- the next steps following this consultation.

Further copies of this report and the consultation paper can be obtained by contacting **Charles Stewart** at the address below:

Civil Law and Justice
Ministry of Justice
102 Petty France
London
SW1H 9AJ

Telephone: 020 3334 3212
Email: charles.stewart@justice.gsi.gov.uk

This report is also available on the Ministry's website: www.justice.gov.uk

Alternative format versions of this publication can be requested from charles.stewart@justice.gsi.gov.uk telephone 020 3334 3212.

Background

The consultation paper Local Authority Property Search Services - Charges for Property Search Services was published jointly by the Ministry of Justice (MOJ) and the Department for Communities and Local Government (CLG) on 18 January 2008.

The consultation invited comments on proposals for future arrangements for charging for property search services by local authorities (LAs) in England. These included views on how and by whom the fee for a personal search of the local land charges register should be set and at what level it should be set.

The consultation period closed on 18 April and this report summarises the responses and the Government's response to the comments made in so far as they relate to the fee for a personal search of the local land charges register. This includes how the consultation process influenced the final shape of the proposals consulted upon.

List of abbreviations used in this document

MOJ – Ministry of Justice

CLG – Department for Communities and Local Government

LAs – local authorities

PSC – personal search company

IPSA – The Association of Independent Personal Search Agents (IPSA)

PSG – Property Search Group

HIP – Home Improvement Pack

Summary of responses

Number of responses received

1. There were 858 responses to the consultation paper. The organisations and individuals that responded to the consultation can be broken down as follows:

No. and % of responses	Organisations
549 (64%)	The Association of Independent Personal Search Agents (IPSA)
224 (26%)	Local authorities (LAs)
57 (7%)	Property Search Group (PSG)
28 (3%)	Others

2. Responses within each of the first three groups of responses were generally uniform. We have, therefore, summarised the responses to the questions by reference to the groups mentioned.
3. "Others" included the Association of Home Information Pack Providers (AHIPP), the Council of Property Search Organisations (CoPSO), Local Land Charge Institute (LLCI), Land Data¹, Council of Mortgage Lenders (CML), Office of Fair Trading (OFT), Local Government Association (LGA), Law Society and Audit Commission.

¹ During the consultation period the National Land Information Service changed its name to Land Data.

Summary of the questions

4. The consultation paper asked 10 questions. Questions 8, 9 and 10 related to the fee for a personal search of the local land charges register. These questions raised issues falling within MoJ's responsibility. The remaining questions related to other property search fees. They raised questions relating to matters within CLG's area of responsibility.
5. This document summarises the responses received to questions 9 to 10 of the consultation paper which relate to the personal search fee and also to question 8 in so far as they relate to this fee. A summary of responses to questions 1-7 which relate to charging for local authority property search information and to question 8, so far as they relate to charging for information, was published by CLG, together with a summary of responses to their further consultation on regulations for charges for property searches, on 13 November 2008.
6. All of the responses received to question 8 – 10 were considered by MoJ when deciding how best to take these proposals forward. However, as can be seen from the breakdown above, the majority of responses came from one organisation and the views of this organisation would dominate the summary if the responses were to be considered on a purely numerical basis. Therefore, although an attempt has been made to assess the numbers of responses containing a particular view point, the absolute volume of responses is not the only element taken into account in considering them.
7. Question 8 sought views on the impact assessments included in the consultation paper. Question 9 asked how the fee for a personal search of the local land charges register should be set. Question 10 asked for views on the adequacy of the present £11 fee. In this paper, we consider questions 9 and 10 first and then return to question 8. We consider question 8 last because the local land charge impact assessment related to the subject matter of the questions.

Overview of responses

8. Overall, the responses to questions 8-10 were polarised in much the same way as the responses to the other questions in the consultation paper as summarised in the CLG response. In general terms, the private sector consultees supported a fee set nationally rather than a locally set one and they acknowledged that there might be a case for changing the £11 fee. They were generally critical of the impact assessments. Unfortunately, they did not distinguish between the two impact assessments in Annex 4 to the consultation paper in their responses. One of these related to property search fees generally and the other to the fee for a personal search of the local land charges register. It is, therefore, sometimes

difficult to establish which impact assessment is alleged to be at fault. Conversely, the public sector consultees agreed with locally set fees. They argued strongly for an increase and thought the impact assessment was generally accurate.

