



Property searches

A market study

September 2005

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1 EXECUTIVE SUMMARY

1.1 This study looks at how well the market for property searches is serving consumers. When buying a residential or commercial property, people use a property search to uncover information about the property and the surrounding area that might impact on the value of the property, or their enjoyment of it.

1.2 Some aspects of the supply of property searches are working well. Many suppliers offer a good service, quickly providing the information that consumers need, and relatively few consumers claim to experience problems with property searches.

1.3 However, our study has identified concerns about:

- limits on the availability of some property information
- the potential for competition concerns in the retailing of property searches in the future, and
- the level of consumer awareness about property searches.

1.4 To address these concerns, we make a number of recommendations to ensure that this rapidly evolving market works well for consumers in the future. These include:

- changes to how much property information local authorities (LAs) make available, and clearer guidance on how they should charge for it
- removing restrictions on the retailing of property searches, and
- information campaigns to improve consumers' understanding of property searches.

1.5 The rest of this summary outlines our findings and recommendations. Details and supporting evidence may be found in the main report.

The supply of property searches

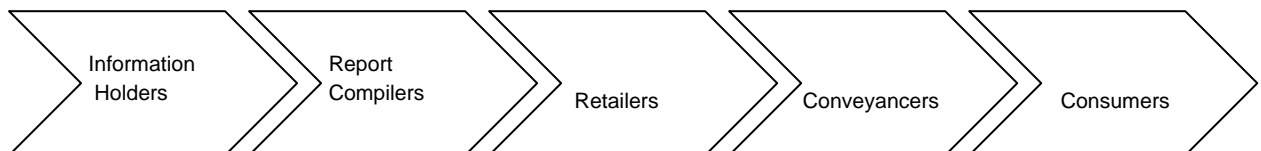
1.6 Property searches are used by people buying a property, to discover certain types of information about the property and its environment that might affect

the value of the property or their enjoyment of it. For example, they may wish to find out about planning applications or plans for new traffic schemes in the immediate vicinity. This information is referred to as **property information**, and is usually bought in a report format called a **property search**. This summary focuses on the property searches supplied by LAs, which we call **local property searches**, and water companies, which we call **drainage and water searches**.

1.7 Legislative reform and technological innovation are changing the supply of property searches. At present in England and Wales the purchaser of the property buys the property search as part of the conveyancing process. In Scotland and Northern Ireland property searches must be provided by the seller of the property. This will also become the case in England and Wales from 2007, with the introduction of the Home Information Pack (HIP).

1.8 In 2004 there were around 1.4 million property transactions in England and Wales, and 171,000 in Scotland. We estimate the value of the market for local property searches in England, Wales and Scotland to be around £190m. Data on Northern Ireland are limited, but the market is likely to be considerably smaller as there were only 43,000 property transactions in 2004. In addition, the structure of supply is considerably different, and prices appear relatively lower than in England and Wales. This study has focused on the situation in England, Wales and Scotland.

1.9 There are five types of player in the supply chain of property searches:



1.10 **Information holders** collect and hold the unrefined property information used to create property searches. LAs hold information about a wide range of issues of interest to property purchasers, such as building regulations, planning permits, highway and road information, and tree preservation orders. Water companies hold information about whether individual properties are connected to mains water and sewerage, among other issues.

In many cases information holders have a statutory duty to collect this information, and will usually be the sole official source of that information.

- 1.11 **Report compilers** collect together the unrefined information, and collate it into a useable format for consumers and conveyancers. Most information holders compile property searches and there are also private sector companies known as property search companies (PSCs) that interpret, compile and sell on the information held by LAs and other bodies.
- 1.12 **Retailers** source the compiled property searches and sell them on to conveyancers and consumers, sometimes with additional services such as data on crime figures or local schools. Most information holders and compilers are also retailers and there are also bodies that retail searches compiled by others. Some PSCs sell on searches compiled by LAs, and in England and Wales there is an electronic gateway called the National Land Information Service (NLIS), that sells LA compiled local property searches.
- 1.13 **Conveyancers** act as agents for consumers in buying and assessing property searches.
- 1.14 **Consumers** of property searches are people engaged in property transactions, who are ultimately affected by the information contained in property searches.
- 1.15 Both the product and the market structure differ across the four countries of the UK. Therefore, some of our recommendations are targeted at particular countries.
- 1.16 We have identified three key concerns:
 - limits on the availability of unrefined information have implications for competition in compiling
 - there is potential for future competition concerns in the retailing of LA compiled property searches in electronic format, and

- consumers lack awareness about property searches, and the level of protection offered by different products varies.

1.17 These are summarised below.

Availability of unrefined information

- 1.18 The availability of unrefined information affects the ability of PSCs to compete with LAs, which in turn would also be expected to influence the prices paid by consumers. In England and Wales the price of LA compiled local property searches varies widely, from around £55 to £269 for residential property searches.
- 1.19 The situation in Scotland is different. Competition appears to be more effective, with most unrefined information available for free by statute, a higher market share for PSCs, and fewer complaints about the behaviour of LAs. Prices are generally lower than in England and Wales, and vary less (although a direct comparison is not possible, as the contents of the products differ slightly). Therefore our analysis and recommendations on this issue focus on England and Wales.
- 1.20 There are two aspects to the availability of unrefined information: the extent of available information, and the terms on which it is available.

Extent of available information

- 1.21 Only LAs hold all the unrefined property information necessary to produce a local property search. Some LAs may be restricting the availability of some unrefined information to PSCs. For example, our survey of LAs found that over one in 10 provided no access to records of notices and other proceedings under the Town and Country Planning Act 1990 such as enforcement notices, even though by statute this information should be openly available for free. Similarly, one PSC told us that 31 per cent of LAs do not provide information on highway schemes.
- 1.22 This patchy access to unrefined property information means that local property searches compiled by PSCs may omit some information. Although they often offer insurance against problems arising from the missing information, this means that PSC compiled local property searches can only partially compete with LA compiled searches, and are not accepted by some mortgage lenders. In 2007 the introduction of the HIP will mean that some

information will be required for all property transactions in England and Wales. If PSCs do not have access to all of the necessary information, the HIP could potentially eliminate private sector competition in the compilation of local property searches, extending LAs' strong position in unrefined information into the provision of compiled local property searches.

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.

- 1.23 LAs could do this voluntarily as a matter of best practice or it could be made mandatory by changing the relevant pieces of legislation. As the former is the simpler approach, central government and the Local Government Association (LGA) should first look to encourage LAs to adopt the best practice approach. If this fails, government should consider the case for legislative change.

Terms of availability

- 1.24 To enable effective competition in compiling, unrefined property information must be made available on terms that do not discriminate against compilers on the basis of their status. In particular, LAs must offer PSCs and individuals access on comparable terms to those the LAs offer themselves when they compile local property searches.

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.

- 1.25 There are two important aspects of non-discriminatory terms: price and turnaround times.

Price

- 1.26 LAs lack clear guidance about how they should charge for unrefined and compiled property information, and how they should cover the costs they incur in providing this information. These costs include collecting the information, recording the information on registers, and making the information available for others to search. These activities take place within a complex framework of legislation under which some information must be

provided for free while access to other information is discretionary and may be charged for.

- 1.27 This may be one reason why LAs restrict the availability of unrefined information. For example, most LAs in our survey said that the charge for personal searches by individuals or their agents of the Local Land Charges Register (LLCR), which is centrally set at £11, does not cover the cost of providing this service. Some LAs also said that they cover the shortfall through revenues from charges for their compiled local property searches, implying that consumers who buy LA compiled property searches may be cross subsidising those who buy PSC compiled searches.
- 1.28 This situation could be addressed by introducing greater consistency in the ways that LAs charge for their unrefined and compiled property information and how the costs of these services are recovered.
- 1.29 There are broadly two options for pricing unrefined information. First, central government could set prices for unrefined property information at a uniform level across LAs, perhaps using a standard menu of bundles of information based on the contents of the HIP, for example all relevant unrefined information from the planning register sold together at a single price. Prices could be set to reflect the costs of an efficient LA, for example.
- 1.30 This approach would provide certainty for LAs and PSCs, and leave less scope for LAs to overcharge for unrefined information. It would also be relatively light touch. By improving transparency, it would make it easier to monitor compliance by LAs. If central government chose to set prices at zero, as happens in Scotland, it would not need to try to determine the cost base and would remove the current complexity.
- 1.31 However, setting uniform prices will carry revenue implications for LAs. Some may suffer a reduction in revenues, although all could potentially benefit from receiving revenues from unrefined information that must

currently be made available for free. This option would cut across the current grain of government policy, which is to delegate greater financial powers to LAs. There are also legislative complexities, as the duty to allow free access to some information is enshrined in a number of pieces of primary legislation. This would be less of a concern if the Government were to make all unrefined information free, which would require change to a single piece of secondary legislation.

- 1.32 The second, alternative approach would be to let LAs set their own prices for unrefined information. If LAs were allowed to charge prices for unrefined information that covered their costs, they should face less of an incentive to restrict its availability. This does however require that every LA that provides such information knows what its costs are. At present only 29 per cent of LAs say that they record these costs separately in their accounts, which implies that most LAs will have to set up an accounting system to determine their costs.
- 1.33 It would be necessary to provide LAs with very clear guidance about which costs may be covered, for example just the marginal cost of making the information available or some contribution to the costs of collecting and recording the information. There would also be a need for monitoring, as LAs may have an incentive to inflate their estimates of the marginal cost of making unrefined information available, in order to raise prices and increase revenues.
- 1.34 We consider that the first of the two options, in which central government sets a uniform price, is likely to be the most effective and light touch solution, particularly if prices are set at zero. However, as there are complex cost and legislative implications we are not recommending which of these options the Government should take. However, we consider that action along the lines of one of these options is necessary to ensure that competition in compiling is not distorted.
- 1.35 At a minimum, in making information open to all, the Government should take action to ensure that there is consistency between LAs in the way they set their prices, to reduce the current confusion and remove one source of possible discrimination against individuals and PSCs.

- 1.36 It is also important to be clearer about the costs that may be recovered through the price that LAs charge for their compiled searches. The price of LA compiled searches should reflect the sum of the prices of the unrefined information they contain, plus the additional cost of compiling. This should mean that LAs are indifferent between providing the unrefined information to PSCs, or undertaking the compiling themselves. LAs should also not be able to engage in a margin squeeze, by effectively charging themselves a lower internal price for unrefined information than they charge to PSCs.

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.

Turnaround times

- 1.37 The second aspect of non-discriminatory terms is turnaround times. LAs should not discriminate against other compilers and individuals by favouring their own compiling activities with shorter turnaround times. LAs in England currently aim to meet a Best Value Performance Indicator (BVPI), agreed with the Office of the Deputy Prime Minister (ODPM) and monitored by the Audit Commission, of responding to a standard search request within 10 working days. A similar framework is in place for LAs in Wales.
- 1.38 It should be quicker to make unrefined information available than put together a compiled search, so unrefined information should be provided within a shorter timeframe. For example, we consider that appointments should be available to collect information or view registers well within the 10 days, even if records are not available electronically. To avoid discrimination, this should happen in the same timescale as LAs face for their own compiling activities.

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.

- 1.39 Taken together, we expect that these recommendations, if implemented, will help to ensure a more efficient and innovative market for property searches. If the actions of LAs and other bodies providing property search information continue to raise competition concerns after the introduction of the HIP in 2007, enforcement action under the Competition Act 1998 may be suitable to address those concerns, where appropriate. LAs and other bodies should in any event be mindful of their obligations under competition law, and more generally it would naturally be preferable to get the framework for the market right through the implementation of our recommendations.

Retailing of property searches

- 1.40 We have identified the potential for future competition concerns relating to the retailing of electronic LA compiled local property searches. It is important to address these issues now, as the popularity of using electronic format local property searches is likely to increase over time.
- 1.41 The structure of retailing in Scotland is different from that in England and Wales, as there are no restrictions on how Scottish LAs distribute electronic local property searches. We therefore focus on England and Wales.
- 1.42 In England and Wales there is a single gateway for the electronic provision of LA compiled property searches. NLIS was set up as a public private partnership, with the Local Government Information House (LGIH) as the public partner.
- 1.43 NLIS is currently composed of a central hub and three channels. The channels act as a one stop shop client interface, passing requests from conveyancers to the hub, sending property searches to conveyancers, and receiving payments, all online. The hub provides a centralised point of contact between the channels and providers of property information. It passes on requests to the LAs and other information providers, passes back property searches, and processes the payments.
- 1.44 While this set up is not currently a concern, it could be in the future as more people choose the electronic route for buying property searches. In order to maximise the potential benefits for consumers from the electronic supply of property searches, it would be desirable to address the current restrictions involved in NLIS. There are two potential problems.

- 1.45 First, the contractual arrangements surrounding NLIS effectively make the hub the only source of LA compiled electronic local property searches. There are exclusivity provisions in the contract between the LAs and LGIH that restrict the LAs to providing property searches electronically only through the hub. Although only around a quarter of all LAs have signed this contract, many still apparently believe that they are bound to deal only with the NLIS hub, and we are aware of only one LA that provides its electronic local property searches direct to consumers and conveyancers.
- 1.46 The channels are also subject to exclusivity provisions that restrict them to sourcing electronic property searches only from the hub. This prevents them, for example, from going directly to the LAs to request electronic format local property searches.
- 1.47 Taken together, these exclusivity provisions effectively mean that at present the only way to get LA compiled local property searches electronically in England and Wales is to go via the NLIS hub.
- 1.48 The hub is subject to some contractual constraints on its behaviour, relating to the rate of return on capital it can earn and therefore the price it can charge the channels. However, LGIH has no statutory powers over the hub, and can only enforce the contract by taking court action.

We recommend that 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.

- 1.49 Our second concern relates to the number of channels that can connect to the hub. The current contracts effectively restrict the number of channel licences until at least 2008, unless the existing channels agree to allow additional licences to be awarded. This restriction on the number of licences, combined with the fact that the hub remains the exclusive distributor of electronic LA compiled local property searches, means that PSCs are restricted from competing in the retail of such searches.
- 1.50 Initially, the limit on the number of channels and the exclusivity clauses were imposed to provide incentives for the hub and channels to invest in the NLIS infrastructure, while there was still uncertainty over the likely size of the market for electronic property searches. By the end of the current licence period the investment in the infrastructure will have been made and the hub and channels will have enjoyed the envisaged protected period to recoup their investment.
- 1.51 LGIH have told us that they will write to LAs waiving the exclusivity provision for all those LAs who have signed the contract. We welcome this action, but consider that further action is also required, as outlined below.

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.

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.

- 1.52 To ensure that the greatest benefit arises from the freedom to set up alternative electronic connections, LGIH should also support and encourage LAs to allow other retailers to connect directly to their systems. For example, LGIH should ensure that LAs are aware of the options available to them, and address security concerns. LGIH should also consider licensing the NLIS software to other users without the NLIS brand.

Information and redress

- 1.53 Only a very small proportion of the consumers we surveyed had encountered a problem with the quality of information in their property searches, suggesting that difficulties occur relatively rarely. However, when problems do happen they can affect the value of the property, cause delay to the transaction, give rise to additional costs or create emotional distress. The level of protection offered to consumers varies according to the country and source of the property search.
- 1.54 Ideally home buyers should be made aware of the protection on offer and should know how to go about pursuing redress when problems occur. This will become more problematic with the introduction of the HIP in England and Wales when the seller of the property will pay for the searches but the buyer of the property will need to pursue redress in the event of an error or omission in the search. A similar pack of property information has been proposed in Scotland, called the Property Information Pack (PIP).

