



# *Local authority registers of building control information*

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Summary of consultation responses





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# Contents

<b>Introduction</b>	<b>5</b>
<b>Format and content</b>	<b>5</b>
<b>Respondents to consultation</b>	<b>6</b>
<b>Overview of responses</b>	<b>6</b>
<b>General comments</b>	<b>7</b>
<b>Next Steps</b>	<b>8</b>
<b>Annexes</b>	
<b>Annex A: Responses to questions</b>	<b>9</b>
<b>Annex B: Markinson Ruling</b>	<b>15</b>
<b>Annex C: List of respondents</b>	<b>16</b>



## Introduction

In March 2007, Communities and Local Government published a consultation on its proposals to make regulations under Section 91A of the Building Act 1984 (inserted by section 7 of Sustainable and Secure Building Act (SSBA)), in connection with the requirement for local authorities (LAs) to keep a register of prescribed information and documents concerning building control (BC), including their own building control service. The consultation was announced in the Department's Press Notice 20 March 2007.

The consultation package primarily comprised of the proposal and several annexes including, the Regulatory Impact Assessment – RIA, Information Matrix, Competent Person Schemes and the Response Form.

The consultation closed on 15 June 2007 and 143 formal responses were received which are summarised in this document.

*Copies of the individual formal responses to the consultation have been placed in the Communities and Local Government library at Ashdown House, 123 Victoria Street, London, SW1E 6DE and will be available for viewing for a period of six months from the date of this publication. If you wish to make an appointment to inspect, please telephone 020 7944 3039.*

## Format and content

*Of the 143 formal responses received over half submitted their views using the questionnaire proforma response form provided in the consultation package. The detailed summary at Annex A, which forms the bulk of this document, follows a similar format.*

In the questionnaire consultees were asked to indicate whether they supported each proposal with a YES/NO response and to include any comments they wished to provide. The response to each question is dealt with here in the same format with the numbers of YES/NO responses given as a percentage of those responding to that particular question, followed by more detailed commentary.

It should also be noted that several respondents chose not to use the proforma response form to reply. In these cases their responses have been incorporated into the comments sections. Where a clear view for or against a particular proposal was expressed it has been included in the percentage YES/NO responses.

All responses received to date will be considered by Communities and Local Government when deciding how best to take these proposals forward.

## Respondents to consultation

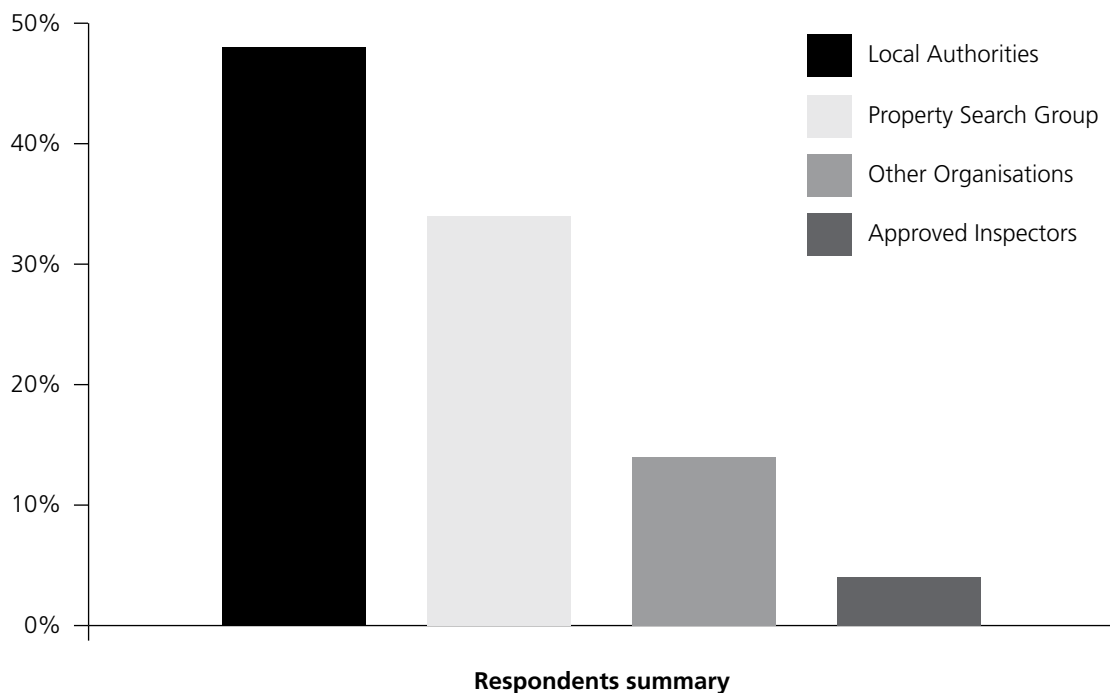
The organisations and individuals that responded to the consultation can be broken down as follows:

