

Annexe H

Other property information holders

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1 OTHER PROPERTY INFORMATION HOLDERS

- 1.1 This annexe provides a brief overview of the key public bodies that collect, maintain and supply property information in the UK. The issues that surround the supply of information by public bodies more generally will be covered within the OFT market study into the commercial use of public information.¹ This annexe does not cover local authorities, water companies or the less common property searches.²
- 1.2 For more detail on the information holders and the services they supply please refer to the website of the relevant body.

Detailed information on property information holders

- 1.3 This section sets out the activities of six public bodies not covered elsewhere in this report that hold property information used in the more common property searches.
- 1.4 The six bodies covered in this annexe are:
- HM Land Registry – information relating to local land charges, land registration and agricultural credits in England and Wales
 - Land Registers Northern Ireland – information relating to the registered titles of land in Northern Ireland
 - The Registers of Scotland – information in Scotland equivalent to HM Land Registry in England and Wales, and some additional information
 - The Coal Authority – information on the existence and extent of underground coal workings and mine entries

¹ See www.offt.gov.uk/News/Press+releases/2005/139-05.htm

² Examples of less common searches include chancel repairs, transport searches and utilities searches.

- The Environment Agency – a wide range of information such as flood plain data and detailed land use surveys, and
- Companies House – basic information on the company if the buyer or seller of a property is a company.

1.5 For each body, this annexe sets out:

- a description of the information holder and the services it supplies
- the supply conditions of the information, and
- consumer protection offered by the information holder.

HM Land Registry

1.6 HM Land Registry (Land Registry) is a government department, an executive agency³ and a trading fund.⁴ Its main function is to keep and maintain a register of title to freehold and leasehold land in England and Wales. The equivalent information in Scotland is kept by the Register of Scotland and in Northern Ireland by the Land Registers of Northern Ireland, both discussed separately below.

1.7 Land Registry was created in 1862 and became a trading fund in April 1993. The Chief Land Registrar is responsible for the conduct and business of land registration and is appointed by and responsible to the Secretary of State for Constitutional Affairs and the Lord Chancellor.

³ Executive agencies are part of the Crown, usually operating under powers delegated from Ministers and Departments. They generally take responsibility for executive (service delivery) functions within government. These functions are measured against specific targets.

⁴ A trading fund is a part of government which relies on its ability to derive income from its activities in order to cover its costs.

- 1.8 Land Registry holds information relevant to property transactions in its registers of title and Land Charges and Agricultural Credits registers.⁵
- 1.9 Fees for applications to register land and interests in land, searches and the provision of information from the registers are the main source of income for Land Registry. In 2003/2004 Land Registry's fee income was almost £400 million.⁶
- 1.10 All transfers of land must be registered with Land Registry. An individual registered title comprises the following:
- the Property Register which identifies the property and the estate (for example, whether freehold or leasehold) and includes details of any rights or other provisions benefiting the property
 - the Proprietorship Register which gives details of the class of the title (for example, absolute, possessory or qualified title), the names and addresses of the proprietors, and any restriction affecting the proprietors' powers to deal with the property
 - the Charges Register which gives details of any charges, restrictive covenants or other encumbrances to which the land is subject, and
 - the Title Plan which is an Ordnance Survey based plan identifying the land.
- 1.11 Land Charges relate to unregistered land and bankruptcy. A person who claims an interest in unregistered land should register a Land Charge, to constitute notice of the interest to a purchaser. Entries are also made when notification of bankruptcy proceedings or a bankruptcy order is received by Land Registry. Registration is in the name of the land owner or debtor (as appropriate).

⁵ The Agricultural Credits register relates to charges of farming stock and other agricultural assets. Registrations are made in the name of the farmer.

⁶ Annual Report and Accounts 2003-04, available at www.landreg.gov.uk

- 1.12 There are a wide range of Land Registry services providing information from its registers, for example requests to inspect or view the registers or documents, requests for copies of the registers or documents, and searches for changes in the registers or pending applications. Applications for these services can be made in person, by post, by telephone, electronically through Land Registry Direct or the National Land Information Service (NLIS), or via Land Registry's website, Land Register Online, for register information only.
- 1.13 Land Registry does not provide any additional compiled reports relating to property searches. The information that it holds for property searches is available on non-discriminatory terms to anyone who requests it, upon payment of the appropriate fee.
- 1.14 The Lord Chancellor (subject to approval from HM Treasury) prescribes Land Registration, Land Charges and Agricultural Credits fees. In setting the fees Land Registry follows the HM Treasury Fees and Charges guidance.⁷ Information on the fees for each of these services can be obtained through the Land Registry website.