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 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.

- 1.55 We surveyed consumers in England, Wales and Scotland who had recently bought or sold a house, and found low levels of awareness and understanding of property searches. Around one in five were unaware that a property search had been undertaken, and two thirds said they had not been told that searches could be bought from the LA or PSCs. Many of the consumers who claimed to have had a problem with their property search specified issues that are not actually covered by such searches, suggesting that they did not understand the content and purpose of property searches.
- 1.56 The introduction of the HIP and the PIP, and the accompanying information campaigns, offer an opportunity to inform consumers about the purpose and content of property searches.

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.

2 INTRODUCTION

2.1 This market study looks at how well the supply of property searches is serving consumers. It was launched on 8 December 2004, following complaints investigated under the Competition Act 1998.¹ While our investigations found no grounds for action against the companies involved, we decided there were aspects of the market which merited a market study. Market studies are carried out under the Office of Fair Trading's (OFT) function contained in section 5 of the Enterprise Act 2002.

2.2 We have looked at each step in the supply of property searches to consumers:

- **information holders** – collect and hold the unrefined information used to create property searches. Local authorities (LAs) and water companies do this²
- **report compilers** – collect the relevant unrefined information and interpret it into a useable format for consumers. Most information holders do this, as do private sector companies called property search companies (PSCs)
- **retailers** – source the compiled property search and sell it on to consumers and conveyancers. Most information holders also do this. The National Land Information Service (NLIS) is a gateway that retails information in electronic format in England and Wales
- **conveyancers** – most consumers rely on a conveyancer to commission a property search on their behalf, and

¹ August 2004. See: www.offt.gov.uk/News/Press+releases/2004/130-04.htm

² Other public bodies also hold information used to compile property searches, such as the Environment Agency and HM Land Registry. This study focuses on LAs and water companies. The issues surrounding the use of information held by national public bodies more generally are being considered in the market study on the commercial use of public information, which was launched on 28 July 2005. See: www.offt.gov.uk/Business/Market+studies/commercial.htm

- **consumers** – people engaged in property transactions are the consumers of property searches. Property searches may be paid for by the property buyer or seller as part of the conveyancing process.

2.3 During the study we commissioned a number of pieces of original research into the property search market:

- **consumer survey** - to understand the level of awareness consumers have about the property search process
- **conveyancer survey** - to identify the decision makers in the purchase of property information and the factors influencing the choice of source from which to buy the property search. We also asked about the problems that could occur
- **LA survey** - to collect information on the number of searches conducted, time taken and the fees charged for individuals and PSCs to access property search information, and the number and type of complaints received and whether any resulted in a financial settlement, and
- **conveyancer mystery shopping** - to discover which of the key elements of conveyancing are discussed when getting a quote and how options for property searches are presented.

2.4 A list of the parties we consulted during the study is at Annexe I. These include:

- central and local government
- PSCs
- the Law Society of England and Wales and the Law Society of Scotland
- the Council of Mortgage Lenders, and
- water companies.

2.5 In our report we make recommendations aimed at promoting effective competition in the compiling and retailing of property searches, and improving consumer awareness of the different types of property searches and their rights to redress should things go wrong. Our recommendations

are targeted at the problems we have identified in the report, and are proportionate to the identified adverse effects on competition and the amount of consumer detriment and practical to implement.

2.6 The rest of the report is structured as follows:

- Chapter 3 provides an overview of the market. It describes the products and market structure in each country of the UK
- Chapter 4 identifies concerns with the availability of the unrefined property information used to compile property searches
- Chapter 5 highlights the potential for future problems with the retailing of electronic format property searches
- Chapter 6 looks at the level of consumer awareness of and engagement with property searches, and also the quality of property searches, and
- Chapter 7 looks at the drainage and water searches provided by water companies.

2.7 Details of our methodology, the research carried out and the relevant legislation can be found in the annexes to this report. The studies we commissioned are the responsibility of the authors concerned and any views expressed in them are those of the authors and not necessarily of the OFT. The views of the OFT are expressed in this report, which has drawn on those studies.

3 SUPPLY OF PROPERTY SEARCHES

Summary

- 3.1 This chapter provides an overview of the supply of property searches in the UK.
- 3.2 The supply, form and content of property searches differ significantly across the four countries of the UK. The rest of this chapter describes property searches and how they are supplied, before elaborating on the differences across the UK.

Property searches

- 3.3 When buying a property people need information to uncover issues relating to a building or its surrounding environment that may impact on the value of the property or affect their desire to live in it. For example, they may like to find out about any plans for a nearby highway or building restrictions imposed upon the property. We call this **property information** and it is usually bought in a report format called a **property search**.
- 3.4 The property information needed to create property searches is held by LAs, water and sewerage companies³ and a number of national public bodies, such as HM Land Registry and the Environment Agency. This report focuses on LAs and water companies⁴ in their role as holders, compilers and retailers of property search information. Throughout this report we refer to the searches compiled by LAs and the private sector equivalent products as **local property searches**. The searches produced by water companies are referred to as **drainage and water searches**.

³ We refer to water and sewerage companies through this report as 'water companies'. This should not be confused with those companies holding 'water only' licences. See Chapter 7 for more details.

⁴ Water companies in Scotland and Northern Ireland are public bodies. They are not discussed further in this report.

- 3.5 Wider issues that might arise from the supply of information more generally by public bodies are being considered in the market study on the commercial use of public sector information.⁵ Therefore other public bodies involved in the supply of property information are not considered here.⁶
- 3.6 Property searches are bought in a compiled format. In England and Wales at present property searches are usually bought by, or on behalf of, the property buyer. In Scotland and Northern Ireland, it is usually the seller who is responsible for providing property search information on the property they are selling. This will also be the case in England and Wales from 2007 with the introduction of the Home Information Pack (HIP).⁷
- 3.7 In 2004 there were around 1.4 million property transactions in England and Wales⁸ and 171,000 in Scotland,⁹ with local property searches supplied estimated at around £177m and £13m respectively.¹⁰ In Northern Ireland the market is considerably smaller at around £3m¹¹ on 45,000 property

⁵ For more information see: www.oft.gov.uk/News/Press+releases/2005/139-05.htm

⁶ See Annexe H for a brief overview of the other key central public bodies that collect, maintain and supply property information in the UK.

⁷ The HIP will contain a range of property information, and will be provided by the seller to potential buyers. Some property searches will be required, such as the drainage and water search, while others will be authorised for inclusion but will not be relevant for every property, such as the commons land search. See Chapter 4 for more detail about the HIP.

⁸ Data from HM Land Registry. See www.landreg.gov.uk

⁹ Data from HM Revenue and Customs. See www.hmrc.gov.uk

¹⁰ OFT analysis based on volume figures from HM Land Registry and HM Revenue and Customs; prices of the different suppliers from LAs, NLIS and PSCs; and shares of supply from Annexe C, *Mystery shopping exercise*, Figure 4.5.

¹¹ OFT analysis based on volume figures from HM Revenue and Customs and the standard £60 fee (see paragraph 3.37).

transactions in 2004.¹² The value of drainage and water searches is about £34m¹³ in England and Wales.

Supply of property searches

3.8 There are five key steps in the supply of property searches. Within this supply chain some bodies carry out more than one of these functions.

Figure 3.1: The supply chain for property information



Source: Office of Fair Trading

3.9 **Information holders** collect and hold the unrefined property information necessary to create property searches.¹⁴ For example, LAs hold information about a wide range of issues, such as building regulations and planning permissions, highway and road schemes, and tree preservation orders. Water companies hold information about whether individual properties are connected to mains water and sewerage. Other central bodies also hold information that is used in property searches. For example, in England and Wales HM Land Registry holds information about

¹² Data from HM Revenue and Customs. See: www.hmrc.gov.uk

¹³ OFT analysis based on the average price for a basic drainage and water search, from www.drainageandwater.co.uk, and WaterUK's estimate of the number of drainage and water searches supplied. As this estimate assumes that people buy the standard search at £42, rather than paying £61 for an expedited search, it is likely to underestimate the value of the market to some extent.

¹⁴ The information is not kept in a format that suits the needs of property buyers. We therefore refer to this information as **unrefined property information** throughout the report. See Chapter 4 for more detail on unrefined property information.

title to ownership and mortgages or other financial charges on the property, and the Environment Agency holds a range of information including whether the property is in a flood plain.

- 3.10 **Report compilers** collect together the relevant unrefined property information, and collate it into a useable format for consumers. For example, information can be held by LAs in paper files across numerous departments, and may need to be collected and reformatted by trained staff before being provided in a format useable by consumers. Most information holders are also compilers, and PSCs also interpret, compile and sell on the information held by LAs and other bodies.
- 3.11 **Retailers** source the compiled property searches and sell them on to conveyancers and consumers, sometimes with additional services such as data on crime figures or local schools. Most information holders and compilers sell their own searches, and there are also bodies that retail searches compiled by others. Some PSCs sell LA compiled property searches, and in England and Wales there is an electronic gateway called NLIS that sells LA compiled searches.¹⁵
- 3.12 **Conveyancers** act as agents for consumers in buying and assessing property searches.
- 3.13 **Consumers** of property searches are people engaged in property transactions, who are ultimately affected by the information contained in property searches. People buying property will want information about issues that might influence the value of the property or their desire to live in it. In England and Wales the buyer of a property currently pays for the property searches, while in Scotland the seller is responsible for supplying the necessary property information.
- 3.14 The following sections set out the differences in the product and supply chain across the four countries of the UK.

¹⁵ See Chapter 5 for more on the retailing of local property searches and further information on NLIS.

England and Wales

Product

- 3.15 LAs and the Law Society of England and Wales have agreed a specified set of information that should be included in a local property search to ensure that consumers get the right information when buying a property. These requirements are set out in two forms: Con29 part 1 and Con29 part 2.¹⁶ The Con29 part 1 contains standard enquiries¹⁷ and is purchased for nearly all property transactions, while the Con29 part 2 contains questions that do not apply to all properties,¹⁸ and is purchased in only a minority of cases.¹⁹
- 3.16 Fees for Con29s are set at the discretion of each LA, under the Local Authorities (Charges for Land Searches) Regulations 1994. The prices vary between LAs, ranging from £55 to £269,²⁰ with a median price of £119.²¹
- 3.17 All local property searches should also disclose whether any local land charges apply to the property. LAs provide this information by completing the official certificate of search on form LLC1, which is the same form used to requisition the search.²²

¹⁶ The forms are attached at Annexe J, *Specimen property search forms*.

¹⁷ Contains information on road and traffic schemes, planning notices and designations, and building regulation approvals.

¹⁸ Contains information on land maintenance notices, noise abatement zones, pollution notices and other matters.

¹⁹ Around one in five. Based on Annexe D, *Survey of local authorities*, Table 3.1.

²⁰ Data from MDA TransAction Online. The councils at the extremes of pricing are the Isle of Anglesey, charging £55, and the London Borough of Barnet, charging £269. Data as at May 2005.

²¹ See Chapter 4 for more discussion of the variation in price.

²² See Annexe J, *Specimen property search forms*.

- 3.18 The price prescribed for an official search of the Local Land Charges Register is £6, or £4 if conducted electronically.²³ These prices are currently uniform across all LAs in England and Wales, and prices in England are set by the Lord Chancellor. However, legislation has been passed which when implemented will give LAs in England the power to set fees for local land charge services, including official searches.²⁴ This excludes the price for personal searches of the local land charges register by consumers or their agents, such as PSCs.
- 3.19 The Lord Chancellor's power to set local land charge fees in Wales has been devolved to the National Assembly for Wales with effect from 31 December 2004. The National Assembly for Wales, when it exercises this power, intends to continue setting fees centrally at a uniform level.²⁵
- 3.20 Local property searches are also available from other compilers and retailers. These suppliers can offer additional information to that in a local property search, including details on the quality of local schools, crime rates or information on a wider area around the property.
- 3.21 Drainage and water searches are provided by water companies on a form called a Con29 DW. Similarly to local property searches, drainage and water searches are purchased either directly from water companies, or through bodies that sell on water and drainage searches compiled by water companies, such as PSCs and NLIS channels.²⁶

Supply chain

²³ See Annex E, *Legal framework in England and Wales*, paragraphs 1.30 to 1.35.

²⁴ Constitutional Reform Act 2005.

²⁵ See Annex E, *Legal framework in England and Wales*, paragraphs 1.22 and 1.23 for more details.

²⁶ See the following section for more on these different routes of supply.

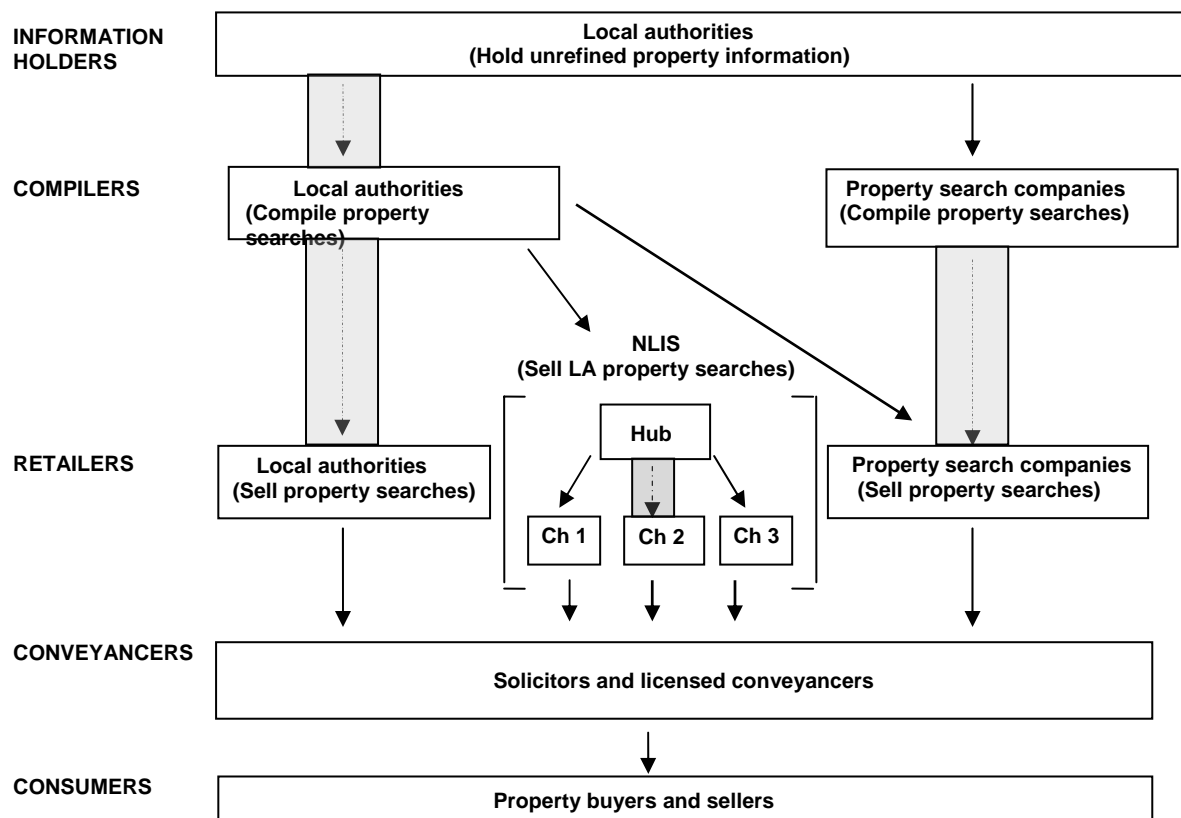
- 3.22 Property information in England and Wales is typically provided to consumers through their appointed conveyancer, who obtains the information through one of a number of methods. For local property searches, the most popular routes are requesting a compiled search from the LA by post, or via the electronic gateway NLIS, or from a PSC. Although individuals (including conveyancers and their clients) can conduct a personal search of LA registers to obtain the information first hand, this is relatively unusual. This structure of supply is set out in Figure 3.2 (see next page).
- 3.23 In their role as information holders, LAs and water companies effectively have a monopoly over the unrefined property information relevant to their functions in their geographical areas. Both PSCs and LAs compile and retail property information, with NLIS also competing in retail.