9. We now consider the response to each specific question in the consultation.

Responses to specific questions

9. Do you agree that the fee for a personal search of the local land charges register should be:

- set by individual registering authorities in England on a cost recovery basis (option 2)?
- set at a figure that does not exceed cost recovery?

In either case, if you do not, please explain why.

This question sought comments on whether the fee should be set by LAs in England and if so on what basis.

The consultation paper set out four options for how and by whom a personal search fee should be set. These were:

Option 1: central uniform fee: no change;

This would be simple and straightforward for LAs and businesses to operate, but would not reflect an authority's costs on an individual basis.

Option 2: local setting of fees: cost recovery;

This would ensure consistency with other local land charge services and the fee would reflect costs at a local level, but possibly leading to costs to the private sector and consumers rising. The consultation paper also asked in relation this option whether the fee for a personal search of the local land charges register should be set by individual LAs either on a cost recovery basis or at a level that does not exceed cost recovery.

Option 3: local setting of fees: price competed/value added;

This option would produce a similar outcome to option 2, but with discretionary pricing by LAs, again potentially leading to increased costs to personal search companies (PSCs) and their customers.

Option 4: no fee;

This solution would be straightforward for business, consumers and LAs, but with the full cost of the service falling to the latter.

Summary of responses

Broadly, the private sector consultees favoured national fee setting on grounds of uniformity, while the public sector favoured local fee setting.

Overall, the private sector consultees seemed to distrust local fee setting by LAs and preferred national and regulated fee setting as a means of ensuring predictability and consistency. They saw commercial dangers and potential anti-competitiveness in local fee setting, whereas the public sector saw local fee setting as a safeguard for public finances and to this end some sought greater flexibility in determining costs.

Subject to this, there was very little disagreement on the principle of charging at cost recovery. There was, though, some difference of opinion on what costs should be included and how these are calculated. We now consider the responses in more detail.

IPSA response: The IPSA response favoured a nationally set fee at cost to enable predictable and consistent costs and value. Against this, IPSA members saw locally set fees (option 2) as a reward for inefficiency. They saw advantages in uniformity in continuing with a nationally set fee (option 1), which they felt would encourage a competitive market. They rejected local setting of fees on a price competed /value added basis (option 3). They said the absence of a fee (option 4) would favour LAs more than PSCs, as LAs would have free access to the register and competition would take place on compilation alone. They commented, though, that this would avoid differing fees and the perceived postcode lottery on the cost of a Home Information Pack (HIP), the compulsory set of documents provided by a seller for a buyer giving key information on a property when marketing it. They did not think that the absence of a fee incentive would reduce the level of access offered to the local land charges register, saying that any such reduced access would be in breach of the Local Land Charges Act 1975 and face litigation from the private sector.

PSG response: The PSG response said they were not concerned how the fee was calculated, provided charging and levels of access to information were uniform and the process was regulated. They said there was a strong case, in the wider interests of the British economy, for LAs to charge on a marginal cost basis (i.e. only the cost of undertaking the additional work to provide the second facility) rather than cost recovery. Deregulation, they said, will lead to LAs setting fees at the maximum feasible.

Other responses: 10 of the other consultees agreed with local fee setting while 16 disagreed. About half of those who disagreed did so in similar terms to the standard PSG response. They argued that a single national fee would have the benefit of avoiding differing fees in different places and would avoid the perceived postcode lottery on cost of HIPs. This uniformity would enable the private sector to predict costs and provide consistent and good value to customers. It would also reward efficiency in LAs and prevent the distortion of the market. Among those who disagreed with local fee setting was the Council of Mortgage Lenders, who were concerned that the proposals might make

conveyancing more expensive. Two respondents argued that locally set charges at cost ran counter to the Freedom of Information Act 2000 which has given a means of free access to information.

LA responses: Of 196 LAs who replied to this question (almost 23% of total respondents), 193 agreed that the fee for a personal search of the local land charges register should be set by individual registering authorities in England so that the costs are reflected in the fee (Option 2). Of these, 174 stated in identical or near identical terms that “the fee should be set by individual registering authorities so that the costs of the authority are reflected in the fee”.

Seven of the LAs supporting local fee setting commented further on cost recovery, largely arguing for LA flexibility in achieving this. One LA for instance considered there should be no restriction on what costs may be included in the fee, as long as it could be shown that the cost is directly attributable to the personal search provision at a given LA. Others argued that LAs should be able to achieve a surplus as a safeguard against deficit in other years.

