

PSI Consulting

21st Century

Public Sector (Land & Property)

Information Trading.

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Introduction:

Since 2006, following the introduction of the [European Directive on the Re-Use of Public Sector Information \(SI.2115/2005\)](#) John Gray (PSI Consulting) has regularly undertaken to prepare of a series of annual surveys of the Local Government sector within England & Wales concentrating on the trading of land & property information.

The surveys have sought to gauge actual compliance against the stated aims of the European Directive on the re-use of Public Sector Information and the many related statutes and initiatives which impact directly on the Local Authority Sector.

Property information services were initially chosen as the desired control for these surveys, as that particular arena represents an active multifaceted interface where the interests of public and private sectors meet on a constant and often conflicting basis.

In undertaking the 2010 survey, PSI Consulting are looking at the interaction of the Re-Use of Public Sector Information Directive & Regulations against the influence of other related statutory enactments, many of which impose often quite startling contradictory requirements on the way in which Local Authorities in England and Wales manage and trade property information assets in their interface with the wider private sector.

Background:

Since 2005 and in addition to the Re-Use of Public Sector Information Directive (against the background ethos of Open government and Freedom of Information within the UK) we have within the UK experienced a number of high profile European Community and UK Government initiatives with the stated aim of supporting an increase in the re-use of public sector information. The aims underlying same are now coalesced to be taken forward within the Coalition Governments Information Transparency Agenda.

During the period 2005 – 2010 there has also been clear evidence of an increased level of interaction and pressure from commercial lobby groups championing the interests of often unrelated trade associations and business concerns representing the views of the information industry. This has been particularly evident within the property services sector of the UK information marketplace where commercial lobbying pressures have been instrumental in contributing towards the imposition of a number of key (but often contradictory) Policy initiatives.

A number of these legislative enactments ALL of which are of direct relevance to the effective re-use of public sector information AND the UK property information services marketplace, are listed and detailed within the body of this Report:

Against this background and accepted trend towards open information trading, the legislative changes outlined would all appear to impact upon the ability of Local Authorities to trade their information resource. The catalyst for the changes which have occurred during the stated period have been:

- [OFT Property Searches Study 2005 \(OFT810\)](#)
- [OFT Commercial Re-Use of Information Study 2006](#)

Whilst the European Directive of the Re-Use of public sector information was introduced to break down barriers and promote an ethos of open information trading, there is clear evidence that a number of the subsequent policy initiatives (listed) have produced openly contradictory results in managing a variety of access and information charging policies.

The effect for the private sector has been one of confusion with regards to charging policy and the effect on the public sector has also been similarly harmful with an obvious lack of understanding as to what can and what cannot be charged for and the means by which charges can and should be levied.

The result of this apparent confusion in the right to levy charges can be costly.

There are currently two potential legal actions under consideration which, if pursued, will impact upon Local Authority budgets at a time when the overall pressure for cost cutting and diminishing management of resource are at their most extreme.

- **(APPS) Class Action against Local Authorities**

A Class Action is being considered by an amalgam of commercial property search companies within England and Wales seeking a refund of excess search fees levied since 2005.

- **DEFRA advice on overcharging of search access fees.**

Advice from DEFRA (and The Welsh Assembly) in line with Statutory Instrument SI2010/1812 suggests that overcharging of search fees for information which should have been made available under the Environmental Information Regulations 2004 can be addressed by means of a request for a full refund of those fees (plus interest) levied.

The likely cost to Local Authorities (in essence – the public purse) will run to many millions.

Policies/Statutes impacting upon Property Information Trading 2005 – 2010:

- **European Directive on Re-use of Public Sector Information –
Statutory Instrument SI2005/1515**

The yardstick against which Proactive information trading was to evolve.

- **OFT Property Searches Market Study 2005 (OFT810) –
Increase of Competition in Property Information Market**

The OFT Study – widely regarded as a ground-breaking attempt to promote competition and remove restrictions in the retailing of property search information.

- **OFT Commercial Use of Public Information Study 2006 –
Promoting the PSI Model**

To consider whether the way in which Public Sector Information Holders supply information in a way that works well for business and to assess unfair advantages in relation to companies that are reliant on Public Sector Information Holder's for raw data.

- **Deregulation of Standard LLC1 Fees 2008 (SI 2008/3248)**

Since the inception of the **Local Land Charges Act 1975** the fee for a search of the Register had been controlled by central government being set by the Lord Chancellors Department. Following the de-regulation of the UK standard £6.00 fee in 2008, fees had by 2010 shown a wide range of variations between £5.00 and £68.00 depending which of the 386 District and Unitary Local Authorities undertake a search.



LLC1 Costs.xls

- **Charges (for Property Searches) Regulations 2008**

Introduced in 2008, following what became known as the KPMG Study, the Charging Regulations allowed Local Authorities to introduce widely increased

Fee Setting powers which exhibited a radical departure from zero or marginal cost pricing.