Local Authorities

- 3.24 Postal requests to LAs are the traditional way of obtaining property search information. The LA responds to an application form sent together with payment for the compiled search and postage costs.
- 3.25 Although PSCs and NLIS have both increased their share of the retailing of local property searches over recent years, postal requests remain the most popular route. We estimate that postal requests accounted for around 42 per cent of all local property searches sold in England and Wales during the year to May 2005.²⁷

²⁷ Annexe C, *Mystery shopping exercise*, Figure 4.5. This is corroborated by estimates provided by stakeholders and the proportion of conveyancers using each search method in our survey of conveyancers, Annexe B.

Figure 3.2: The supply of property information held by LAs in England and Wales²⁸



Source: Office of Fair Trading

Personal Search Companies

- 3.26 PSCs compile unrefined property information obtained from LAs and sell it to their clients in either paper or electronic format. Some PSCs also sell local property searches in paper format prepared by LAs, which they obtain through postal requests.
- 3.27 Many PSCs have indicated to us that they find it difficult to obtain all of the unrefined property information from LAs that is needed to compile a local

²⁸ Lines represent flows of input from one layer of the supply chain to another. When dotted and within a shaded box the flow is internal to the same body or company.

property search.²⁹ Some PSCs offer insurance against problems arising from the information that they provide.

- 3.28 In the year to May 2005 we estimate that PSCs accounted for 40 per cent of all local property searches sold in England and Wales.³⁰ Conveyancers who use PSCs rate them highly for their ease of use and speed.³¹ Some PSCs also provide additional information with their property searches such as information on schools and crime in the area or environmental reports.

National Land Information Service

- 3.29 NLIS is currently composed of a central hub and three channels. The hub acts as a centralised point of connection between the channels and LAs and a number of other compilers, such as HM Land Registry and the Environment Agency. Each of the channels is operated by a privately run company that acts as a client interface, channelling requests for searches from conveyancers and consumers to compilers via the hub, and passing on the requested searches received from compilers to the client, also via the hub. The local property search may be received by the consumer in paper or electronic format,³² depending on the compiler.³³
- 3.30 At present, LAs only provide electronic format local property searches via NLIS, and only around 37 per cent of LAs have the technological capabilities to do so.³⁴ However, NLIS also sells paper-based searches and we estimate

²⁹ Council of Property Search Organisations: *Submission to the OFT in connection with its enquiry into the market for the supply of property search services*, 11 April 2005. See also Chapter 4 for a discussion of the availability of unrefined property information.

³⁰ Annexe C, *Mystery shopping exercise*, Figure 4.5. This is corroborated by estimates provided by stakeholders and the proportion of conveyancers using each search method in our survey of conveyancers, Annexe B.

³¹ See Annexe B, *Survey of conveyancers*, Table 1.1.

³² Local Government Information House, 15 August 2005.

³³ See Annexe G, *National Land Information Service* for more on the structure of NLIS, and Chapter 5 paragraphs 5.12 to 5.17 for more on NLIS and the retailing of local property searches.

³⁴ Provision of electronic formatted information will increase as part of the modernisation agenda. For more information on this see Chapter 5, Box 5.2.

that NLIS accounted for 20 per cent of all local property searches sold in England and Wales during the year to May 2005.³⁵

Water and Sewerage Companies

- 3.31 In England and Wales, the 10 water companies are effectively the sole compilers of drainage and water searches for properties in their area. They sell their drainage and water searches directly to conveyancers and consumers, as well as supplying them to NLIS and PSCs to sell on to their clients.³⁶

Scotland

Product

- 3.32 The local property search in Scotland is called a Property Enquiry Certificate (PEC), for which there is no standard form across the 32 Scottish LAs. The PEC is normally obtained by the property seller or their conveyancer and provided to the potential buyer when an offer is made for the property.
- 3.33 There is no standard fee for a PEC in Scotland. It is the responsibility of individual LAs to decide the fee for the service. The Scottish Executive does not provide specific guidance on the matter, although they do advise LAs to follow any existing rules and regulations dictating which services they can and cannot run at a profit.³⁷ Prices currently range between £50 and £150, with a median price of £80.³⁸

Supply chain

³⁵ Annexe C, *Mystery shopping exercise*, Figure 4.5. This is corroborated by estimates provided by stakeholders and the proportion of conveyancers using each search method in our survey of conveyancers, Annexe B.

³⁶ Chapter 7 discusses water companies in more detail.

³⁷ Local Government Group, Scottish Executive, 23 March 2005.

³⁸ OFT analysis of data from Scottish LAs.

- 3.34 The structure of the supply chain in Scotland is similar to that in England and Wales, but there is no equivalent to NLIS at the retail stage. Consequently, only the LAs and PSCs compete in the retailing of PECs. PSCs have a higher share of the market in Scotland. In our mystery shopping exercise, 77 per cent of conveyancers claimed to buy searches from PSCs, and 22 per cent from LAs.³⁹ By statute most of the relevant unrefined property information must be available for public inspection.⁴⁰
- 3.35 Those LAs with the capacity to do so provide consumers and conveyancers with electronic access to unrefined property information such as planning applications and building controls by making public registers available online.⁴¹

Northern Ireland

Product

- 3.36 In Northern Ireland a local property search consists of a Department of Environment (DoE) Certificate and an LA Property Certificate.⁴²
- 3.37 The fee charged for an LA Property Certificate is currently £60, which was recommended to LAs in Northern Ireland by the Society of Local Authority Chief Executives and Senior Managers (SOLACE), after consultation with the Law Society of Northern Ireland.⁴³ The fee for the DoE Certificate is currently £30. This fee is set by the DoE's Planning Service and must meet the Department of Finance and Personnel's (DFP) requirement that it should only reflect the cost incurred in providing this service.⁴⁴

³⁹ Annexe C, *Mystery shopping exercise*, Figure 5.13.

⁴⁰ See Annexe F for information on the legal framework in Scotland.

⁴¹ For example, see Edinburgh City Council's website www.edinburgh.gov.uk/

⁴² LAs in Northern Ireland collect and keep data on building control approval and enforcement notices, orders issued under environmental health legislation, while the DoE keeps data on road services, water services, and environmental and heritage information.

⁴³ Down County Council, 16 May 2005.

⁴⁴ Planning Service, DoE, 23 March 2005.

Supply chain

- 3.38 The provision of property information in Northern Ireland has a much simpler supply chain compared to that in other countries in the UK. There is no equivalent to either NLIS or PSCs, so consumers and their conveyancers obtain their information directly from LAs and the DoE who both have an effective monopoly in the supply of their respective property searches.
- 3.39 In 2004 there were 43,000 property transactions in Northern Ireland⁴⁵ with no known complaints made regarding the supply of property information. We have consulted with both the General Consumer Council of Northern Ireland and the Local Government Association of Northern Ireland and neither of these bodies expressed any concerns about the supply of property searches in Northern Ireland.
- 3.40 Although there is a lack of competition in the supply of local property searches in Northern Ireland, we did not identify significant concerns within the country about the service received by consumers or potential consumer detriment. Prices appear lower and are set at a standard level across LAs, in contrast to the situation in England and Wales.
- 3.41 As we have received no complaints, prices are lower and the market is relatively small, we have not considered the situation in Northern Ireland in any further depth. However, the DFP should consider how far our analysis and recommendations apply to their country and whether they should implement any of our recommendations. In particular, consideration should be whether guidance for LAs from central government on setting the price of the compiled property searches would be appropriate in Northern Ireland, as we are recommending for England and Wales.
- 3.42 Northern Ireland is not considered further in this report.

⁴⁵ Data from HM Revenue and Customs. See: www.hmrc.gov.uk

4 COMPILING LOCAL PROPERTY SEARCHES

Summary

- 4.1 This chapter discusses the availability of the unrefined property information, held by LAs,⁴⁶ that is compiled into local property searches. It highlights a number of concerns surrounding the availability and price of unrefined property information in England and Wales, and the implications of this for consumers.
- 4.2 The availability of unrefined property information affects the ability of PSCs to compete with LAs, which in turn would be expected to influence the prices paid by consumers. In England and Wales, the price of LA compiled property searches varies widely, from £55 to £269 for residential property searches.⁴⁷ Since the product is standardised, underlying costs should not vary dramatically. This wide variation in price suggests that some consumers may be paying too much for LA compiled local property searches.
- 4.3 LAs have, in effect, a monopoly over the unrefined property information needed to compile local property searches. The evidence available to the OFT suggests that some LAs are not making some of this information available to PSCs. Where this occurs PSCs can produce only incomplete local property searches, limiting the extent to which they can compete with LA compiled local property searches. This reduces the incentives on LAs to price competitively, be cost efficient and innovate in compiling.
- 4.4 The situation is likely to worsen with the introduction of the HIP in 2007. The HIP will require certain information to be provided by the seller of the property, while other information will be authorised for inclusion but will not be relevant

⁴⁶ Water companies also hold unrefined property information that is compiled into drainage and water searches. This chapter focuses on LAs. Water companies are discussed in Chapter 7.

⁴⁷ Data supplied to the OFT by MDA TransAction Online, May 2005.

to every property. Unless the relevant unrefined property information is available to competing compilers, this will potentially eliminate competition from PSCs.

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.

This must be done on terms that do not advantage their own compiling activities over competing compilers.

- 4.5 LAs lack clear government guidance on how they should cover the costs of making unrefined information available, and how they should price unrefined information and their own compiled searches. Only 29 per cent of the LAs we surveyed said they kept a record of the costs of providing access to property information and compiling searches, and many set prices taking little account of costs, instead using income targets or other LAs' prices as a guide.⁴⁸

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.

- 4.6 This chapter first describes the unrefined property information held by LAs. It then examines the availability of this information in England and Wales, and makes recommendations aimed at creating better conditions for competition in compiling local property searches. The situation in Scotland, which raises fewer concerns, is discussed separately.

⁴⁸ Annexe D, *Survey of local authorities*, paragraph 6.13.

Unrefined property information

- 4.7 LAs collect and hold a wide range of information relevant to property transactions, including building regulations, planning permits, highway and road information and tree preservation orders.⁴⁹ Some of this information is held on public registers which LAs are under a statutory duty to maintain, such as the Local Land Charges Register (LLCR), while other information is collected by the LAs as part of their day to day tasks, for example, regarding road and traffic schemes.⁵⁰
- 4.8 As described in Chapter 3, some of the information held by LAs is used to compile local property searches. However, the information held by LAs is unrefined and needs to undergo some processing in order to be of use to consumers. For example, it is often held as paper files in different departments of the LA and different physical locations within the LA offices, and must be found and collated. Unrefined property information may also need interpretation by knowledgeable staff.
- 4.9 Compiling a local property search that is useful to consumers from unrefined property information can therefore be a time consuming task. The LAs that we surveyed in England and Wales estimated that it took an average of around 70 minutes of staff time to complete a search of all the relevant registers needed to compile a local property search.⁵¹ Although the range of responses was relatively wide, and skewed by a few very high answers, half of all LAs reported that it took between 50 and 120 minutes.

⁴⁹ In many cases, this information must be notified to the LAs, either by property owners or other public bodies. For example, planning applications must be lodged with the LA pursuant to section 69 of the Town and Country Planning Act 1990. The LA then makes an entry recording the application on the planning register. The LA also generates some information itself, for example, when it issues orders such as tree preservation orders.

⁵⁰ Annexe E, *Legal framework in England and Wales* has more details on the framework surrounding the collection and supply of property information by LAs.

⁵¹ Annexe D, *Survey of local authorities*, Table 6.9. Seventy one minutes is the median time taken to search the LLCR and other registers combined in order to respond to a postal search request.

4.10 LAs and PSCs both compile unrefined property information into local property searches, as do a very small proportion of consumers.⁵² LAs effectively have a monopoly of the unrefined property information needed to compile these searches⁵³ and, as discussed below, some LAs are better than others at making this information available.⁵⁴ Restricting the availability of unrefined property information in turn restricts competition in compiling, as it limits the content of other compilers' searches and may mean that some relevant information is omitted.

4.11 The situation in England and Wales regarding the availability of unrefined property information poses some questions about the degree of competition in compiling, whereas the situation in Scotland raises fewer concerns. The following section looks at England and Wales, while Scotland is discussed afterwards.

England and Wales

4.12 The availability of unrefined property information affects the ability of PSCs to compete with LAs in the supply of compiled searches, which in turn would be expected to influence the prices paid by consumers.⁵⁵ We have found wide

⁵² Only two per cent of consumers who had undertaken a property search themselves or knew that a property search had been carried out on their behalf claimed to have visited the LA personally and performed a personal search of the registers. Annexe A, *Survey of consumers*, Table 4.4.

⁵³ Some information may be held by the seller of the property. For example, where notices are served on the owner of a property they may have a copy of the notice, such as a tree preservation order. Even in this situation, however, it is likely that conveyancers and mortgage lenders would want to check the information against the records held by the LA.

⁵⁴ In principle, the Freedom of Information Act 2000 (FoIA) offers a general right of access to information held by LAs. Where information can be provided under the FoIA the request for information has to be answered within 20 working days. As LAs aim to provide their own compiled searches within 10 working days, and property searches are often time critical and needed quickly, we consider that the FoIA route does not offer a solution to the availability of unrefined property information for PSCs. See Annexe E, *Legal framework in England and Wales*, paragraphs 1.45 to 1.53 for more details.

⁵⁵ Competition would be expected to drive down prices through the process of rivalry between LAs and PSCs, as each attempts to attract customers with competitive prices. Other influences on price could include differences in the product, such as the quality of service or additional information, and differences in cost, such as labour costs and the degree of electronic or manual processing.