Land Registers of Northern Ireland

- 1.15 Land Registers of Northern Ireland (LRNI) is an executive agency within the Department of Finance and Personnel (DFP). Its main function is to maintain and develop a register of title to freehold and leasehold land in Northern Ireland.
- 1.16 LRNI was established in 1892 to provide a system recording the registration of land titles. The annual budget of LRNI is £14million.⁸ All of its costs are recovered from the revenue from fees it receives for providing its services.
- 1.17 The LRNI collects information that is relevant to property transactions on three registries:

⁷ *Fees and Charges Guide*, HM Treasury, 1992.

⁸ *Business Plan 2004-2005*, Land Registers of Northern Ireland.

- the Land Registry provides a registration system, a guarantee of the validity of the legal title and records all interests to individual holdings of land. The system identifies each piece of registered land on the Land Registry map
- the Registry of Deeds records documents relating to land which is not registered in the land registry. This system is not map based and is expected to gradually decline as all land becomes registered following the introduction of Compulsory First Registration (CFR), and
- Statutory Charges records a range of statutory encumbrances such as charges, restrictions, notices and orders issued by government departments that affect both registered and unregistered land. All the information collected by this registry is stored on a map based system.

1.18 Currently LRNI does not hold information on all properties in Northern Ireland. However, the introduction of CFR in the Ground Rents Act (Northern Ireland) 2001 will mean that all land will eventually be registered within the LRNI.

1.19 The value of the provision of this information is estimated to be worth in the region of £300,000 per annum, based on the average number of searches requested between the financial years ending 2003 and 2005, at LRNI fees in 2003.⁹

1.20 The LRNI faces no competition in the collection or dissemination of this information to consumers and conveyancers.

1.21 The LRNI provides access to the information it holds via a public counter service and responds to requests made by telephone, fax, in writing or electronically. Remote electronic provision is available to registered users through its direct access service LandWeb Direct. Remote access enables users to view and print electronic information maps and textual information relating to the three registries.

⁹ OFT analysis based on volume figures provided by LRNI, at 2003 fees.

- 1.22 The fees are set to fully recover the cost of operating the service, as established in the Land Registration Act (1970) and rules. This includes a share of overheads but does not include any profit element. The fees must be reviewed by the Departmental Solicitors Office (DSO), and approved by DFP and in the case of Land Registry Fees by the Rules Committee. The current fees are set out in the Land Registry (Fees) Order (Northern Ireland) 2003 and the Registry of Deeds Fees Order 1996.¹⁰

The Registers of Scotland

- 1.23 The Registers of Scotland (ROS) is a government executive agency, operating under a status equivalent to that of a trading fund. ROS's main function is to compile and maintain the 15 public registers relating to Scottish properties and other legal documents.
- 1.24 ROS was established as an executive agency in 1990 and reports directly to the Scottish Executive Development Department.
- 1.25 ROS records information on land and property sales on 15 registers. The three most important registers relating to property transactions in Scotland are: the Land Register of Scotland; the General Register of Sasines; and the Register of Inhibitions and Adjudications. All these main registers are now held in electronic format.
- 1.26 The Land Register is a register of title to land and is generally superseding the General Register of Sasines as the main property register in Scotland. This information on this register includes a description of the property, the current proprietors, any charges associated with the property and any conditions of the title. The General Register of Sasines is a register of deeds relating to land. Each deed recorded in the Register will contain key information and, in particular, the name of, and the parties to the deed, details of the property affected, the date of execution (signature by the parties) information about rights held in relation to the land, and in some cases, conditions governing the use of the property. The Register of

¹⁰ An electronic guide to these Orders can be found at www.lrni.gov.uk/static/staticFrame.jsp

Inhibitions and Adjudications is used to ensure that the seller is under no legal disability from selling (such as outstanding debts