The three LAs who disagreed with option 2 argued for a nationally set fee. One argued that this should cover the highest cost recovery figure – this would be at least £189.70 on the figures supplied to us in response to the consultation. Another said that the personal fee should be set by legislation for a period of say 5 years, indexed to the Retail Price Index.

MoJ comments: MoJ notes the divergent views of private and public sector consultees. There is clearly an absence of consensus on this issue. The division of opinion is so polarised that a change in the fee setting regime at this time does not seem appropriate. We have therefore no current plans to devolve the fee setting power.

10. If you do not agree that the fee for a personal search of the local land charges register should be set at £11, please provide evidence using the pro-forma at Annex 7 to explain why.

Having considered how and by whom the fee should be set in question 9, question 10 asked whether the present fee should change.

Prior to the consultation, MoJ had already obtained some information on the cost of the provision of a personal search of the local land charges register. It was, though, not sufficient to determine a national cost profile. That is why this question was necessary.

In any event, even if there was to be a change in the legislation governing how and by whom the fee was set, it might take some time for it to be enacted. If so, the current fee might become unrelated to the costs it is intended to recover. To provide a common basis for the provision of information about costings we provided a detailed proforma for completion by respondents. The question was largely aimed at LAs. Nonetheless, some private sector consultees replied.

In our assessment of annual benefits from option 2 (local setting of fees: cost recovery) in the impact assessment, based on the – admittedly limited - data we had then collected, we considered that the cost of a personal search of the local land charges register to LAs was likely to be higher than £11, but we did not make any proposal. We asked for evidence where respondents disagreed that the fee should be set at this amount.

Consultees agreed that the fee should be related to cost but took differing views as to the amount.

IPSA response: The IPSA respondents did not agree that the fee would necessarily have to be set at £11. They said that capital charges should be disregarded in any calculations made from responses to the proforma in annex 7 of the consultation paper.

PSG responses: The PSG respondents did not consider there was sufficient information on which to question the price of personal searches. They said that it had proved impossible for anyone reach a consensus on the costs of accessing the local land charges register.

Other responses: Of the other 28 responses (over 3% of the total) only two commented that the £11 fee should be retained. Otherwise, there was agreement that the fee should be set at a level to cover the costs of providing the service, though some suggested that capital costs should be excluded.

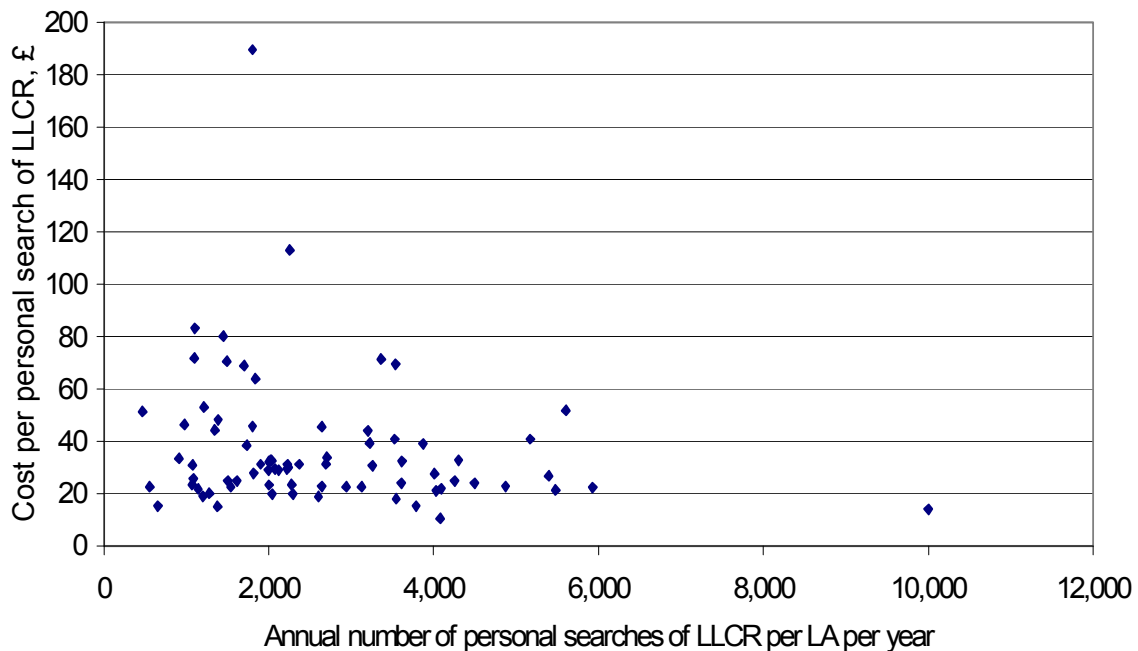
LA responses: In total, MoJ received fee information from 128 LAs in England. The information received was varied in both detail and content. MoJ requested information on staff costs, direct costs, indirect costs and capital

costs per personal search. The aim was to establish an accurate national total cost to LAs of allowing a personal search. 76 responses provided complete or almost complete proformas. The remaining 52 responses contained less detailed fee information. Information from this second group did enable an analysis to be undertaken as an accuracy check on the main group.

