

LAND CHARGES FEES
AN OUTLINE OF THE STATUTORY BACKGROUND AND
THE COUNCIL'S POLICY APPROACH

1. There are two categories of local land charges search conducted by local authorities. The first, a search of the Local Land Charges Register, is governed by statute. Section 9 of the Local Land Charges Act 1975 places a duty on local authorities to provide information about local land charges (as defined in Section 1 of the 1975 Act) following a requisition in writing and payment of the appropriate fee. Such searches are dealt with by Form LLC1. Section 8 of the 1975 Act provides that any person may carry out a personal search in the Local Land Charges Register on payment of the prescribed fee.
2. Rules governing the level of fees charged by local authorities for a search of the Local Land Charges Register are made by the Lord Chancellor, with the concurrence of the Treasury, under Section 14 of the 1975 Act. The rules currently in force are contained in Statutory Instrument 2003 SI No 2502. This set fees of £6 for an official search of the whole of the Register and £11 for a personal search.
3. For many years the second category of land search was not covered by statute. This is the information usually supplied in answer to CON29 form of enquiries. It concerns supplementary search and enquiries about planning, drainage, highways and other matters likely to be of concern to prospective purchasers. The arrangements for dealing with these enquiries are agreed between representatives of the Local Government Association and the Law Society. The current form was introduced in July 2002.
4. The Local Government Association and the Law Society from time to time agreed guideline fees for responding to the CON29 enquiry. For many years these were applied nationally by all local authorities. In the late 1980s/early 1990s authorities varied charges locally to suit their own financial circumstances for each authority's local land charge service. For a number of years the guideline fee continued to be issued by the local authority associations but did not resemble those charged in practice by local authorities. The Local Government Association no longer issues such guideline fees because of the disparity in charging practice. However, its Local Land Charges Code of Practice encourages local authorities to only revise their fees from 1 April each year, as the information is also supplied and published nationally to help solicitors who are dealing with local authorities from different parts of the country.
5. The Local Authorities (Charges for Land Searches) Regulations 1994 (S.I.1994 No 1885) now contains the relevant charging power in relation to the CON29 enquiries and similar enquiries made by letter.
6. Regulation 3 provides as follows:

“The amount of a charge is to be at the local authority's discretion and in determining that amount the authority shall have regard to its costs in dealing with enquiries within the description in Regulation 2(1).”

Regulation 2(1) relates to the provision of information relating to the authority's functions in response to enquiries arising from (potential) land transactions.

7. The search fee for the LLC1 form, therefore, is statutory and cannot be changed by the local authority. The CON29 element is discretionary. The 1994 Statutory Instrument provides that the amount of the charge to be at the local authority's discretion and in determining the amount the authority shall have regard to its costs in dealing with enquiries. The approach generally taken by authorities is that the wording of this charging power does not prevent an authority from setting a charge that produces a surplus. However, proper regard has to be had to the actual expenditure involved.
8. In setting the charge there should be a reasonable balance between the interests of Council Taxpayers as a whole and the users of the service. There is no direct case relating to this point for land charges. However, the reasonable balance point has been taken in administrative law cases such as R v. GLC ex p. Bromley L.B.C. (relating to the extent that it was permissible to subsidise London Transport from ratepayers money). There is also no direct case law on the meaning of "proper regard" in Regulation 3. However, "due regard" was held to mean just that and not to extend to "giving substantial weight" in the context of environmental impact regulations – R v. Derbyshire C.C. ex p. Murray (Times judgement 6-10-2000).
9. A private Members Bill was introduced in the summer of 2004 to change the statutory provisions on charging for the LLC1 search. The Government indicated support for this Bill, but it was subsequently withdrawn. It is currently not known whether the Government will bring forward any changes during 2005.