- 1.27 The other 12 registers contain a variety of different types of information and documents, including authenticated legal agreements, courts orders, information about Crown writs and royal appointments, and registrations for certain statutory rights to buy under the land reform process in Scotland. Some of this information may be relevant to transactions involving land, but not all.
- 1.28 ROS provide a number of services based on this information, some of which are a statutory duty. The statutory services include structured search reports, through Registers Direct and by direct requests. ROS currently offers tailored reports in response to receipt of requests for information on one of the statutory forms.¹¹
- 1.29 Registers Direct is an internet based service which allows electronic access to information contained in the ROS registers. This service is available to solicitors, property search companies and other public bodies.
- 1.30 Requests for any of the structured search reports referred to above can be submitted by post, by email or by fax. The public can also attend in person at the Customer Service Centres to carry out searches of the Registers.
- 1.31 The fees for information are set in line with the requirements of section 25 of the Land Registers (Scotland) Act 1868 and also Scottish Public Finance Manual (SPFM).¹² This guidance requires that the fees reflect the cost of provision, including a return on capital invested of six per cent.¹³ A review of the Fees Order, which involves consultation with internal and external

¹¹ There are a number of statutory forms, each of which provides different information. The forms currently available are Form 10-14 and Forms P16 and P17. The cost of each form varies from £13.60 to £34.00.

¹² SPFM is issued by Scottish Ministers to provide guidance on the proper handling of public funds, available at www.Scotland.gov.uk

¹³ This rate of return is agreed with, and paid to, Scottish Ministers.

stakeholders, is carried out every five years. The Fees Order was last updated in 1999, and was amended in 2004 to make provision for new types of registrations. A new five yearly review is currently in progress.

- 1.32 Access to the information is available on non-discriminatory terms to anyone who requests it, upon payment of the appropriate fee. The only difference in supply conditions that is applied relates to the way in which the search is requested.
- 1.33 The Keeper of the Registers has a statutory obligation to indemnify any person who suffers loss as a result of an error in any information given in writing. Thus, if a search report provided by ROS contains an error it would be liable to reimburse the losses of a party relying on that information. In a typical case ROS would consider their liability to be limited to the person to whom the inaccurate information was supplied. If the ultimate user of the information seeks reimbursement of their losses, ROS would reimburse them directly if no intermediate party had been indemnified already.

The Coal Authority

- 1.34 The Coal Authority (the Authority) is a non-departmental public body, set up to facilitate the proper exploitation of coal resources in England, Wales and Scotland. The Authority has functions covering a variety of activities relating to coal mining including: the licensing of coal mining operations; handling subsidence damage claims; dealing with property and historical liability issues and providing public access to information which it holds.
- 1.35 The Authority was established in 1994 under the Coal Industry Act (1994). The sponsor of the Authority is the Department of Trade and Industry (DTI).
- 1.36 During 2003/4 the Authority received a gross income for the year of £60.8 million. This was made up of rents and the sales of surplus properties (£24.7 million), fees and charges for services provided (£10.3 million) and grant-in-aid from the DTI (£25.8 million).¹⁴

¹⁴ *Annual Report and Accounts 2003–2004*, the Coal Authority. Available at www.coal.gov.uk

- 1.37 The information held by the Authority can have an impact on the value of a property in two key ways: firstly it provides information about the location of any existing or future mining operations that may affect the property; and secondly gives an assessment of the impact that coal mining subsidence may have on property.
- 1.38 The Authority uses its information to compile two types of search, a residential property search, known as a Con29M in England and Wales and ScotForm in Scotland, and a non-residential search or development site search.
- 1.39 The market for mining reports is estimated to be worth around £10 million per year which flows from supplying around half a million mining reports annually.¹⁵
- 1.40 Although not necessary for all property transactions, mining searches are carried out for a significant proportion: more than one in three between 2002 and 2004, according to information provided by the Authority.
- 1.41 The relevance of a mining search depends on the areas in which the property is located. In order to determine if such a search is necessary it is possible to consult the Directory of Places on the Authority's website or use the Authority's Online Directory¹⁶ which provides immediate online confirmation on entering a property postcode as to whether a coal mining search is necessary or not.
- 1.42 Whilst some coal mining information is held by alternative sources the Authority holds the most comprehensive national record of coal and mining related activities. There is some competition from property search companies (PSCs) in the compiling of mining reports. These competitors are able to produce a similar search using information that they collect, supplemented by information from public sources such as public record

¹⁵ OFT analysis based on volume figures provided by the Authority, at the current fee for a residential search of between £20 and £24.