The 76 detailed LA responses represented 21.5% of LAs required to keep a Local Land Charges Register in England. This sample consisted of 61% non-metropolitan district or borough councils, 18% unitary, 11% metropolitan and 11% London Boroughs. We consider 20% of LAs as a sufficient size to form a reasonably authoritative sample. The percentage breakdown of LA type is also similar to the spread across England so we consider the sample to be representative of the national spread of LAs.

There was a broad range of total cost figures provided by the sample of 76 LAs. The highest total cost figure from the sample was £189.70 and the lowest was £10.40. However, the majority of the figures (82%) were under £50 as shown in the graph.

Total Cost Figures per LA by Amount and No. of Personal Searches
- (Group 1 - 76 LAs)



MoJ comments: Taking the information provided at face value, the following averages can be calculated.

(Table 1)

Data Set	Weighted Average	Mean Average	Median Average	Highest Concentration
Group 1 (Fee Info from 76 LAs)	£33.79	£36.80	£29.70	39% in £21-£30 group
Group 2 (Fee Info from 52 LAs)	N/A (Insufficient evidence)	£34.20	£33	33% in £31-£45 group

A single standard deviation was calculated from the cost information provided. The standard deviation gives an indication of how closely the values are found from the mean and thus gives a method to determine which values are far enough from the mean to be considered outliers and should be removed from the sample as they may overly influence the result. When it was applied to the cost information, it excluded the ten outlying values and produced the following distribution:

Quartile 1	Bottom 25% of results fell between £0 and £22
Quartile 2	25% to 50% results fell between £22 and £27
Quartile 3	50% to 75% results fell between £27 and £32
Quartile 4	75% to 100% results fell between £32 and £52

We are grateful to LAs who supplied cost information. This has demonstrated that the £11 fee is inadequate and needs to be revised. The more difficult issue is to identify what the increase should be, particularly in view of the huge spread of costs across LAs and the potential effect of an excessive increase on private sector search companies and other commercial users of the service, as well as their respective customers.

The range of costs makes identifying a typical cost difficult. We also have to bear in mind that those authorities who responded - and we and others encouraged LAs to do so – are self-selected. They presumably come from the most concerned authorities. Secondly, although we have no doubt that the figures supplied to us are given in good faith, they have not been audited.

We are also conscious that a national fee should encourage efficiency and lower costs among those authorities which charge significantly more than those in the first quartile. It seems reasonable to expect that if a quarter of LAs can provide the service at or for less than £22 that other authorities ought to be reviewing their practices to see if they too can drive down their costs to the benefit of their customers and consumers.

In calculating where to set the fee we took as our starting point the mid-point of the standard deviation range, namely £27. On the figures we have obtained, approximately half of all LAs presumably could break even (or better) at this level with no change in behaviour. However, a fee at this level would represent an increase of about 145%. We consider that an increase of this size is difficult to justify in relative terms. We have, therefore, sought a figure in the lower middle quartile range of £22 to £27 we hope that will not penalise LAs or overburden their customers. At the lower end, £22 represents a 100% increase. We consider that this is as much of an increase as it is reasonable to expect business and consumers to bear at this time and that savings in the region of £5 for those LAs within £22 - £27 band are not obviously unachievable, though doing so may be difficult for some LAs given the widely varying systems used. We have therefore decided that the new fee should £22.

Notwithstanding the increase some LAs will not recover their costs of providing the service. This is an inevitable consequence of the variation in cost across England. The additional income will nonetheless provide an increase in local land charge revenue. This should help LAs to improve their services.

We have prepared an impact assessment in relation to this fee increase based on the information we received during the consultation. A copy is annexed to this document.