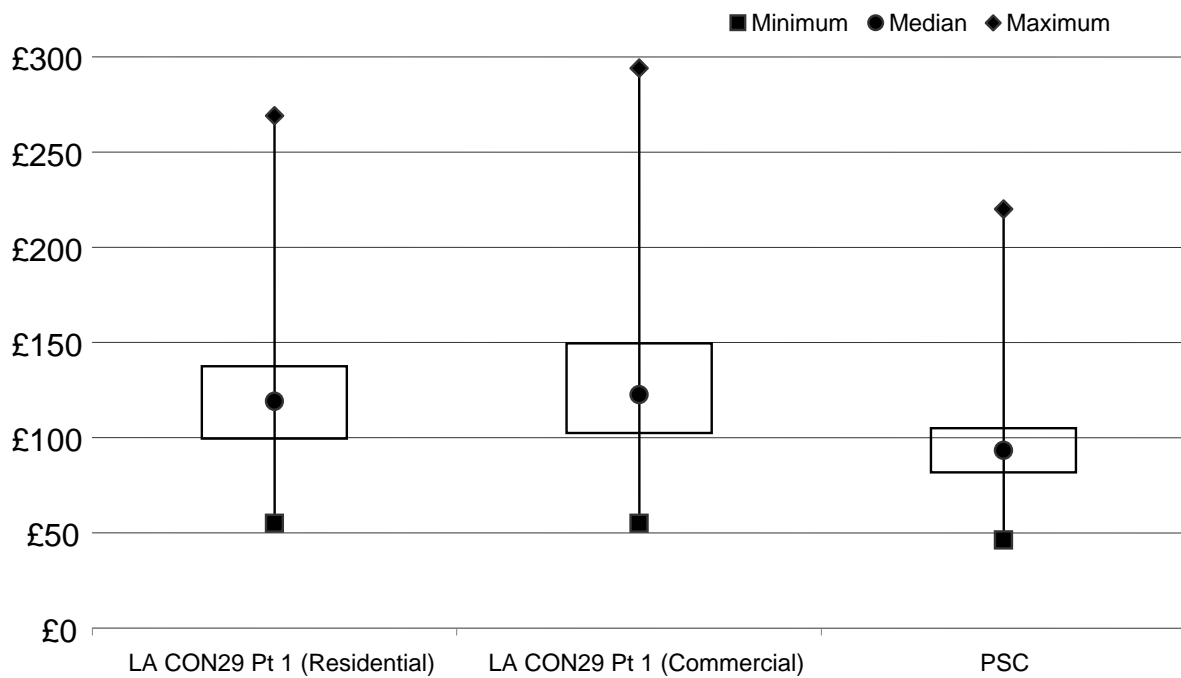
variation in the price of local property searches in England and Wales. As Figure 4.1 below shows, the price of the standard LA compiled local property search⁵⁶ for residential property transactions, which the Law Society of England and Wales recommends that all consumers should have, ranges between £55 and £269.⁵⁷ The product is standardised, so it is unlikely that differences in underlying costs can explain all the variation in price. The average LA took around 70 minutes to compile a local property search,⁵⁸ and in Figure 4.1 the box denoting the middle 50 per cent of data falls between approximately £100 and £140. Overall, this data suggests that some consumers may be paying too much for LA compiled local property searches.

⁵⁶ LA compiled local property searches are based on standard forms called LLC1 and Con29 parts 1 and 2.

⁵⁷ Data from MDA TransAction Online, May 2005. The LAs at the top and bottom of the price range are the Isle of Anglesey, charging £55, and the London Borough of Barnet, charging £269. Some searches for commercial properties are more expensive. See Figure 4.1.

⁵⁸ Median time. Annexe D, *Survey of local authorities*, Table 6.9.

Figure 4.1: Prices of LA compiled local property searches and PSC equivalents



Source: MDA TransAction Online, May 2005, OFT analysis

4.13 LAs have, in effect, a monopoly over the unrefined property information needed to produce a local property search. This raises three related concerns:

- some LAs restrict the availability of some unrefined property information
- there is confusion over how LAs should set prices for unrefined and compiled property information, and
- the HIP is likely to have serious implications for competition in compiling.

Information availability

4.14 The availability of unrefined property information to PSCs and individuals varies significantly across LAs, and the evidence suggests that some LAs

restrict the availability of some of the unrefined information needed to create local property searches. For example, our survey of LAs found that over one in 10 provided no access to records of notices and other proceedings under the Town and Country Planning Act 1990, such as enforcement notices, which by statute should be available on public registers.⁵⁹ Forty per cent said that they provided no access to building regulations records, such as completion certificates.⁶⁰ Similarly, one PSC told us that almost a third of LAs do not provide information on highway schemes.⁶¹

- 4.15 Limited access to unrefined property information means PSC property searches may be incomplete and, where this occurs, they can only offer some of the information contained in an LA compiled local property search. This is likely to make PSCs' products less attractive to some people, reducing the competitive pressure on LAs. Under the current framework, this would also be the case when LAs meet their statutory obligations to make some types of information available in public registers, as some types of information included in local property searches are not covered by such obligations. See Annexe E for more details.
- 4.16 Law Society guidance⁶² for solicitors states that LA compiled local property searches should be used unless there are time constraints that force the use

⁵⁹ Annexe D, *Survey of local authorities*, Table 8.23. It should be noted that further enquiry showed that some LAs misinterpreted what was meant by 'access', for example stating that they provide no access where they do not in fact hold any information (eg: hedgerow preservation orders are not relevant to metropolitan LAs), or stating that they restrict access where they charge a small fee to provide a photocopy of the register, instead of allowing access to the register itself. This means that the results may overstate the extent of restrictions placed on the availability of unrefined information. All LAs should record and make available unrefined information relating to planning notices and enforcement. See also Annexe D, *Survey of local authorities*, paragraphs 8.5 to 8.7.

⁶⁰ *Ibid*, Table 8.18. Note that there is no statutory requirement for LAs to make available building regulations information.

⁶¹ Property Search Group, *Complaint to the OFT: Markets and Policy Investigation (Schedule 2)*, 22 March 2005. It should be noted that LAs are not required by statute to make all highways information available on public registers. The Council of Property Search Organisations (CoPSO) also states that some LAs refuse access to necessary unrefined property information, including building regulations information and traffic scheme data. CoPSO, *Submission to the OFT in connection with its inquiry into the market for the supply of property search services*, April 2005.

⁶² *Conveyancing Handbook*, 11th Edition, Law Society of England and Wales.

of a PSC, and 40 per cent of mortgage lenders say that they will not accept local property searches compiled by PSCs because they omit some information.⁶³ Despite this, PSCs supply around 40 per cent of local property searches.⁶⁴ It may be that the Law Society guidance should be reconsidered after the introduction of the HIP.

- 4.17 Statistics from CoPSO, a trade association representing bodies providing property searches, suggest that nearly one in five LAs impose delays on obtaining appointments to access unrefined property information, and a similar proportion restrict the number of searches that may be made per visit.⁶⁵ In our survey, however, nine out of 10 LAs said that they provide access to their registers no later than four days after receiving the request, and 71 per cent said they do so within one or two working days.⁶⁶
- 4.18 Delays in obtaining appointments and restrictions on the number of searches may be a problem if LAs are delaying PSCs for longer than the time LAs themselves take to access unrefined property information for their searches. This is important because local property searches are usually needed within a short timeframe. Such restrictions may delay the compilation of a local property search, which may reduce the ability of PSCs to compete with LAs in terms of the timeframe in which they can produce local property searches,⁶⁷ and consumers may get a slower service than they otherwise would.

Setting the price of unrefined information

⁶³ *Council of Mortgage Lenders Handbook*, part 2.

⁶⁴ Annexe C, *Mystery shopping exercise*, Figure 4.5. This is corroborated by estimates provided by stakeholders and the proportion of conveyancers using each search method in our survey of conveyancers, Annexe B.

⁶⁵ CoPSO: *Submission to the OFT in connection with its enquiry into the market for the supply of property search services*, April 2005.

⁶⁶ Annexe D, *Survey of local authorities*, Table 4.4.

⁶⁷ For example, 25 per cent of conveyancers in our survey said that speed was the most important factor in deciding which supplier of local property searches to use. Annexe B, *Survey of conveyancers*, Figure 4.9.

- 4.19 LAs lack clear guidance on how they should set the price of the unrefined information that they may charge for.⁶⁸ We consider that in principle prices should take account of the cost of providing unrefined property information. The costs arise from three activities: collecting the information, recording the information on registers, and making the information available for others to search. Some of these activities happen as the LAs discharge their statutory or other day to day functions, and it is not clear which costs should be considered by LAs when setting charges for unrefined property information.
- 4.20 The additional cost of making unrefined property information available to third parties may on its own be substantial. This may arise from employing staff to either supervise visitors wishing to look at public registers, or to extract the information from the files for the visitor, although these costs are likely to be lower if information is available electronically. The LAs we surveyed said that on average it takes around 70 minutes of staff time to deal with a search request from a PSC.⁶⁹ It is not clear how these costs should be met.
- 4.21 The collection, recording and provision of unrefined property information by LAs takes place within a complex framework of legislation, and the ability of LAs to charge for unrefined property information depends upon the type of information in question. Some information, such as records about contaminated land, is stored on public registers and must be made available free of charge, which implies that the costs of providing this type of information must be covered by general funds.⁷⁰ The LLCR must be available for any person to search on paying the prescribed fee, currently centrally set at £11 for a personal search.⁷¹ Still other information may be made available at the LA's discretion, and may be charged for at prices set 'with regard to

⁶⁸ Local Authorities (Charges for Land Services) Regulations 1994 (SI 1994/1885) provide some guidance, giving LAs the power to charge for some services 'having regard to costs'. However, there is some confusion over the scope of these regulations, and they do not provide the detailed guidance on how LAs should calculate costs and reflect them in prices that we consider to be necessary.

⁶⁹ Annexe D, *Survey of local authorities*, Table 6.9. This is similar to the time it takes for LAs to search the registers to compile their own local property searches.

⁷⁰ Environmental Protection Act 1990. See also Annexe E, *Legal framework in England and Wales*.

⁷¹ See Annexe E, *Legal framework in England and Wales*, paragraphs 1.30 to 1.35.

cost',⁷² such as notices of infringement of building regulations. However, it is not clear what having 'regard to cost' means in practice.

- 4.22 This situation has resulted in LAs lacking a clear source of guidance on how they should set prices for unrefined and compiled property information, and how they should cover the costs of these services. For example, the majority of LAs claim that the charge for personal searches of the LLCR, by PSCs or individuals, does not cover the costs they incur in facilitating this access. A smaller but still substantial majority say that they cover these costs through revenues from charges for their own compiled searches,⁷³ implying that consumers who buy LA compiled property searches may be cross subsidising those who buy PSC compiled searches.
- 4.23 Against this backdrop, the number of searches being carried out by PSCs has risen dramatically, from around five per cent in 1999⁷⁴ to an estimated 40 per cent for the year to May 2005.⁷⁵ This suggests that any unrecovered costs for LAs from making unrefined property information available are likely to be increasing year on year. It is reasonable to assume that the lack of clear guidance on how such costs are to be recovered may provide LAs with an incentive to place restrictions on the availability of unrefined property information in an attempt to reduce revenue shortfalls.

Implications of the home information pack

- 4.24 The consequences of the restrictions on the availability of unrefined property information are likely get worse should they continue after the introduction of the HIP (see Box 4.1). At present, the Government's policy is that certain information will be required to be included in a HIP. We recognise that this

⁷² Local Authorities (Charges for Land Searches) Regulations 1994 (SI 1994/1885).

⁷³ Annexe D, *Survey of local authorities*, paragraphs 7.3 and 7.4. Eighty three per cent say the charge does not cover the cost, and 69 per cent say they cover the shortfall through charges for Con29s.

⁷⁴ CoPSO, *Submission to the OFT in connection with its inquiry into the market for the supply of property search services*, 11 April 2005.

⁷⁵ Annexe C, *Mystery shopping exercise*, Figure 4.5. This is corroborated by estimates provided by stakeholders and the proportion of conveyancers using each search method in our survey of conveyancers, Annexe B.

may be a necessary feature of the HIP to ensure it is trusted by property buyers, and offers adequate protection. However, if PSC compiled local property searches are incomplete due to restrictions on the availability of unrefined information, they will not be eligible for inclusion in the HIP.⁷⁶

- 4.25 Under the current arrangements this may effectively eliminate competition in compiling local property searches, and extend the LAs' effective monopoly position in the supply of unrefined property information into a very strong position in the market for compiled local property searches. This could reduce any pressure on LAs to be cost efficient and price local property searches competitively, and could therefore potentially raise the overall cost of the HIP for property sellers.

⁷⁶ Although PSCs often offer indemnity insurance to protect consumers in the event of problems arising from the missing information, the Office of the Deputy Prime Minister (ODPM) have told us that this will not be acceptable for the HIP, which on current policy must include all the prescribed information.

Box 4.1: The home information pack

From early 2007 in England and Wales, homeowners or their selling agents will be required to prepare and provide a HIP containing standard information and documents to potential buyers of a property. This will ensure that important information regarding the property is available from the very beginning of the house buying process, reducing the risk of the transaction collapsing and wasting time and money on both sides.

The Government is currently carrying out final consultations with consumer representatives and key industry stakeholders on proposals for the content of a HIP including terms of sale; evidence of title; replies to standard searches; planning consents, agreements and directions and building control certificates; seller's property information form; warranties and guarantees; and a home condition report.⁷⁷

The Government is proposing that all mandatory searches included in the HIP will have to contain certain information, while other information may be added according to its relevance to the property in question. It is also proposing that property search providers must offer insurance protecting the property purchaser from loss arising from problems with the information in the HIP.

Source:

www.odpm.gov.uk/stellent/groups/odpm_housing/documents/divisionhomepage/033116.hcsp as at August 2005.

Recommendations for England and Wales

- 4.26 Currently, some consumers may be paying too much for local property searches, and LAs face weak incentives for cost efficiency, innovation and competitive pricing (see paragraphs 4.15, 4.18 and 4.25 above). Unless the underlying problems are addressed, the situation is likely to get worse with the introduction of the HIP.
- 4.27 The possibility that some consumers are paying too much for LA compiled local property searches could be addressed through regulation of the price of

⁷⁷ Additional requirements for leasehold properties include the lease; recent service charge accounts and receipts; current and planned future works; insurance for the building and receipt for premiums; regulations made by the landlord or management company; memorandum and articles of the landlord or management company.

these searches by central government. For example, central government could set prices in agreement with LAs, or set a single price for LA compiled local property searches across all LAs. This would have the advantage of directly addressing the prices paid by consumers, and may be less complex for LAs than the alternative of addressing the availability of unrefined information (which is discussed below).

4.28 However, while regulating the price of LA compiled local property searches would in principle alter the outcome for consumers, it would be preferable to enable effective competition in compiling to drive down prices. Regulating effectively is difficult, and getting the price wrong could further distort the supply of local property searches. In this respect, if regulation were considered necessary it would be preferable to regulate the price and availability of unrefined property information rather than the price of compiled local property searches, as the consequences of setting the wrong price or giving LAs the wrong incentives may be less severe. An error in setting the price of unrefined information should have less overall effect on prices to consumers, as unrefined information makes up only part of the total price of compiled local property searches.

4.29 Regulating the price of LA compiled local property searches would not address the issue of availability of unrefined property information, so competition in compiling, such as that from PSCs, would be likely to be eliminated when the HIP is introduced. LAs would then face no competition from PSCs when compiling local property searches, and may have less incentive to reduce costs or innovate. Consumers would lose the option to choose between different sources of compiled local property searches, and may pay more for their searches than they would in the presence of competition.

- 4.30 Regulating the price of LA compiled local property searches would also mean revoking the Local Authorities (Charges for Land Searches) Regulations 1994,⁷⁸ and in order to be effective would require central government regularly to assess the costs incurred by LAs in order to set the prices.
- 4.31 On balance, we believe that it would be more effective to make the necessary unrefined property information more readily available to third parties, rather than regulate the price of LA compiled local property searches, in order to allow competition in compiling to occur after the introduction of the HIP. The next two sections look at how much unrefined property information should be made available, and then at the terms on which it should be offered.

Extent of available information

- 4.32 We deal first with how much unrefined property information is made available by LAs. After the HIP is introduced, to allow competition in compiling local property searches, PSCs must be able to obtain all the unrefined property information needed to compile a local property search for inclusion in a HIP.
- 4.33 The key advantage of improving the availability of unrefined information, compared to the option of regulating the price of LA compiled local property searches, is that it would allow the pressure of competition to drive greater efficiency and innovation in the supply of local property searches, to the ultimate benefit of consumers.

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.