48% – Local Authorities

34% – Property Search Group

14% – Other Organisations

4% – Approved Inspectors



*Other organisations* comprised mainly of other property search companies and professional organisations such as LABC, Institution of Electrical Engineers etc. Although there are around 376 local authority building control bodies (BCBs) in England and Wales, only 69 (18%) responded to the consultation.

## Overview of responses

Just over half of the respondents supported the proposals for LAs to maintain a register of information for themselves as well as Approved Inspectors (AIs) and Competent Persons (CPs). The reasons cited for supporting a particular proposal often varied considerably and respondents often qualified that support. For example, in respect of question 8 on whether full plans should be excluded, a number of respondents supported the proposal but some raised concerns.

The level of support varied, with almost half the proposals being opposed by 48 per cent of those who responded and the majority of the proposals being supported by more than 52 per cent. A few proposals received a low level of support. These were:

Questions	Percentage
Q10 Should there be other exemptions?	YES (13%)
Q13 Do you agree with the manner in which registers should be maintained?	YES (46%)
Q14 Members of the public should be entitled to copies of information simply on request and payment of the appropriate fee?	YES (37%)
Q21 Will the proposal deliver benefits?	YES (30%)
Q23 Are there benefits/justification?	YES (30%)
Q25 Anyone else affected?	YES (37%)

Further detail on the reasons respondents were *for* or *against* the proposals in the consultation can be found at Annex A.

## General comments

A number of respondents did not use the questionnaire provided but submitted comments on the proposals. Some of their general key comments made were:

- A large number felt that the proposals breached the law in relation to the Environmental Information Regulations (EIR) and Markinson ruling which is explained in Annex B.
- A number were concerned that completion and final certificates were not a guarantee that all work carried out by AIs and CPs would meet the requirements of building control and felt that a provision for exclusion of liability should be included as a precautionary measure.
- Some welcomed the exclusion of full plans from the register but a lesser number suggested that plans be kept at the discretion of LAs.
- Most agreed with the suggested exemptions but some also believed that protection should extend to secure the identity of individual names, those with disabilities, etc.
- Most suggested that request for documents should be in writing, with a reasonable timescale of 5 days in which LAs must respond.
- A large number had concerns regarding the charging proposal as well as the implications of the Markinson ruling.
- A few felt that CON29 and building control should have a distinction and that there should be a national standard for the period of time that CON29 relates to.

- Most were satisfied that copyright provided adequate protection but some felt it needed to be stronger to prevent possible court action. In particular, some felt that data protection consideration should be given where descriptions could indicate disability, etc.
- Most felt that commercial organisations are more likely to benefit and gain from the registers more than any other group.
- Most LAs had concerns regarding the high set-up costs, the proposed use of Building Control funds to fund the project and the proposed costs to members of the public.

## Next steps

The regulation was scheduled for October 2007 but the *Markinson Decision* which arose during the course of the consultation, required some clarity and resulted in considerable delays to this timetable. (See Annex B). The Department has now carefully considered and sought advice on the issues surrounding the Markinson Decision and is now content to move to bring the regulations into force in April 2008.

# Annex A

## Responses to the questions

### 1 THE PROPOSAL : 1.1 – 1.3 (Questions 1-5)

**1)** [Para 1.1–1.2 under “The Proposal”] What do you think are the most serious shortcomings with the current system for providing access to, and maintaining registers of, building control information?