8. Do you agree with the impact assessments provided (Annex 4)? If not please give your reasons.

The consultation invited views on the Partial Impact Assessment Of How And By Whom The Fee For A Personal Search Of The Local Land Charges Register Should Be Set, which examined each of the policy options against costs and benefits and legislative options for change. The impact assessment was set out in Annex 4 to the consultation paper Local Authority Property Search Services – Charges for Property Search Services.

The additional costs and benefits of the four options considered in the impact assessment and the assumptions on which the calculations were based are summarised in the following table:

Local authority property search services – charges for property search services
Summary of responses

Option	Comment	Additional Costs	Additional Benefits	Assumptions
1. Central uniform fee: do nothing	Would not require any legislative change but fee changes would need to be enacted periodically by fee order. Perceived bias to PSCs	Nil	Nil	The total number of searches is 1.1 million; and 353 LAs are required to keep local land charge registers in England.
2. Local setting of fees: cost recovery	Would require a change in primary legislation or Legislative and Regulatory Reform Order (LRRO) No bias	On private sector – £13.2 million	To LAs – £13.2 million	Costing and charging guidance will be available to LA. 10% of LAs charge £6; 10% charge £11; 70% charge £25; and 10% charge £40.
3. Local setting of fees: value added or price competed	Would require a change in primary legislation or LRRO Perceived bias to LAs	On private sector – £18.2 million	To LAs – £18.2 million	5% of LAs charge £6; 10% charge £11; 50% charge £25; and 35% charge £40.
4. No fee	Might be possible to implement a nil fee under the Local Land Charges Act 1975, otherwise primary legislation required or LRRO Perceived bias to PSCs	On LAs – £11.9 million	To private sector – £11.9 million	LAs would not be able to recover any monies from providing the personal search service.

In general, the public sector consultees agreed with the impact assessment. They were doubtful that the options, other than option 2 (local fee setting at cost recovery), would lead to consumer benefits and were concerned about the possible continuation of what they perceived to be a subsidy to the private sector caused by the artificially low level of the fee. We are not certain of the extent of this subsidisation as it is also alleged LAs make good any shortfall in the fees they set for other charges, although this will be more difficult following the recent changes introduced by the Local Authorities (England) (Charges for Property Searches) Regulations 2008 were made on 16 December 2009 and came into force on 23 December 2009.

On the other hand, in general terms, the criticisms from private sector consultees mentioned that the statistical sample was small and they disagreed in general terms with the assumptions made. We now examine the responses in more detail.

IPSA responses: These responses were all in the same terms. They disagreed with the impact assessment. They argued that it was based on a very limited sample of LAs. Their other comments appear to be directed at the impact assessment prepared in relation to chapter 4 of the consultation paper on local authority charging for unrefined and refined data generally, rather than the personal search of the local land charges register impact assessment.

PSG responses: These responses disagreed with the impact assessment. These replies were also in a standard form. They considered the assessment to be misguided and based on erroneous assumptions, but did not specify clearly which assumptions they had in mind. They also criticised the sample as too small to lead to meaningful conclusions.

Other responses: Of those who commented, six agreed and 11 disagreed. Those who disagreed did so briefly without specific comment.

LA responses: 149 LA respondents (over 17% of total respondents) wholly supported the impact assessment. Where comments were made, these were in support of setting costs locally and charging at cost recovery (Option 2).

A further 25 (almost 3% of total respondents) partially agreed with the impact assessment. They did not agree that a zero fee (Option 4) would result in a reduction in charges to PSC customers. Rather they said that it would lead to higher profits to PSC companies. Other comments were that the impact assessment did not mention the need to regulate the activities of PSCs; that it was weighted in favour of PSCs; and it overemphasised the benefits to PSCs rather than LAs; and that it needed to emphasise more that the business user decides which search to use and will often enter into exclusive agreements with PSCs.

16 (less than 2% of total respondents) disagreed with the impact assessment. They said that it did not take account of the true cost of personal searches to

LAs, who were constantly losing revenue and market share. They said it incorrectly estimated annual benefits and did not take account of the effect of HIPs on the market. They also said that it favoured PSCs and that it neither took into account the costs of implementing electronic systems nor a lack of transparency and cross-subsidisation by PSCs.

MoJ comments: MoJ note the differing perspectives of the private and public sectors. Against private sector disagreement with the impact assessment, LA respondents broadly supported it, albeit with some qualification, as did others where they commented in answer to this question. While we agree the limited nature of the sample used to prepare the assessment, we consider that it was a sufficient indicative basis for our assumptions and recommendations at that stage. We are pleased that the consultation has provided us with better information about the costs now incurred in relation to personal searches of the local land charges register.