- **Information Commissioners Office (ICO)**

Following the introduction of the Charges for Property Searches Regulations 2008, the Office of the Information Commissioner has been active in making numerous rulings on apparent and alleged overcharging by individual Local Authorities. (Refer File ICO DN) attached.



ICO DN.docx

- **Deregulation of standard personal search fee 2009**

The Ministry of Justice was lobbied heavily by and on behalf of Local Authorities with a view to releasing from central control the standard disbursement (£11.00) to conduct a search of the Register of Local Land Charges. The MoJ declined to allow the deregulation of the Personal Search fee BUT did agree to a 100% increase of the access fee from £11.00 to £22.00 (Refer File PS Fee) Attached.



PS Fees.xlsx

- **Statutory Instrument 2010 No 1812 Repealing of Fees**

Statutory Instrument issued on 29th June 2010 instructing all District and Unitary Councils within England & Wales to desist from Charging an Official Search of the Local Land Charges Register as from 17th August 2010. The Instrument suggested that it would in fact be good practice for Local Authorities to cease charging for access for personal inspection with immediate effect to ensure compliance with the Environmental Information Regulations 2004.

Summary

Within the UK property information marketplace, we have experienced a fundamental change in the deregulation of previously standardised and accepted fees and an increase in the ability of Local Authorities to use charging powers to levy radical price increases.

These changes in charging powers have all occurred since 2005 and ALL appear to offer a startling contradiction between both the prevailing European Directive on Re-Use of Public Sector Information AND The Environmental Information Regulations 2004

It appears highly contradictory of joined up policy making that whilst Government bodies such as OPSI and APPSI were striving to promote an open information interface and active compliance with the PSI Re Use Regulations, other Departments such as Communities and Local Government (to whom a number of the charging powers can be traced) were seeking to facilitate the introduction of Charging Powers which were in direct opposition to prevailing information policies.

(I have myself attended a number of meetings in support of OPSI with staff from the Department of Communities and Local Government and yet despite reasoned and cogent argument from OPSI, these charges were nevertheless introduced).

A Freedom of Information request that I have personally submitted to Communities and Local Government indicates that the cost of the KPMG Charging Regulations introduced in 2008 as they effect that Department are estimated at **£528.599.00**

This Charging regime has been challenged by the Information Commissioner with reference to the EIR Regulations and has now been dropped by a number of Local Authorities. There is evidence that Local Authorities within England and Wales are unsure and uncertain as to exactly what they are able to charge for and representative bodies such as Local Government Association (LGA) and The Society of Local Authority Chief Executive Officers (SOLACE) are liaising with DEFRA & MoJ to seek clarification.

The Statutory Fees for the Personal Search of the Register of Local Land Charges as authorised by the Lord Chancellors Department have been withdrawn with immediate effect. These fees over the last 10 years or so have been recognised as a highly significant revenue source for Local Authorities and their withdrawal will impact severely on those Local Authorities at a time when they can least afford for this to happen.

The effect on the wider private sector property information sector is one of confusion where major and often contradictory charging powers are seen to have been introduced and then repealed within a very short time-frame.

The effect on Local Authorities is likely to be even more extreme with widely accepted charging practices dating back many years being challenged and withdrawn with scant notice.

There is very real evidence that Charges for property searches since January 2005 may have to be refunded to the very companies who were charged those fees.

Quite aside from the ability of Local Authorities to manage a refund and payback scheme which will total millions of revenue and which will impact upon their budgets at a critical juncture – they seem to have now lost the ability to make (what were widely acceptable) charges at a time when they are facing unparalleled cuts along with other swathes of the Public sector.

We now have a position where the Property Search Companies are enjoying free access to information providing same is accessed in person subject to the EIR Regulations. The Local Authorities however are continuing to cost out the information at an average fee of £22.00 for compilation and preparation within their own reporting framework.

The EIR Regulations stipulate that access (other than in person) by remote means is also available subject to a 'reasonable fee'. Unfortunately, the reasonable fee for remote access appears to be the prevailing LLC1 fee which varies across 386 District Authorities from as little as £5 to as much as £68.

It was believed that the introduction of the European Directive on Re-use of Public Sector Information (2005) and the Office of Fair Trading Property Searches Study 2005 & Commercial Use of Public Sector Information Study 2006 pointed the way towards a brave new world of open information trading where public and private sector information alliances and partnerships would evolve. The reality differs with:

- Lack of clear cohesion in Policy making
- Contradictory Legislative Enactments
- Lack of joined up governance
- Differing Agendas between various Government Departments
- Severe potential cost implications to Local Authorities
- Increased costs to the Tax Payer

In the period since 2005 – 2010 we have experienced the development of increasingly adversarial attitudes between private sector search community interests and those of the Public Sector (Local Authority) data holders, where it would appear that the true interests of the taxpayer and potential home purchaser are often disregarded.