- 4.34 LAs could make this information available voluntarily as a matter of best practice. There are no significant legal barriers to overcome,⁷⁹ and this would

⁷⁸ For the LLC1 part of an LA compiled local property search, the power to delegate the ability to set charges for official searches to LAs has been introduced through reforms to the Constitutional Reform Act 2005, but not yet brought into force. Therefore, should the Government choose this approach the Lord Chancellor would simply not make any order to bring the relevant provisions into force.

⁷⁹ One exception to this may be where registers contain personal information, in which case the Data Protection Act 1998 may prevent LAs from offering direct access to the register. In this case LAs could make available edited information that removes personal details. At least one LA that we are aware of deals with this issue by providing building control information by phone.

be the simplest and least costly way of enabling competition in compiling. However, the effectiveness of this latter approach would rely on voluntary compliance by LAs. Requiring LAs to make unrefined property information available on public registers may be more effective, but it would involve changes to primary and secondary legislation.

- 4.35 As voluntary compliance by LAs is simpler and less costly than the alternative of legislative change, central government and the Local Government Association (LGA) should encourage LAs to adopt the best practice approach. If this fails, for example due to a lack of compliance, central government should consider the case for legislative change.
- 4.36 This change in the availability of unrefined information should take place as soon as possible. We recognise that it could take some time for LAs to put in place cost effective systems, electronic or otherwise, to make all the necessary unrefined information publicly available. However, these changes must at the latest take place before the HIP is introduced in 2007, to avoid the restriction of competition in compiling local property searches that would otherwise be likely.

Terms of availability

- 4.37 To ensure that competition in compiling local property searches is not restricted or distorted, LAs must not discriminate between different sources of requests for unrefined property information. In other words, LAs should make unrefined property information available to PSCs and individuals on comparable terms to those that the LAs offer themselves when they compile local property searches.

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.

- 4.38 There are two important aspects to this: price and turnaround times.

Price of unrefined information

- 4.39 We consider that in principle the prices charged by LAs for unrefined property information should be transparent, should take account of costs, and should not preclude competition in compiling of local property searches. Any recommendations for changes to the current regime should also be proportionate, taking into account the practicalities of implementing changes and the administrative burden on LAs and central government. For example, it may not be necessary to price each separate item of information contained in a local property search. Instead, it may be more efficient to set prices for sets of information sold together.
- 4.40 There are broadly two options for pricing unrefined property information. First, central government could set prices for unrefined property information at a uniform level across all LAs, perhaps using a standard menu of categories of information based on the contents of the HIP, such as all relevant unrefined information from the planning register sold together at a single price. Prices could be set to reflect the costs of an efficient LA, for example.
- 4.41 This approach would provide certainty for LAs and PSCs, and leave less scope for LAs to overcharge for unrefined property information. It would also be relatively light touch. By improving transparency, it would make it easier to monitor compliance by LAs.
- 4.42 If central government chose to set prices at zero, as happens in Scotland (and for some information in England and Wales), or chose to set prices at the current median price, it would remove the need to try to determine the cost base. Setting a zero price would also considerably reduce the complexity of prices compared to the current system, under which some information must be made available free while other information may be charged for.
- 4.43 It is important to recognise that setting uniform prices will carry revenue implications for LAs. Depending on the pricing approach chosen, some or all LAs may suffer a reduction in revenues. Setting the price at the current average would be revenue neutral overall, although some LAs would gain and others lose revenues. Any reduction in revenues for LAs may have wider implications if LAs draw resources from other services to cover the shortfall. However, if all unrefined information were charged for, all LAs would benefit

from receiving revenues from unrefined information that must currently be made available for free.

- 4.44 In addition, such centralisation cuts against the grain of recent government policy. For example, at present in England the price of official searches of the LLCR is set by the Lord Chancellor. However, when implemented the Constitutional Reform Act 2005 will give LAs the power to set fees for local land charge services, including official searches.⁸⁰ This is one example of moves toward delegating greater financial powers to LAs.
- 4.45 There are also legislative complexities as the duty to allow free access to some unrefined property information is enshrined in a number of pieces of primary legislation. This would be less of a concern if the Government were to make all unrefined information free, which would require change to a single piece of secondary legislation.⁸¹
- 4.46 The second, alternative approach would be to let LAs set their own prices for unrefined property information. If LAs were allowed to charge prices for unrefined property information that covered their costs, they should face less of an incentive to restrict its availability. This does however require that every LA that provides unrefined property information knows what its costs are. At present, only 29 percent of LAs say that they record these costs separately in their accounts,⁸² which implies that most LAs will have to set up an accounting system to determine their costs.
- 4.47 It would be necessary to provide LAs with very clear guidance about which costs may be covered, for example, just the marginal cost of making the information available, or some contribution to the costs of collecting and

⁸⁰ The Department for Constitutional Affairs also prepared draft guidance on fee setting for the LLCR on behalf of the Lord Chancellor. See Annexe E, *Legal framework in England and Wales*, paragraphs 1.18 to 1.21 for more details.

⁸¹ Local Authorities (Charges for Land Searches) Regulations 1994.

⁸² Annexe D, *Survey of local authorities*, paragraph 6.12. Although these LAs record their costs, they may not break the costs down in a way that would enable them to calculate cost based prices. Therefore, even these LAs may face an additional cost to set up new accounting systems.

recording the information. There would also be a need for monitoring, as LAs may have an incentive to inflate their estimates of the marginal cost of making unrefined property information available, in order to increase their revenues.

- 4.48 Finally, enabling LAs to charge for all unrefined information would require changes to those pieces of primary legislation that place a duty on LAs to make unrefined property information freely available on public registers.
- 4.49 We consider that the first of the two options, in which central government sets a uniform price, is likely to be the most effective and light touch solution, particularly if prices are set at zero. As there are complex cost and legislative implications, and wider issues such as citizens' rights to access information, we are not recommending which of these options the Government should take. However, we consider that action along the lines of one of these options is necessary to ensure that competition in compiling is not distorted.
- 4.50 At a minimum, in making information open to all, the Government should take action to ensure that there is consistency between LAs in how they set the price of unrefined property information to reduce the current confusion and remove one source of possible discrimination against individuals and PSCs.
- 4.51 It is also important to be clearer about how LAs should set the price of their compiled local property searches. The price of LA compiled local property searches should reflect the sum of the prices of the unrefined property information they contain, plus the additional cost of compiling. LAs should get broadly the same contribution to the costs of collecting, recording and providing access to unrefined property information from either selling a local property search that they have compiled, or selling the equivalent quantity of unrefined property information to a competing compiler. This should mean that LAs are indifferent between providing the unrefined property information to PSCs, or undertaking the compiling themselves.
- 4.52 LAs should also not be able to engage in a margin squeeze, by effectively charging themselves a lower internal price for unrefined property information than they charge to PSCs, which would then enable them to charge lower prices for their own compiled local property searches.

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.

Turnaround times

- 4.53 The second important aspect of the availability of unrefined property information is turnaround times. Local property searches are time critical: they become out of date, and time is often limited in property transactions, so searches need to be supplied within a short timeframe. In our survey of conveyancers, 68 per cent ranked speed as the most or second most important factor in deciding which route to use to obtain a local property search.⁸³
- 4.54 Therefore, in order to be non-discriminatory, LAs should meet the same turnaround times for PSCs as they aim to do internally. Currently, in England the Audit Commission assesses how LAs perform against a set of 'Best Value Performance Indicators' (BVPI). For local property searches the relevant BVPI is that LAs should complete requests for 'standard' local property searches within 10 working days.⁸⁴ A similar framework is in place for LAs in Wales.
- 4.55 It should be quicker to make unrefined property information available than put together a compiled search, so unrefined property information should therefore be provided within a shorter timeframe. For example, we consider that appointments should be available for individuals and PSCs to collect information or view registers well within the 10 working days, even if records are not available electronically. To avoid discrimination, this should happen on the same timescale as LAs offer themselves for their own compiling activities.

⁸³ Annexe B, *Survey of conveyancers*, Figure 4.9.

⁸⁴ BVPI179: Searches carried out within 10 working days. Performance against this standard may be assessed as part of an Audit Commission review of the LA's planning department. A 'standard' search is a search of the LLCR or a Con29 part 1. It does not include Con29 part 2.

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 property searches. The Welsh Assembly should include a similar target in the framework for LAs in Wales.

Competition Act 1998

- 4.56 The Competition Act 1998 (CA98) can, in some circumstances, apply to public bodies when they are engaged in an economic activity. The OFT has investigated the behaviour of undertakings involved in the supply of property searches using its powers under CA98, and received a number of complaints in recent years.⁸⁵ The recommendations made in this report, if implemented, should address the main competition concerns in this market. Until LAs and other bodies have had time to implement our recommendations, we think it is unlikely that further action under CA98 will be an appropriate use of resources.
- 4.57 However, the introduction of the HIP has serious implications for competition in compiling. If, after 2007, the actions of LAs and other bodies providing property search information continue to raise competition concerns, enforcement action under CA98 may be necessary to address those problems. It would make much more sense to get the framework for the market right through the implementation of our recommendations.

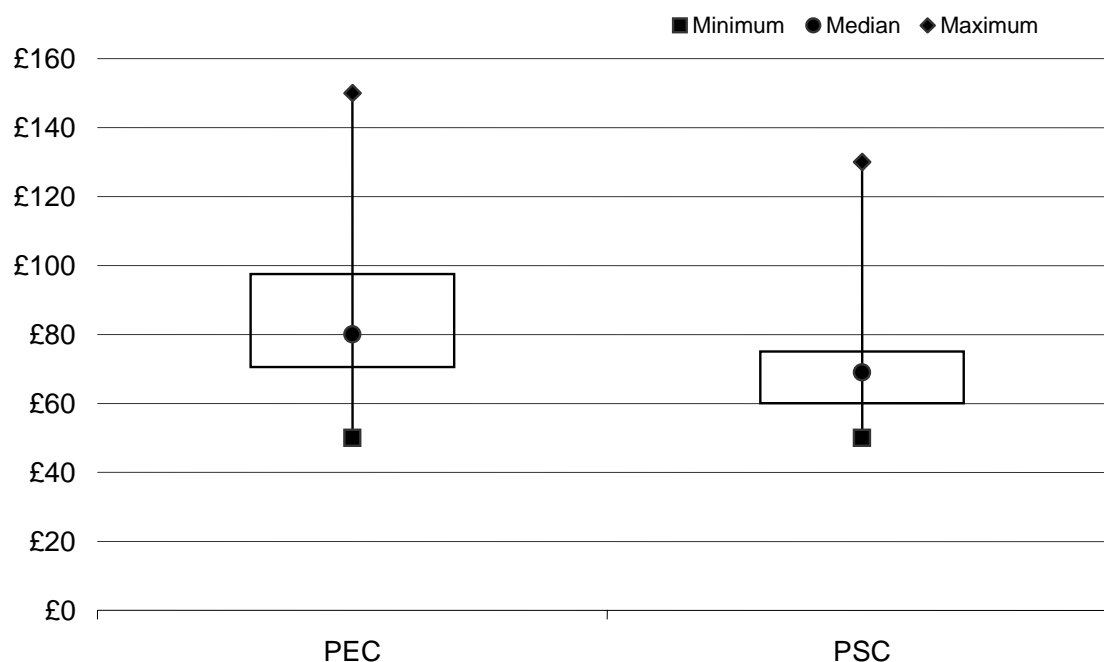
⁸⁵ See TM Property Services Limited's complaint against MacDonald Dettwiler (Hub) Limited and MacDonald Dettwiler (Channel) Ltd (trading as Transaction Online) No. CA 98/07/2004 www.of.gov.uk/business/competition+act/decisions/tm+property.htm and Online property search companies not anti-competitive No CA 130/04 www.of.gov.uk/news/press+releases/2004/130-04.htm

Scotland

- 4.58 As set out in Chapter 3, the structure of supply in Scotland is similar but not identical to that in England and Wales. LAs in Scotland also have a monopoly over some types of unrefined property information, but by statute most of the unrefined property information must be available for public inspection.⁸⁶ The access is provided free of charge, with costs being met by general funds. This means that local property searches compiled by PSCs do not have the problems with omitted information found in England and Wales, and are thus able to compete more effectively with LA compiled local property searches.
- 4.59 Prices for local property searches in Scotland appear on average lower than in England and Wales, although direct comparisons are not possible as the products differ and unrefined property information is available for free. It should also be noted that although on average PSCs charge lower prices, in some areas the LA compiled local property searches are actually cheaper. Figure 4.2 illustrates the range of prices found in Scotland.

⁸⁶ See Annexe F, *Legal framework in Scotland* for more details.

Figure 4.2: Prices for property searches in Scotland



Source: OFT data collected from Scottish LAs, 2005, OFT analysis

4.60 Because PSCs have better access to unrefined information in Scotland, in principle they should be better able to compete with LA compiled local property searches than is the case in England and Wales. There is some evidence to support this. For example, PSCs appear to have a higher overall market share in Scotland. When we carried out a mystery shopping exercise of conveyancers, 77 per cent of Scottish conveyancers said that they sourced their property searches from PSCs, compared with 38 per cent of conveyancers in England and Wales.⁸⁷

4.61 Overall, the situation in Scotland does not give rise to the same concerns as in England and Wales. We are therefore not making any recommendations to Scotland regarding the provision of unrefined property information or LA compiled local property searches.

⁸⁷ Annexe C, *Mystery shopping exercise*, Figure 6.20.

5 RETAILING PROPERTY SEARCHES

Summary

- 5.1 Compiled property searches can be bought by property search buyers either directly from the compiler or from a retailer. We refer to this stage in the supply of property searches as retailing, and to bodies that sell searches to consumer and conveyancers.
- 5.2 Competition between retailers can create benefits for consumers by providing them with a choice of where they source a property search. For example, they could choose to order direct from the compilers or take advantage of additional services offered by some retailers, such as acting as a one stop shop for different property searches.⁸⁸ Compilers may also benefit if competition between retailers drives down distribution costs and the availability of retailers reduces the number of points of contact that they have with consumers.
- 5.3 No particular competition concerns have arisen from the way in which local property searches are currently supplied by retailers in England, Wales and Scotland. There are generally three routes to buy a local property search: through a direct request to the relevant LA; electronically via NLIS (in England and Wales);⁸⁹ or from a PSC. These routes compete by offering different services and prices.
- 5.4 However, we have identified two potential problems relating to the future supply of electronic LA compiled local property searches in England and Wales.

⁸⁸ For example, TM Property Services list over 50 potential searches, ranging from coal mining reports to chancel repairs searches (which determines if a property is liable for its parish church repairs). A full list of the searches offered can be found at www.tmproperty.co.uk

⁸⁹ NLIS is a public-private partnership with the Local Government Information House (LGIH) as the public partner. Throughout this chapter we will refer to LGIH but we recognise that the role of public partner will shortly pass to a new body, the Council for National Land and Information Services (C-NLIS). Further information on the structure and operation of NLIS can be found in Annexe G, *National Land Information Service*.

- 5.5 First, the contractual arrangements contain a number of exclusivity provisions, which in effect make the NLIS hub the sole conduit for electronic LA compiled local property searches. This position may provide the hub with significant market power, if the competitive constraints placed on NLIS by the other retailers are reduced. This is likely if the share of retailing through the direct and PSC routes declines as LAs move towards electronic provision and the role of PSCs changes with the introduction of the HIP.⁹⁰

Therefore we recommend that 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.

- 5.6 Second, the contracts limited to four the number of channels sourcing information from the hub prior to October 2004 but allowed for more licences beyond the four to be issued after this date.⁹¹ Only three of the four original licences have actually been taken up, although we have been told that there is demand for more channel licences.⁹² This constraint on the number of channels may unnecessarily limit competition.