¹⁶ Both of which may be found at www.coalminingreports.co.uk

repositories and museums. This type of competition is highly localised and no direct competitor exists on a national scale.

- 1.43 The Authority does not allow unrestricted access to its database but does allow free access to what it defines as 'raw' records and plans from which their database has been derived.
- 1.44 The Authority supplies mining searches through a number of channels including direct sales, in paper or electronic form via its own online service, a level three connection with the NLIS and through PSCs.
- 1.45 The Authority told us that when setting fees their key constraint is the HM Treasury Fees and Charges Guide for Statutory Services, which requires pricing of the service to be on a cost recovery basis, and the Authority's Financial Duties Determination required by the Secretary of State.
- 1.46 The Authority is liable for any negligence if it produces incorrect mining reports. This liability extends not only to the purchaser of the report, but also to other users of it such as a lessee or mortgagee of the property. This is the case irrespective of the distributional channel the information went through, other than for misrepresentation of the property search address in the case of the NLIS service. The liability is common to both residential and non-residential searches.

The Environment Agency

- 1.47 The Environment Agency (the Agency) is a non-departmental public body in England and Wales whose powers and duties relate to environmental protection, flood defence, water resources, fisheries, recreation, conservation and navigation. The primary sponsor of the Agency is the Department for Environment, Food and Rural Affairs (DEFRA). It also receives significant grants from the National Assembly for Wales (NAfW).
- 1.48 The Agency was established under the Environment Act 1995. It took up its statutory powers and duties in 1996, taking functions from the National Rivers Authority, HM Inspectorate of Pollution, the waste regulation authorities and several smaller units of the Department of the Environment.

- 1.49 The Agency holds a significant amount of information that may be relevant to the correct valuation of a property. Access to this information is provided in both unrefined and compiled formats.
- 1.50 The information held by the Agency is supplied in a number of routes including: direct access via their website; inspection of public registers via their offices; response to individual requests (by post, email, or telephone); and a number of published environmental reports.
- 1.51 Compiled reports are available either directly from the Agency or from a number of retailers.¹⁷ The Agency currently offers one compiled report called the Complete Property Search Report, costing around £47. This report contains information on the risk of flooding, subsidence, radon gas, coal mining and contaminated land. The fee was determined by the Agency in accordance with HM Treasury Guidance on 'Selling Services into Wider Markets'.¹⁸
- 1.52 The Agency provides a limited liability in respect of the compiled reports, which only covers errors in the interpretation of the data held rather than any errors that are contained within the registers.

Companies House

- 1.53 Companies House (CH) is a trading fund whose parent department is the DTI. CH's main responsibility is to maintain and update the relevant registers and provide company information to the public. CH collects this information for companies registered in England, Wales and Scotland. In Northern Ireland this information is kept by the Companies Registry for Northern Ireland.
- 1.54 A search of the information held by CH is only necessary when the seller or the buyer of a property is a company. The information provided by CH allows the searcher to collect basic information on the company in question, such

¹⁷ The Agency has also licensed a number of retailers to provide additional services based on its data.

¹⁸ www.hm-treasury.gov.uk/media/D7DF5/sgswm.pdf

as: that the company exists; its registered office address; the names of its officers; its accounts and annual returns; its registered fixed or floating charges; and whether it is in administration, receivership or liquidation.

- 1.55 CH provides information in response to online, telephone, and postal requests. Information may also be accessed in public search rooms.
- 1.56 The information is kept on the Register of Companies for England and Wales and the Register of Companies for Scotland. Although secondary information sources exist on company information, there are no direct competitors providing the information held by CH.
- 1.57 No specific property search service is available at CH. Any requests for information are completed under company information services as specified by the Companies Act 1985.
- 1.58 It should be noted that CH does not provide any consumer protection for losses arising through the use of its information.