The criticisms of the assumptions used are difficult to assess as no detailed information was given in the responses. It seems to us that the assumptions as to the number of searches were reasonable in the market conditions of the time. It is likely that the number will rise and fall as the market activity increases or diminishes. This may increase the unit cost per search, but we do not think it invalidates the impact assessment.

We note the concerns of some LAs that the impact assessments needed to take greater account of the costs to them of providing access to the local land charges register and the benefits to the private sector of the present arrangements.

In overall terms, MoJ considers that the partial impact assessment was satisfactory. However, as we have decided not to take any decision on the devolution of the fee setting power for the time being, it is not necessary to update the impact assessment at this stage.

Conclusion and next steps

The consultation on the personal search fee placed respondents into two opposing camps. On the one hand, the private sector favoured a nationally set fee, while on the other, LAs favoured local fee setting at cost recovery. The consultation process has not reconciled these two opposing viewpoints. In the absence of any consensus, we have taken no decision on the devolution of the fee setting power. We have, though, in view of the evidence provided by LAs, concluded that the fee at its current level is inadequate. In deciding to set the new fee at £22, we have been mindful of the interests of both the private and public sectors. The revised fee should give LAs both an increase in their fee income and encourage them towards greater efficiency, without overburdening their customers. We hope this balances fairly the needs of business in the current economic climate with those of LAs in recovering their costs of providing the personal search service.

LAs will no doubt be disappointed by the retention of a centrally set fee, but their most pressing problem is the present shortfall in income. The new fee will address that issue.

The potential devolution of the fee setting power can be revisited in due course. To give effect to the increase a statutory instrument to amend the Local Land Charges Rules 1977 will be laid before Parliament shortly. This will be subject to a negative resolution procedure.

The new fee will take effect on 1 January 2010 so as to allow LAs and their customers time to adjust.

Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact Julia Bradford, Ministry of Justice Consultation Co-ordinator, on 020 3334 4492, or email her at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

**Legal Policy Division
Legal Directorate
6:37, Zone C, 6th Floor
102 Petty France
London
SW1H 9AJ
United Kingdom**

Tel: 020 3334 4492

Email: consultation@justice.gsi.gov.uk

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under the **Introduction and contact details** section of this paper at page 4.

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria must be reproduced within all consultation documents.

Summary: Intervention & Options

Department /Agency: Ministry of Justice	Title: Impact Assessment Should the Fee for a Personal Search of the Local Land Charges Register be changed?	
Stage: Final IA	Version: FINAL	Date: August 2009
Related Publications: Local Authority Property Search Services, Charges for Property Search Services – A consultation paper – (Communities and Local Government / Ministry of Justice) 18 January 2008; and the MoJ response document on the fee for a personal search of the local land charges register September 2009.		

Available to view or download at:

<http://www.justice.gov.uk>

Contact for enquiries: Charles Stewart

Telephone: 020 3334 3212

What is the problem under consideration? Why is government intervention necessary?

Whether the fee for a personal search of the Local Land Charges Register (LLCR) in England needs to be changed. The fee is charged by local authorities but is set by the Lord Chancellor with the consent of HM Treasury (Local Land Charges Act 1975, s14). It was last changed in 2003. The LLCR records matters of public interest affecting individual private properties (such as tree preservation orders and planning conditions). It is maintained by local authorities. A personal search is a search of the register conducted in person by an applicant.

What are the policy objectives and the intended effects?

To set a fee for a personal search of the LLCR broadly at cost recovery over England as a whole, taking account of the effects on customers and consumers.

An appropriate fee should encourage fair competition in the provision of property searches. It should enable most LAs to recover their costs of providing the personal search service. This will save money for the council taxpayer, while encouraging efficient delivery of services. The main affected groups are local authorities, personal search companies and their respective customers.

What policy options have been considered? Please justify any preferred option.

Option 1 – The fee should remain unchanged; Option 2 – The fee should be changed.

Preferred option – Option 2, increasing the fee from £11 to £22.