We recommend that LGIH re-tender the fourth channel licence as soon as is practicable, and explore the possibility of issuing additional channel licences prior to the expiry of the current licences.

In future LGIH should remove the limits on the number of hub and channel licences, and should seek to set objective criteria for all

⁹⁰ See Chapter 4 paragraphs 4.24 to 4.25 and Box 4.1 for more detail about the implications of the HIP.

⁹¹ Under certain circumstances or by agreement between LGIH and the existing channels. For a description of these circumstances see Annexe G, *National Land Information Service*, paragraph 1.19.

⁹² This view was expressed by LGIH, MacDonald Dettwiler (Hub) Limited, and Searchflow.

potential licensees to ensure adequate consumer protection, without otherwise limiting the number of licences awarded.

5.7 The rest of this chapter first describes the structure of retailing of property searches, before discussing competition in the retailing of electronic local property searches.

Supply of property searches

5.8 The structure of retailing in Scotland is different from that in England and Wales. In particular, there are no restrictions on how Scottish LAs distribute electronic local property searches. Box 5.1 briefly describes the situation in Scotland. The rest of this chapter focuses on England and Wales.

Box 5.1: Retailing property searches in Scotland

In Scotland only two routes exist for conveyancers to obtain property searches:

- Direct from LAs (by post or electronically); or
- From PSCs.

There is no central electronic hub similar to NLIS in England and Wales. There is a scheme called ScotLIS in operation in the Glasgow City area.⁹³ However, ScotLIS is unlikely to create any competition issues, as it acts as a directory, providing links to other property search providers, rather than retailing property searches. There are no other restrictions on how Scottish LAs distribute electronic local property searches.

Therefore we have no concerns regarding the retailing of property searches in Scotland, and make no recommendations on this topic to Scottish bodies.

5.9 In England and Wales there are three ways of buying local property searches:

- direct requests to LAs (usually by post)

⁹³ Available at www.scotlis.com.

- electronically via NLIS, or
- from a PSC.

Each of these routes is briefly described below.

Direct requests to LAs

- 5.10 Many property search buyers request local property searches directly from LAs by post, sending the LA an application form together with a payment for the compiled search and postage costs. This is the traditional method of commissioning local property searches and remains the most popular, although its use has fallen over recent years to an estimated 42 per cent of local property searches for the year to May 2005.⁹⁴
- 5.11 The price of a postal local property search varies between LAs, from £55 to £269.⁹⁵ LAs generally respond to postal requests within seven to 11 days.⁹⁶ Some offer an expedited service and others may respond more quickly to enquiries by phone or fax.⁹⁷

National Land Information Service

- 5.12 Alternatively, property search buyers may request an LA compiled local property search through NLIS. NLIS is a public-private partnership launched nationally in 2001 that enables online commissioning of property searches

⁹⁴ Annexe C, *Mystery shopping exercise*, Figure 4.5. This is corroborated by estimates provided by stakeholders and the proportion of conveyancers using each search method in our survey of conveyancers, Annexe B.

⁹⁵ Data from MDA TransAction Online, May 2005.

⁹⁶ This includes the OFT estimate of two to six days postage (both to the LA and for the response) and 5 working days for compiling, the average time stated in Annexe D, *Survey of local authorities* Table 3.2.

⁹⁷ Some LAs offer this service, for example the City of Lincoln council offer to fax responses in urgent cases at no extra cost www.lincoln.gov.uk

compiled by LAs and other bodies.⁹⁸ Since its national launch NLIS has grown rapidly, and for the year to May 2005 it supplied an estimated 20 per cent of local property searches.⁹⁹

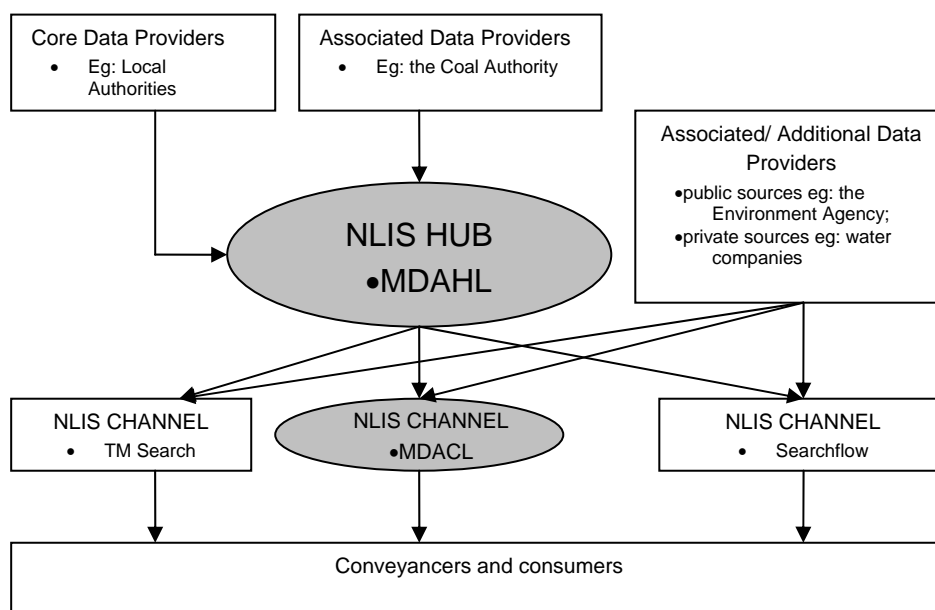
- 5.13 NLIS is a gateway that acts as an interface between conveyancers and information holders, such as LAs and HM Land Registry. It consists of three channels and a hub. The channels act as the client interface, receiving requests from conveyancers, passing the completed property search to the conveyancer, and receiving payments, all online. The hub provides a centralised point of contact between the channels and compilers of property information, including LAs. It passes on requests to the compilers, passes the completed property searches back to the relevant channel, and processes the payments. NLIS collects searches from all LAs.
- 5.14 The hub and the three channels are all private companies using the NLIS brand under licence from the public partner, LGIH.¹⁰⁰ The structure of NLIS is set out in Figure 5.1 below.

⁹⁸ Currently NLIS data sources are separated into core data providers, including LAs and HM Land Registry, 'associated data providers', including the Coal Authority, and 'additional data providers', which include some public and private data sources.

⁹⁹ Annexe C, *Mystery shopping exercise*, Figure 4.5. This is corroborated by estimates provided by stakeholders and the proportion of conveyancers using each search method in our survey of conveyancers, Annexe B.

¹⁰⁰ One of the channels is vertically integrated with the hub, indicated in Figure 5.1 by shading. This arrangement was the subject of an OFT investigation under CA98, which however found that MacDonald Dettwiler (Hub) Limited and MacDonald Dettwiler (Channel) Ltd (trading as Transaction Online) had not infringed CA98. (See CA 98/07/2004 www.offt.gov.uk/business/competition+act/decisions/tm+property.htm) Details of the steps taken to prevent abuse by the vertically integrated hub and channel are provided in Annexe G, *National Land Information Service*, paragraph 1.8.

Figure 5.1: NLIS supply structure



Source: Office of Fair Trading

5.15 The price for an NLIS search varies depending on the channel that is used by the property search buyer. Turnaround time depends on the efficiency of the compiler's property information system. This may mean that for LAs that are able to receive and respond to requests electronically turnaround time is reduced to the processing time, which is on average five working days. As at Spring 2005, 37 per cent of LAs had reached this stage.¹⁰¹ Over half of LAs offer the hub a discount on the retail price of their compiled local property searches.¹⁰²

¹⁰¹ Data from LGIH, 15 August 2005.

¹⁰² Based on data provided by MDA TransAction Online, relating to the price of LA compiled local property searches for residential properties.

Property search companies

- 5.16 PSCs have provided an alternative to LA compiled requests for over two decades. They compile and sell their own property searches, sell property searches from alternative compilers and act as one stop shops for consumers and conveyancers. Many PSCs accept telephone requests as well as postal applications, and some provide an electronic service.
- 5.17 Since the late 1990s the volume of local property searches undertaken by PSCs has grown rapidly, from around five per cent in the late 1990s¹⁰³ to an estimated 40 per cent of all local property searches for the year to May 2005.¹⁰⁴ PSCs can supply local property searches more quickly than LAs in some cases, and conveyancers rate PSCs more highly on price than LAs.¹⁰⁵

Competition between retailers

- 5.18 To understand how competition currently operates between the retailers or local property searches we asked conveyancers in England and Wales what factors they take into account when deciding which route to use to source a local property search.¹⁰⁶ Seventy three per cent rated the reliability of information as the most or second most important factor in deciding which route to choose. Speed was rated most or second most important by 68 per cent, and price by 22 per cent.¹⁰⁷
- 5.19 We also asked conveyancers to rank the services they receive from the different routes against these three criteria. NLIS and postal requests both

¹⁰³ CoPSO, *Submission to the OFT in connection with its inquiry into the market for the supply of property search services*, 11 April 2005.

¹⁰⁴ Annexe C, *Mystery shopping exercise*, Figure 4.5. This is corroborated by estimates provided by stakeholders and the proportion of conveyancers using each search method in our survey of conveyancers, Annexe B.

¹⁰⁵ Annexe B, *Survey of conveyancers*, Table 1.1.

¹⁰⁶ While consumers engaged in property transactions are the ultimate end user of the property searches, most consumers leave it to their conveyancer to commission the necessary searches. See Chapter 6.

¹⁰⁷ Annexe B, *Survey of conveyancers*, Table 4.9.

outscore PSCs on reliability of information, but PSCs are ranked highest for speed and price.¹⁰⁸

- 5.20 Given the situation described above and the relative market shares of the different routes, we have identified no particular competition concerns from the way in which local property searches are currently being supplied by retailers in England and Wales. The next section outlines potential problems which could occur in the future retailing of electronic local property searches.

Concerns regarding future retailing of electronic local property searches

- 5.21 Changes in demand for postal requests and the ability of PSCs to compile local property searches are likely to reduce the current level of competitive constraint on NLIS in the future. LAs are also moving towards providing more services electronically as part of the Government's modernisation agenda, described in Box 5.2. Once all LAs are fully modernised the availability of postal searches may be reduced, as LAs will then be likely to have little incentive to provide the more costly postal searches.

Box 5.2: Modernisation agenda

¹⁰⁸ Annexe B, *Survey of conveyancers*, Table 1.1.

The Government's modernisation agenda was set out in the Cabinet Office paper *Modernising Government*.¹⁰⁹ It has three main aims:

- ensuring that policy making is more joined up and strategic
- making sure that public service users, not providers, are the focus, by matching services more closely to people's lives, and
- delivering public services that are high quality and efficient.

Central and local government have adopted the target of making all services available electronically by December 2005, although this target currently seems unlikely to be reached. This does not mean that all services should be provided on the web to the exclusion of other ways of delivering them, but that internet technologies should be used to make services available in people's homes, on websites, over the telephone and at council offices and one stop shops in ways that are convenient and helpful to users.

The success of modernisation will be measured both nationally and locally by:

- the availability of electronic services
- their take up, and
- the value for money provided by local e-government.¹¹⁰

5.22 In 2007 the introduction of the HIP will require certain information to be provided by the property seller. As PSCs do not have access to all of the necessary information, the HIP could potentially eliminate private sector competition in the compiling of local property searches, as discussed in Chapter 4. PSCs could still sell local searches compiled by LAs. However, if they cannot access these electronically due to exclusivity provisions (see paragraphs 5.28 to 5.36) PSCs are unlikely to be able to compete with the NLIS channels in the retail of local property searches.

5.23 Finally, the discounts that some LAs offer to NLIS may also encourage take up of this route for sourcing local property searches (see paragraph 5.15). These discounts may reflect cost savings to LAs from dealing with the NLIS hub. For example, LAs may make efficiency savings on payment processing

¹⁰⁹ *Modernising Government*, Cabinet Office, March 1999.

¹¹⁰ *The National Strategy for Local e-Government*, Office of the Deputy Prime Minister, available at www.localgov.gov.uk

by having a single account with NLIS instead of multiple payments from property search buyers. As discussed in Chapter 4, we consider that in principle the price of LA compiled local property searches should be transparent and cost reflective, and this should also apply to discounts offered to retailers. These discounts may increase the use of NLIS by conveyancers and individual consumers.

5.24 These potential changes in the market mean that two aspects of the operational structure of NLIS may cause competition concerns in the future. These are:

- exclusivity provisions that effectively make the NLIS hub the sole source of LA compiled electronic local property searches, and
- the number of licences, for both hub and channels, issued by LGIH is currently limited.

5.25 LGIH told us that initially both these restrictions were created to provide incentives for the hub and channels to invest in the NLIS infrastructure, given the uncertainty then existing over the likely value of supplying electronic property searches. The total set up cost was estimated, by LGIH, to be of the order of £20million.¹¹¹

5.26 With an estimated 20 per cent of the supply of local property searches in the year to 2005,¹¹² NLIS appears to have become well established and there is a single electronic connection standard for LAs. By the end of the licence periods in 2008 and 2009, the investment in the infrastructure will be

¹¹¹ LGIH, 24 February 2005.

¹¹² Annexe C, *Mystery shopping exercise*, Figure 4.5. This is corroborated by estimates provided by stakeholders and the proportion of conveyancers using each search method in our survey of conveyancers, Annexe B.

completed and the hub and channels will have enjoyed a considerable protected period to recoup their investment.

- 5.27 The following two sections describe the issues in more detail, and set out recommendations aimed at addressing the potential for future competition concerns.

Exclusivity provisions

- 5.28 Exclusivity provisions in the contractual arrangements governing the operation of NLIS mean that the hub is effectively the sole conduit for electronic LA compiled local property searches in England and Wales.¹¹³ The two areas of exclusivity are summarised below.
- 5.29 First, provisions in the licence agreement between LAs and LGIH restrict LAs to using only the NLIS hub to disseminate electronic searches. Although only around one in four LAs have signed this licence agreement,¹¹⁴ some still appear to believe that they are bound to deal only with the NLIS hub.
- 5.30 We also understand, from our discussions with LAs, that they may be reluctant to establish non-NLIS electronic connections due to concerns about the security of their information and the collection of payments. We are aware of only one LA that provides its electronic local property searches directly to consumers and conveyancers.
- 5.31 Second, the NLIS channels are only allowed to obtain local property searches from the hub. They cannot, for instance, electronically connect to the individual LAs to request searches directly and bypass the hub. This contract provision gives the hub a degree of power over the channels. The OFT has investigated one allegation of abuse by the hub of this position, and found no infringement of CA98.¹¹⁵

¹¹³ See Annexe G, *National Land Information Service* for more details.

¹¹⁴ LGIH, 21 June 2005.

¹¹⁵ See TM Property Services Limited's complaint against MacDonald Dettwiler (Hub) Limited and MacDonald Dettwiler (Channel) Ltd (trading as Transaction Online) No. CA 98/07/2004 www.of.gov.uk/business/competition+act/decisions/tm+property.htm

- 5.32 Taken together, these exclusivity provisions and the concerns expressed to us by LAs mean that the hub is effectively the sole source of electronic LA compiled local property searches. If the introduction of the HIP prevents PSCs from compiling and supplying their own searches using LAs' unrefined information, then the NLIS hub will have a monopoly over the supply of electronic local property searches. This could reduce incentives for cost efficiency and innovation, reduce choice and possibly increase prices for consumers in the future.
- 5.33 The potential pricing concerns raised by the hub's position could be addressed through tight price controls on the hub. We do not believe that the existing controls could achieve this. The hub is subject to some contractual constraints on its behaviour, relating to the rate of return on capital it can earn and therefore the price it can charge the channels. However, LGIH has no statutory powers over the hub and can only enforce the contract by taking the hub controller to court.¹¹⁶
- 5.34 To be effective, the existing controls would require significantly increased powers for LGIH, which seems disproportionate and would not provide the same dynamic incentives as a solution allowing more competition. A lighter touch approach would be to remove the exclusivity provisions, which no longer appear justified. This would allow competition from channels and other retailers electronically connecting directly with LAs.
- 5.35 Following discussion of our preliminary findings, LGIH have agreed to write to the LAs to tell them that they are not bound by the exclusivity provisions restricting them, irrespective of whether they signed the agreement or not.¹¹⁷ We welcome this action, but consider that further action is also required.

We recommend that 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

¹¹⁶ In 2003 High Court litigation resulted in an out of court settlement that prescribed the fee level until the end of 2005. From 2006, fees will be set by agreement between the hub and LGIH.

¹¹⁷ This letter will in effect release those LAs that had signed the contract with LGIH from this clause and remind the other LAs that they had not signed this clause.

objective criteria that are necessary to enable new electronic connections to be established, without unnecessarily limiting competition.

- 5.36 To ensure that the greatest benefit arises from the freedom to set up alternative electronic connections to the hub, LAs need support and encouragement to allow channels and other retailers to electronically connect to their systems. LGIH would be best placed to achieve this, and should continue to promote electronic provision. For example, LGIH should ensure that LAs are aware of the options available to them in establishing non-NLIS electronic connections, and discuss ways of addressing any concerns, such as the security of payments and information. LGIH should also consider the possibility of licensing the NLIS software without the NLIS brand to reduce the cost and time associated with developing such software while also allowing LAs to benefit from the efficiencies of using a common standard.

Limits on the number of NLIS licences

- 5.37 Removing the restrictions on the number of licences would allow further competition between retailers, although we acknowledge that allowing alternative electronic connections to LAs would go a long way to address our concerns. The removal of the limit on the number of channels, for example, would allow other retailers to take up channel licences while new electronic connections are being established. This process may take some time while negotiations occur with LAs.
- 5.38 In establishing NLIS, LGIH tendered four channel licences and one hub licence. However, in the event only three channel licences were taken up and the fourth licence was not pursued.
- 5.39 Constraints on the awarding of licences are contained within the contracts surrounding the establishment of NLIS. The relevant provisions say that:

- subject to limited exceptions¹¹⁸ LGIH cannot award any additional hub licences without the consent of the hub licensee, until the hub licence is re-tendered in anticipation of the expiry or termination of the existing hub's licence,¹¹⁹ and

- additional channel licences (beyond the four originally proposed) cannot be awarded without the written consent of the existing channel licensees before October 2004. However, LGIH can award more than four licences at any time if LGIH consider there to be a market for the channel service that has not been satisfied by the existing channels, despite the channels having had a reasonable opportunity to do so. Alternatively, additional licences may be awarded as part of a re-tendering in anticipation of all existing channel licences being terminated.

5.40 This effectively restricts the number of licences until at least 2008, unless the existing channels agree to allow additional licences to be awarded. However, there appears to be little reason why LGIH should not re-tender the fourth channel licence before then, and we believe that there is demand for additional channel licences.¹²⁰

¹¹⁸ A full list of exceptions can be seen in Annexe G, *National Land Information Service*, paragraph 1.19.

¹¹⁹ Currently set to expire in 2008, but could be extended by LGIH at its option up to 2011, in yearly extensions.

¹²⁰ This view was expressed by LGIH, MacDonald Dettwiler (Hub) Limited, and Searchflow.

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

- 5.41 Once the existing contracts have expired there appears to be little rationale in placing any limit on the number of channel and hub licences. LGIH should not place restrictions on the number of hubs and channels, but allow this to be determined by the market. For example, to assign future channel and hub licences, LGIH could simply set objective standards of security and service that prospective licensees should reach, and sell licences to all of the bidders that meet the standards. This would allow other retailers access to LA compiled searches without necessarily establishing direct electronic connections to the LAs.

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

6 INFORMATION AND REDRESS

Summary

- 6.1 This chapter focuses on information and redress for people who pay for and use property searches in England, Wales and Scotland. In particular, we consider people's lack of awareness about property searches, the potential and actual problems arising from property searches, and the redress available if things go wrong. As many people rely on their conveyancer to commission and assess the relevant property searches we also look at the role of conveyancers.
- 6.2 People engaged in property transactions lack knowledge about the purpose, content and sources of property searches. This means that they cannot make an informed decision about the choice of property search supplier, and do not act as an effective constraint on the behaviour of suppliers of property searches. It could also potentially leave them exposed to unexpected problems with the property.
- 6.3 The introduction of the HIP in England and Wales and the Property Information Pack (PIP) in Scotland offer an opportunity to inform consumers about property searches.

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.

- 6.4 Only a small number of the people we surveyed had encountered problems with property searches. However, when problems do occur they can affect the value of the property, cause delay or give rise to additional costs.
- 6.5 The level of protection offered to those buying and using property searches varies across England, Wales and Scotland, and by search provider. Ideally consumers should be made aware of the different property search options, and should know how to go about pursuing redress when problems occur.

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 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.

- 6.6 We also support current proposals that suppliers of property searches included in the HIP be required to provide redress to consumers if they suffer loss as the result of errors or omissions in the property searches.¹²¹
- 6.7 This chapter is structured as follows. It first looks at the consumers of property searches, and considers the role played by conveyancers. It then presents evidence on consumers' lack of knowledge about property searches, before looking at the problems that they can experience with property searches. Finally, it discusses the redress offered to consumers.

Who is the consumer?

- 6.8 The property buyer is the consumer of property searches, relying on them to uncover information about any issues that may affect the value of the property, or affect their desire to live in it.¹²² There may also be one or two other parties involved in sourcing and paying for the property searches.
- 6.9 Property searches may be paid for by either the property buyer or seller. In England and Wales currently the property buyer pays for the property searches. In Scotland, the property seller pays, and this will also become the case in England and Wales in 2007 with the introduction of the HIP.
- 6.10 Currently, many consumers engaged in property transactions rely on their conveyancer to commission the necessary property searches on their behalf, and assess the information that the searches contain.¹²³

¹²¹ See: www.odpm.gov.uk/stellent/groups/odpm_housing/documents/divisionhomepage/033116.hcsp

¹²² Banks or building societies offering mortgages (lenders) also instruct conveyancers to carry out property searches, the result of which may influence the lender's decision to lend on a property.

¹²³ After the HIP is introduced consumers may also choose to rely on others, such as estate agents, to commission the relevant property searches.

The role of the conveyancer

6.11 In most cases the conveyancer sources and commissions property searches on behalf of the property buyer or seller. Nearly 90 per cent of people in England and Wales and around 80 per cent in Scotland, who were aware that they had bought a property search, did so through a conveyancer.¹²⁴

6.12 In all three countries, the role of the conveyancer is to ensure that their client receives a product that meets their needs as well as the needs of their mortgage lender, who have their own requirements about property searches. The conveyancer usually decides which property searches to commission and which supplier to use, assesses the information contained in the property searches and pursues any areas of concern.

6.13 There are two types of conveyancers: solicitors and licensed conveyancers.¹²⁵ Unless specified, we use the term conveyancers throughout this report to refer to both types of conveyancers. All conveyancers are advised to follow best practice guidelines as set out by the Law Society in their country or the Council for Licensed Conveyancers when commissioning property searches, and should also follow guidelines about property searches set out by the mortgage lender, if applicable.¹²⁶

¹²⁴ Annexe A, *Survey of consumers*, Table 4.4.

¹²⁵ A solicitor receives a broad legal training, which includes land and property law, while a licensed conveyancer is a specialist who concentrates solely on dealing with property.

¹²⁶ Instructions of individual mortgage lenders can be found in the *Handbook for England and Wales*, Council of Mortgage Lenders, Part 2, and the *Handbook for Scotland*, Council of Mortgage Lenders, Part 2.

- 6.14 Solicitors in England and Wales follow guidelines set out in the Law Society's Conveyancing Handbook.¹²⁷ These guidelines stipulate which property searches should be undertaken in every transaction,¹²⁸ as well as optional additional searches that may be dictated by the location of the property and the requirements of the client and their mortgage lender. The guidelines also specify that if a personal search is undertaken, for example by a PSC or the conveyancer, clients should be told and advised of the limitations of the search and possible implications.¹²⁹
- 6.15 Solicitors in Scotland follow a code of practice set out by the Law Society of Scotland. This lays out principles that solicitors should follow, including avoiding conflicts of interest and providing a professional level of service.¹³⁰
- 6.16 Licensed conveyancers follow guidance provided by the Council for Licensed Conveyancers.¹³¹ This is not specific to property searches but covers general rules of conduct, such as rules for obtaining instructions, handling business and disclosing commission payments. We have been told by conveyancing organisations that in practice licensed conveyancers also refer to the Law Society's Conveyancing Handbook.¹³²

¹²⁷ *Conveyancing Handbook* 2004 11th Edition, Law Society of England and Wales.

¹²⁸ Search of the LLCR, enquiries of the LA and, if appropriate, additional enquiries, standard drainage and water enquiries, pre-contract enquiries of the seller. Ibid page 206.

¹²⁹ Ibid page 209.

¹³⁰ *Code of Conduct: Code of Conduct for Scottish Solicitors and Code of Conduct for Criminal Work*, Law Society of Scotland, June 2002.

¹³¹ *Guide to Professional Conduct, Rules of Conduct, Practice and Discipline* 1999, Council for Licensed Conveyancers.

¹³² Direct Conveyancing Association, 21 May 2005.

Lack of consumer awareness

- 6.17 People engaged in property transactions are uninformed about property searches. They may not be aware that a property search has been carried out, how it was sourced, what it cost and what it covered.
- 6.18 In England and Wales one in five property buyers was unaware that a property search had been bought on their behalf. In Scotland, where the property seller pays for the property searches, awareness was even lower. Half of the property sellers we asked did not know that a property search had been bought on their behalf.¹³³
- 6.19 One possible reason for this is that, as conveyancers act as an expert advisor for consumers, many consumers may prefer to leave it to their conveyancer to commission the relevant property searches.
- 6.20 There is a lack of awareness among consumers engaged in property transactions about the different sources of property searches. Of those who relied on their conveyancer to commission the property search in England and Wales, two thirds had not been told that searches could be bought from the LA or a PSC.¹³⁴ Almost nine out of 10 conveyancers that we surveyed said that they themselves decide which search method should be used, rather than asking the client which method they would prefer.¹³⁵
- 6.21 Awareness of the cost of property searches is also limited. Our conveyancer mystery shopping exercise showed that, when responding to enquiries prior to

¹³³ Annexe A, *Survey of consumers*, Table 4.2.

¹³⁴ Ibid Table 4.6.

¹³⁵ *Annexe B, Survey of conveyancers*, Figures 4.8 and 9.36.

instruction, conveyancers were generally good at providing details about property searches, such as the cost and the source of the search. For example, two thirds of conveyancers told researchers the price of local property searches.¹³⁶ Over 90 per cent of firms contacted in England and Wales and over 80 per cent of firms contacted in Scotland specified the source of the local property search after prompting.¹³⁷

- 6.22 However, once they have been instructed, conveyancers do not always inform their client about the search method they finally use or the price of these searches. In our consumer survey, around a fifth of buyers in England and Wales and sellers in Scotland said that they were not told, or could not remember being told, the exact price before the search was undertaken.¹³⁸ Around 30 per cent of property buyers in England and Wales and around 40 per cent of property sellers in Scotland did not know the source of the property searches commissioned on their behalf.¹³⁹
- 6.23 Finally, those who have bought property searches also seem to have a limited understanding of the content and purpose of property searches. In our consumer survey, we asked about problems arising from property searches. Respondents specified issues that are not covered by these searches, such

¹³⁶ Annexe C, *Mystery shopping exercise*, Figure 4.3

¹³⁷ Annexe C, *Mystery shopping exercise*, 4.9, 5.17 and Figure 6.20.

¹³⁸ Annexe A, *Survey of consumers*, Table 4.11.

¹³⁹ *Ibid* Table 4.8.

as damp walls, suggesting confusion about the content of property searches.¹⁴⁰

- 6.24 Overall, this lack of awareness about property searches means that consumers engaged in property transactions are less likely to shop around effectively, or act as a constraint on the behaviour of property search suppliers. In principle, greater awareness among consumers is important so that they can take informed decisions, with some understanding of the risks being taken on their behalf, and can check that conveyancers are acting in line with their wishes. Uninformed consumers are less likely to be sensitive to either the price or the quality of the property searches they are buying. Low awareness may also set the scene for problems to arise from property searches, some of which are discussed in the next section.
- 6.25 The introduction of the HIP¹⁴¹ in England and Wales, and potentially also the PIP¹⁴² in Scotland, offer a good opportunity to inform consumers about the purpose and content of property searches, and to raise awareness about how property searches can be obtained.

We therefore recommend that a consumer information campaign on different property search options be included as one element in the launch of the HIP, and the PIP in Scotland if introduced.

- 6.26 If the PIP is not introduced, the Scottish Executive should consider mounting an information campaign to inform consumers about the different property search options.
- 6.27 The information campaigns could explain the purpose of property searches, the information that they provide, and make clear that property searches are available from a number of different sources which offer different products.

Problems arising from property searches

¹⁴⁰ Ibid Table 4.13.

¹⁴¹ See Chapter 4 for details on the HIP.

¹⁴² Legislation to introduce the PIP in Scotland has not yet been passed.

6.28 Our research shows that only a very small number of property buyers encounter problems with their property search, suggesting that there are few problems or that problems come to light infrequently. A small minority of consumers found errors or experienced problems in their local property search.¹⁴³ However, not all of these led to adverse consequences.

6.29 When problems occur they can affect the value of the property, cause delay to the transaction or give rise to additional costs. The potential source of problems that can arise for consumers include:

- relevant searches not being commissioned
- conflicts of interest between conveyancers and their clients, and
- errors and omissions on property searches which have been commissioned.

6.30 The level of redress available to consumers of property searches varies according to the country and source of the property search.

Searches not being commissioned

6.31 As set out in Chapter 3, some property searches should be carried out for all property transactions, such as local property searches, while other property searches will only be appropriate for some properties, such as tin mining searches. Consumers often rely on their conveyancer to judge which property searches are necessary. A failure on the part of a conveyancer to commission all the appropriate property searches can lead to additional costs, delays and even devaluation of the property.

6.32 We found some evidence of such cases, mainly relating to commons registration searches, which reveal whether a piece of land or property is registered as common land and if there are restrictions on its use. For

¹⁴³ Annexe A, *Survey of consumers*, Table 4.12 to 4.14.

example, in one case a consumer was awarded approximately £40,000 when their solicitor, amongst other things, failed to carry out a commons registration search which would have disclosed that a large part of the land was subject to common rights.¹⁴⁴

- 6.33 Our discussions with the Law Society of England and Wales and consumer organisations,¹⁴⁵ and an OFT review of court cases, suggest that failure to carry out relevant property searches does not appear to be a widespread problem.¹⁴⁶ In addition, not all cases of failure to commission lead to negative consequences for the consumer. Where this does occur, however, consumers can sue conveyancers for negligence. Conveyancers must have professional indemnity insurance.
- 6.34 The commons registration search and other property searches that are relevant only for some property transactions will be included in the HIP as authorised searches. The HIP should raise awareness among conveyancers and consumers of these searches and reduce the likelihood that they are overlooked.