Evidence received from consultation responses showed the £11 fee to be inadequate. In all but one case the existing fee did not cover costs. The increase to £22 will give LAs an increase in income and provide an incentive to reduce costs, whilst not overburdening personal search companies. Any increase in the costs of a property transaction will be minimal for their customers and consumers.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Post-implementation review will follow 3 to 5 years after implementation.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



..... Date 28 August 2009

Summary: Analysis & Evidence

Policy Option: 2

Description: Increase the fee from £11 to £22

ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'
One-off (Transition)	Yrs	
£ Nil	1	<p>The increase in the fee will fall to personal search companies and their customers. No additional costs will fall to LAs.</p> <p>The increase is £11 per search. Nationally, assuming 1,160,000 personal searches of the LLCR are conducted per year, this represents a transfer of an £12,760,000 annual loss by LAs to cost to personal searchers, usually personal search companies. The increased cost is likely to be passed on by personal search companies to their customers, representing a transfer of the burden of fees from LAs and council tax payers in general to consumers of the service. The extra cost of £11 to a property search in terms of the overall price of a property transaction is minimal and will not materially affect consumers, who generally only buy and sell property infrequently.</p>
Average Annual Cost (excluding one-off)		
£ 12.76 million		Total Cost (PV) £ 12.76 million
Other key non-monetised costs by 'main affected groups'		
ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups'
One-off	Yrs	
£ Nil	1	<p>There are <u>no one-off benefits</u> to the main affected groups.</p> <p>LAs will benefit by a <u>£12.76m</u> increase in income. As the current fee is £11 that represents a benefit across the vast majority of the 353 LAs required to keep a LLCR in England of £36,147 per LA per year or £11 per personal search. The fee is intended to reflect costs incurred or achievable by a significant number of LAs in England. Actual benefit may be greater or less depending on local conditions.</p>
Average Annual Benefit (excluding one-off)		
£ 12.76 million		Total Benefit (PV) £ 12.76 million
Other key non-monetised benefits by 'main affected groups'		

Local authority property search services – charges for property search services

Summary of responses

Key Assumptions/Sensitivities/Risks There are 353 LAs required to keep local land charge registers in England. Costs are believed to vary significantly between them. Numbers of searches may vary year on year depending on property market activity.

The total number of personal searches is estimated to be about 1,160,250 per annum. This figure was calculated as follows: – Number of completed transactions in England (2008) – about 750,000 (Her Majesty’s Revenue and Customs); allow about 20% failed transactions (where search conducted) – 175,000 – and about 647,000 remortgages. Total 1,547,000. Assume 75% of searches are personal searches = 1,160,000 personal searches of LLCR.

Applying a single standard deviation, the £22 figure represents the upper limit of the first quartile of LA cost information, as supplied by 76 LAs who replied in full to the consultation paper (Local Authority Property Search Services, Charges for Property Search Services’ – Communities and Local Government / Ministry of Justice – January 2008).

Price Base Year 2008	Time Period Years 3-5	Net Benefit Range (NPV) £ Nil	NET BENEFIT (NPV Best estimate) £ Nil
-------------------------	--------------------------	--	--

What is the geographic coverage of the policy/option?	England
On what date will the policy be implemented?	01-01-2010
Which organisation(s) will enforce the policy?	Ministry of Justice
What is the total annual cost of enforcement for these organisations?	£ negligible
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	£ N/A
What is the value of changes in greenhouse gas emissions?	£ negligible
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro Small Medium Large
Are any of these organisations exempt?	No No No No

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)
Increase of	£	Decrease of	£	Net Impact £ Nil

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Related Publications

1. 'Local Authority Property Search Services, Charges for Property Search Services – A consultation paper' – (Communities and Local Government (CLG) / Ministry of Justice (MoJ) - January 2008) and the MoJ response document on the fee for a personal search of the local land charges register (2009).

Background

2. The Lord Chancellor has the power to set the fee for a personal search of the local land charges register, with the consent of HM Treasury, under section 14 of the Local Land Charges Act 1975. It was last set in 2003 at £11. The fee was intended to produce an increase across England that broadly represented the cost of providing the service. A number of LAs have written to MoJ in recent years stating that the £11 fee for a personal search of the LLCR is insufficient to allow them to recover their costs of providing the service. As part of its ongoing response to the OFT recommendations in its report on Property Searches in 2005¹ (see background below), the Government decided to use the 'Local Authority Property Search Services' consultation paper (see above) to ask LAs to send in their costing information.
3. Further background to the review of the fee for a personal search of the LLCR can be found at pages 30 and 88 of 'Local Authority Property Search Services, Charges for Property Search Services – A consultation paper' (<http://www.justice.gov.uk/consultations/lacpss180108.htm>)

Current Position

4. CLG and MOJ jointly published the consultation paper Local Authority Property Search Services (see above) on 18 January 2008. The 12-week consultation period ended on 18 April 2008. CLG and MoJ received 858 responses to the consultation.
5. In the responses received, MoJ received fee information from 129 LAs. The detail and quality of this fee information was variable. 76 responses contained the necessary level of detail to assess whether the current fee should remain set at £11. From this information, MoJ calculated a weighted average cost to LAs in England of providing a personal search of the LLCR of £33.

Problem

6. The fee for a personal search of the LLCR appears to be set too low for recovery of LA costs in a large number of cases. However, it is clear that costs vary significantly between local authorities.

Options

Option 1 – No change

7. The evidence is that the £11 fee is inadequate to meet the cost of providing the service. Based on the fee evidence analysed, this option would represent an annual loss to LAs of £12.76 million or £36,147 per LA.

¹ The OFT report is available at http://www.of.gov.uk/shared_of/reports/consumer_protection/of810.pdf; and the Government's response at <http://www.dti.gov.uk/files/file25861.pdf>.

8. Keeping the fee unchanged would benefit private search companies, as it would help them to offer their customers searches at a lower price than that which LAs could charge for their equivalent compiled property search product: the official search of the local land charges register in form LCC1. This could result in the council taxpayer or other customers effectively subsidising the cost of privately compiled searches. However in reality, we understand that LAs have made good some or all of the shortfall on the local land charge personal searches by charging more for other services. The extent of this cross-subsidisation is difficult to determine but the practice does not encourage transparency. Keeping the fee unchanged would encourage further cross-subsidisation, which would be more difficult to achieve under the new fee setting powers introduced in The Local Authorities (England) (Charges for Property Searches) Regulations 2008 (SI No. 3248), or increase losses for LAs.
9. Option 2 – Increase the fee.
10. The cost information received from LAs indicates the fee should be increased. This will benefit LAs by allowing more of them to recover their costs of providing the service.
11. Private search companies may be disadvantaged if the fee is increased. They would be forced to add the increase to every personal search they carry out or absorb the cost. MoJ do not anticipate that passing the cost on to their customers will have a major impact, as this extra cost is minimal with regard to the cost of purchasing a property. Also, if the increase reduces cross-subsidisation between different property search services it will increase transparency and produce a smaller increase (if any) in overall terms for LA customers. In view of these factors, we consider that there is a very strong case for an increase in the fee.
12. Having concluded that an increase in the fee is required, we need to determine the level of increase. This could not be a precise science. Our aim in general terms is to achieve cost recovery over England as whole. On that basis, £11 is clearly too low. Applying a single standard deviation, the first two quartiles fell below £27. But, in the absence of any audit of the costs provided and to accommodate a margin to encourage efficiency, setting the fee at £22, the upper limit of the first quartile, seemed reasonable. The level of fee will provide a significant increase in income for LAs whilst at the same time not overburdening the private sector search companies or their customers. The new fee should, therefore, provide LAs with both a significant level of cost recovery and an incentive towards greater efficiency in provision of personal search services, without distorting competition.

Proposal

13. MoJ conclude that on balance, the evidence shows that the current fee does not cover the cost to LAs of providing the service. MoJ therefore recommend that the fee be increased from its current level of £11 to £22.
14. The fee change will be enacted by secondary legislation. The fee will come into force on 1 January 2010.

Enforcement, sanctions and monitoring

15. MoJ will review the effectiveness of the change in the fee in 3 to 5 year's time from implementation or sooner if adequate evidence is provided to show that the fee needs to be changed.

Competition Assessment

16. MoJ have assessed this proposal and conclude it will not have any adverse impact on competition. Local authorities provide official searches of the LLCR and other property information in competition with the personal searches provided by personal search companies (which include a personal search of the LLCR). The present fee is too low and may be distorting competition by burdening LAs with a possible shortfall in income and charging their competitors too little for the service they use. The increased fee is aimed at cost recovery over England as a whole and should provide a fairer base for competition between local authorities and personal search companies.

Small Firms Impact Test

17. This proposal will have a small impact on the margins and/or cash flows of private search companies, but this should be minimal. The increase in the search fee may well be passed onto the consumer for whom it will be an insignificant increase in the cost of the transaction.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	Results in Evidence Base?	Results annexed?
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

© Crown copyright
Produced by the Ministry of Justice

Alternative format versions of this report are available on request from Charles Stewart in Civil Law and Justice Division. His telephone number is 020 3334 3212 and his email address is charles.stewart@justice.gsi.gov.uk