Conflicts of interest

- 6.35 Conveyancers may be offered financial incentives by some property search suppliers, for example 'cash back' per search. These incentives could influence conveyancers to choose one source of property searches over another. As the various sources offer slightly different levels of protection for the consumer and have different risks associated with them,¹⁴⁷ the conveyancer's choice may therefore not be in the best interests of their client.

¹⁴⁴ *CP Owen and MC Owen v CH Fielding and JD Griffiths* (1998) EG 110 (CS).

¹⁴⁵ Which?, Citizens Advice, Trading Standards departments.

¹⁴⁶ A search for court cases relating to property searches spanning over 50 years revealed only 16, of which only one third were about conveyancers' failure to conduct the relevant searches.

¹⁴⁷ Searches compiled by LAs and PSCs or carried out by an individual vary in terms of quality and breadth of information, speed, price and financial guarantees in case of errors or omissions.

- 6.36 In our survey of conveyancers, less than five per cent in England and Wales said they had received financial incentives of some type. In Scotland the figure was 21 per cent.¹⁴⁸
- 6.37 However, there are safeguards in place to protect the consumer. Solicitors in England and Wales must disclose commission payments that are over £20, and reimburse it to their client, unless they agree that the solicitor can keep the money.¹⁴⁹ Licensed conveyancers in England and Wales must also disclose commissions to their client in writing but they are not obliged to reimburse them.¹⁵⁰
- 6.38 Guidance for Scottish solicitors states that they must not be influenced by their own personal interests when dealing with clients, must not conceal any profit deriving from their actions on behalf of clients, and must make known to clients the source of any commissions.¹⁵¹

Errors and omissions in searches

- 6.39 Errors and omissions in property searches may occur because:¹⁵²
- PSCs and individuals in England and Wales have limited access to unrefined property search information
 - compilers and retailers may be negligent when putting the information together, or
 - unrefined property search information held by the information holders may be incorrect.

¹⁴⁸ Annexe B, *Survey of conveyancers*, paragraphs 5.15 and 10.13.

¹⁴⁹ *Conveyancing Handbook* 2004 11th edition, Law Society of England and Wales, pages 738-739.

¹⁵⁰ *Guide to Professional Conduct, Rules of Conduct, Practice and Discipline* 1999, Council for Licensed Conveyancers, rule 4.2.

¹⁵¹ *Code of Conduct: Code of Conduct for Scottish Solicitors and Code of Conduct for Criminal Work*, Law Society of Scotland, June 2002.

¹⁵² Based on discussions with LAs, PSCs and conveyancers.

- 6.40 Errors and omissions in searches may only come to light some time after the property transaction has been completed.
- 6.41 In our survey one in 10 consumers who had recently bought a residential property claimed to have found errors or experienced problems with their property search, but of these less than half were errors actually relating to property search information.¹⁵³ For example, consumers cited issues that would be covered in a survey rather than a property search, such as damp walls. This suggests that problems related to property searches are uncommon or rarely come to light.
- 6.42 Similarly, conveyancers reported finding few errors and omissions in property searches in the last year. Error rates among local property searches from LAs and PSCs were between one and two per hundred, and omissions ranged from less than one to around three per hundred searches.¹⁵⁴
- 6.43 In addition, only a quarter of searches with errors actually led to adverse consequences for the buyer, such as delay to the sale or additional costs.¹⁵⁵
- 6.44 The HIP is likely to reduce the level of omissions in searches, as certain information will be required to be included. Any searches required or authorised to be included in the HIP will have to conform to the regulations and must include all the prescribed information.¹⁵⁶

¹⁵³ Annexe A, *Survey of consumers*, Tables 4.12 to 4.14.

¹⁵⁴ Annexe B, *Survey of conveyancers*, Table 1.2.

¹⁵⁵ *Ibid*, paragraphs 6.6, 7.7, 8.8, 11.7 and 12.8.

¹⁵⁶ See:

www.odpm.gov.uk/stellent/groups/odpm_housing/documents/divisionhomepage/033116.hcsp

Redress for consumers

- 6.45 Redress is important for consumers who experience loss or inconvenience due to faulty property searches. However, the level of protection offered varies according to the country in which it is purchased and the supplier of the property search.
- 6.46 Not all retailers of property searches offer financial guarantees, such as professional indemnity insurance, for the information they provide. Consumers may have no access to redress if they find that a property search is faulty and has failed to reveal important information about the property which may impact on its price or cause delays in the sale.
- 6.47 In England and Wales LAs accept responsibility for errors in their compiled reports only if the consumer suffers loss as a result and the LA has been negligent. A third party can benefit from redress covering a search made by someone else.¹⁵⁷ LAs in Scotland do not have a statutory obligation to accept liability for errors in their compiled search reports, although they do have a legal duty of care.¹⁵⁸ Not all PSCs guarantee their searches either, although it is a requirement for all members of the trade association CoPSO to have professional indemnity insurance.¹⁵⁹
- 6.48 Consumers' low level of knowledge about property searches means that they are unlikely to know about the differing levels of protection on offer, and may be unaware that they have bought a search that offers them no financial

¹⁵⁷ *Conveyancing Handbook* 2004 11th Edition, Law Society of England and Wales, pages 208 and 209.

¹⁵⁸ Law Society of Scotland, 14 January 2005.

¹⁵⁹ CoPSO *Code of Practice*. Full/executive members must have £5million professional indemnity cover, and associate members must have £1.5million cover. Under the Search Industry Accreditation Scheme that will be introduced in Spring 2006, search companies subscribing to the scheme will also have to have warranty insurance. This will indemnify the purchaser in the event of loss due to an adverse entry in a search, regardless of the source of the problem, and irrespective of the continuing existence of the search company.

protection against errors. This could potentially be more problematic in situations where the property searches are paid for by the property seller, as the seller is less likely than the buyer to be concerned about the quality of the search and the redress it offers.

- 6.49 Consumers should be made aware of the differences in the level of protection offered by different sources of property searches, and should know how to go about pursuing redress when problems occur.

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 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.

- 6.50 The Scottish Executive should consider whether additional awareness measures should be taken if the PIP is not introduced in Scotland.
- 6.51 We also support current government proposals that compilers of property searches for inclusion in the HIP should be required to provide redress to consumers if they suffer loss as the result of a faulty search.

7 DRAINAGE AND WATER SEARCHES

Summary

- 7.1 This chapter looks at the supply of drainage and water searches in England and Wales, which are requested from the relevant water company¹⁶⁰ using a Con29 DW form.¹⁶¹ Water and sewerage services in Scotland and Northern Ireland are supplied by national public bodies, and are not considered in this report. Issues arising from the supply of information more generally by national public bodies will be considered in the market study into the commercial use of public information.¹⁶²
- 7.2 Drainage and water searches contain important information and the Law Society of England and Wales recommends that they are carried out for all property transactions.¹⁶³
- 7.3 Each water company in England and Wales has an effective monopoly over the compilation of drainage and water searches for properties falling in their defined geographic area. They therefore face no competitive pressures on the price or quality of these searches. We have no significant concerns about quality as responses are in a standardised form, and water companies offer comprehensive protection to consumers.
- 7.4 However, we have some concerns over the price of drainage and water searches. The water companies face little constraint on how they set these prices, which are not among the prices directly regulated by the Office of Water Services (OFWAT), the industry regulator. The average basic price of

¹⁶⁰ There are also other companies with 'water only' licences. Water only companies may contribute to a drainage and water search where they are the supplier of water services. However, they do not directly compile drainage and water searches but rather sell the relevant information to the water and sewerage company who then compiles the complete drainage and water search.

¹⁶¹ The content of a Con29 DW was established by the Law Society of England and Wales in 2005.

¹⁶² Further information on this market study is available on the OFT website at www.of.gov.uk/News/Press+releases/2005/139-05.htm

¹⁶³ *Conveyancing Handbook* 2004 11th Edition, Law Society of England and Wales, paragraphs 10.4.2 and 10.5.3.

around £42¹⁶⁴ appears high given that it does not include the full cost of collecting and maintaining a record of the relevant information, which is at least partially covered by the revenue from regulated charges for water and sewerage services.

- 7.5 Following discussion of our findings, OFWAT has agreed that it is the best placed body to consider the pricing of drainage and water searches, given its specialist knowledge of the water industry.¹⁶⁵ OFWAT is discussing this issue with the water companies and aims to resolve any concerns in early 2006.

Drainage and water searches in England and Wales

- 7.6 The supply of water services was privatised in England and Wales in the Water Act 1989. The privatised regime was later extended to include sewerage services by the Water Industry Act 1991. Together these pieces of legislation transformed the public water authorities into the current 10 private water companies. In the course of performing their statutory duties, water companies collect the information that they also use to produce drainage and water searches.

- 7.7 As noted in paragraph 7.2 the Law Society of England and Wales recommends that a drainage and water search should be obtained for all property transactions. WaterUK¹⁶⁶ told us that they estimated that over 800,000 drainage and water searches were supplied in 2004, or for around 63

¹⁶⁴ OFT analysis. The average price across the water companies for a standard search is £42.15, and £60.92 for an expedited search. Prices as at 23 August 2005. Information available at www.drainageandwater.co.uk.

¹⁶⁵ Agreed with OFWAT on 1 July 2005.

¹⁶⁶ WaterUK is the industry association that represents all water service suppliers in the UK. More information on WaterUK can be found at www.water.org.uk.

per cent of residential property transactions.¹⁶⁷ With the average price of a standard search around £42 we estimate that the supply of these searches in England and Wales was worth at least £34 million in 2004.¹⁶⁸

7.8 A drainage and water search provides a range of information relating to a property. Access to some of the information is a statutory right.¹⁶⁹ Other information is only made available in water companies' compiled searches, including:

- the location of the meter
- any agreements to build over the sewers
- whether sewers are to be built within the local area, and
- whether there are sewers within the boundaries of the property and if they are to be adopted.

7.9 Water companies do not provide access to this unrefined information to other compilers as they claim it would reveal either consumers' personal information or data that are commercially confidential.¹⁷⁰ During this study the OFT has been unable to confirm the extent to which confidentiality issues justify this restriction on availability. At present each water company appears to be the sole compiler of drainage and water searches in its area of operation.

¹⁶⁷ OFT analysis based on WaterUK estimate of the number of drainage and water searches supplied and 1.3 million residential transactions recorded by HM Land Registry.

¹⁶⁸ OFT analysis based on the average price for a basic drainage and water search, from www.drainageandwater.co.uk, and WaterUK estimate of the number of drainage and water searches supplied. As this estimate assumes that people buy the standard search at £42, rather than paying £61 for an expedited search, it is likely to underestimate the value of the market to some extent.

¹⁶⁹ Under the Water Industry Act 1991 consumers have a statutory right to access both the Water Main Record (at an office of the relevant water company) and the Sewer Map (at the LA and at the office of the relevant water company).

¹⁷⁰ Our discussions with WaterUK provided a number of examples of confidential information provided in the drainage and water search, including personal information from agreements.

- 7.10 It is likely that with the introduction of the HIP in 2007 drainage and water searches will be required for all residential property transactions.¹⁷¹ This would strengthen substantially the position of the water companies and increase the number of searches undertaken. Such a requirement would have increased the number of searches by 500,000 in 2004.¹⁷²
- 7.11 There is competition in the retailing of drainage and water searches. Consumers and their conveyancers may currently source drainage and water searches directly from the relevant water company, from a PSC or electronically via NLIS. However, all drainage and water searches sourced through PSCs and NLIS are still compiled by water companies.
- 7.12 Given that water companies hold effective geographic monopolies in the compiling of drainage and water searches, we have looked at whether there are concerns over service quality or price.

Service quality

- 7.13 Drainage and water searches answer a standard set of questions that were drawn up by the Law Society of England and Wales and agreed with the water companies in 2002.¹⁷³ Thus, the product is standardised in content, and searches prepared by all 10 water companies include the same types of information.
- 7.14 We found no evidence to suggest that there are any concerns with the quality of service provided by the water companies. The consumer body WaterVoice

¹⁷¹ Recommendations of the HIP Components Project Board, available at www.odpm.gov.uk

¹⁷² Based on WaterUK's estimate of 800,000 drainage and water searches supplied and 1.3 million residential transactions recorded by HM Land Registry.

¹⁷³ The content of this search is likely to change with the introduction of the HIP. The new content will be agreed by WaterVoice, WaterUK and ODPM.

told us that they were only aware of one complaint regarding quality and this was a few years ago.¹⁷⁴ In any case water companies offer consumers comprehensive protection in the event of a problem arising from their drainage and water search, including paying to rectify any problems in the event that they provide the wrong information.¹⁷⁵

- 7.15 Turnaround times also look good relative to other property searches. Information provided by WaterUK showed that the water companies complete 77 per cent of drainage and water search requests within three working days and 94 per cent within 5 working days.¹⁷⁶ Nine of the 10 water companies also offer an expedited service supplying searches in 24 hours or less.¹⁷⁷

Pricing

- 7.16 Although water companies are regulated by OFWAT, the price of drainage and water searches is not regulated. OFWAT have told us that if, in providing this service, the water companies create costs for the resources of the regulated services, then a contribution from the revenue generated by the service should be made which at least covers such costs.¹⁷⁸ Where such a contribution is made it would be included as a revenue taken into account when OFWAT sets price limits for the regulated services. This mechanism does not place a significant constraint on the pricing of this service.

¹⁷⁴ WaterVoice, 2 August 2005.

¹⁷⁵ Details of consumer protection are provided in the drainage and water search terms and conditions, available for each of the water companies at www.drainageandwater.co.uk

¹⁷⁶ Figures provided by WaterUK based on May, June and July 2005. Turnaround times are calculated from the receipt of the request to the date of the reply, even if the application is incomplete.

¹⁷⁷ Information collected from www.drainageandwater.co.uk

¹⁷⁸ OFWAT, 24 August 2005. OFWAT told us that no guidance is currently available on when and how any such contributions should be paid. They also told us that it is not possible to identify the level and presence of any contributions, as any such contributions are recorded in the water companies' regulatory accounts as other income and would only be identified specifically if they constituted over five per cent of annual turnover.

- 7.17 We asked water companies how they set the price for their drainage and water searches. Many said that they used a 'market based approach' where this meant that they took account of 'market characteristics' or profitability.¹⁷⁹ Given that each water company has an effective geographic monopoly in the supply of drainage and water searches it is not clear that such an approach operates in the consumer interest.
- 7.18 At this stage, it is not clear exactly how water companies recover the costs of maintaining information about water and sewerage services. OFWAT is trying to establish the proportion of these costs recovered from consumers of water and sewerage services, compared to consumers requesting drainage and water searches. It may be that the price of drainage and water searches should only take account of the cost of compiling the information. On this basis, an average fee of around £42 is arguably high. In addition, information provided to the OFT by water companies indicated that a number were making apparently high margins on this service.¹⁸⁰
- 7.19 OFWAT has agreed that it is the best placed body to consider the pricing of drainage and water searches, given its specialist knowledge of the water industry. Therefore we did not collect the detailed accounting information that would be needed to establish conclusively whether prices are excessive. OFWAT is discussing this issue with the water companies and aims to resolve any concerns in early 2006.

¹⁷⁹ This information came in response to an OFT questionnaire sent to the water companies on 18 March 2005.

¹⁸⁰ This information came in response to an OFT questionnaire sent to the water companies on 18 March 2005.