**Yes: 59% No: 18% No View: 23%**

**SUMMARY:** In general, the respondents felt that there would be extra burdens and increased workload for LAs, particularly as there was a lack of resources, budget and investment. Some felt that any IT development would be complicated to implement through the corporate systems. There were concerns that not many AIs provided final certificates and that there would also be an inability to accurately determine the full nature and extent of the work done by AIs.

**2)** [Para 1.1 to 1.4 under “The Proposal”] Do you have any objections to the proposals which you would like to be taken into account?

**Yes: 77% No: 23% No View: 0%**

**SUMMARY:** The main concerns respondents had related to the amount of information required to be kept, the costs to set-up a register and the proposed use of Building Control income for this purpose. Some respondents felt that AIs and CPs should provide the information on websites and this should be managed by the scheme organisers. It was also suggested that an online register should be encouraged and that LAs should have the freedom to choose the format. Others took the view that LAs should receive CPs notifications within 30 days and that AIs and CPs should pay a fee each time an entry is made.

**3)** [Para 1.3 under “The Proposal”] Do you agree that to obtain an appropriate and consistent standard of service, all LAs should maintain a similar register?

**Yes: 93% No: 7% No View: 0%**

**SUMMARY:** Although there was clear support for LAs maintaining a register of information, opinions were divided on certain issues. Some felt the Department should issue specific guidance on the system format to be used, whilst others felt the LAs should decide how it should be maintained. Some respondents felt that a comprehensive register would enhance service delivery. It was also felt by some that data entries and transfer between bodies should be standardised to facilitate ease of use.

**4)** [Para 1.3 under “The Proposal”] Do you agree that LAs should retain information relating to their own building control service and that provided to them by CPs, as well as documents relating to that provided by AIs?

**Yes: 50% No: 50% No View: 0%**

**SUMMARY:** The general consensus was that LAs should not be responsible for information given by AIs/CPs. Some were of the view that AIs should keep registers of their own information and search companies should make enquiries directly to the relevant body for AIs/CPs work. Some respondents took the view that AIs/CPs would not contribute to the cost incurred to keep the registers and that an administration fee should also accompany Initial Notices, Final Certificates, etc.

<p><b>5)</b> [Para 1.3 under “The Proposal”] Do you agree that information which is currently kept by LAs in registers as required by section 56 BA should be transferred onto the new registers?</p> <p><b>Yes: 50% No: 48% No View: 2%</b></p> <p><b>SUMMARY:</b> Some respondents warned that there was an issue with the volume of information required to be kept and that there would be problems in transferring data. Some felt that the information for the registers should commence on a specific date whilst others felt that this should be an option only as it could cause confusion with regards to the extent of information available.</p>
<p><b>2 PROPOSAL 1: 2.1 – 2.5 (Questions 6-10)</b></p>
<p><b>6)</b> [Para 2.1 under “Proposal 1” and the Information Matrix in Annex B] Do you agree with the proposed list of information that LAs will be required to retain and place on a register (including the proposal that full plans will not be required to be retained)?</p> <p><b>Yes: 79% No: 21% No View: 0%</b></p> <p><b>SUMMARY:</b> Many of the respondents felt that the Matrix list had too much information and recommended the headings be kept to a minimum. There were also a few comments which suggested that the Matrix be reviewed to ensure its accuracy. Some respondents felt that there was no need to name individuals and that the company name and address, should be adequate information for the register. Others took the view that the CPs scheme should include the name and address of the person signing the certificates. Views regarding retaining plans were divided as some respondents felt they should be kept in hard copy form for a shorter period of time and should be available on line. Others felt that plans should not be kept and that access to them should not be part of the proposal. The majority of respondents who did not use the proforma response form felt that reference should be made to the existing requirements under the Environmental Information Regulations which allowed public access to any environmental information.</p>
<p><b>7)</b> [Para 2.1 under “Proposal 1” and the Information Matrix in Annex B] Do you agree that documents kept by the LAs will provide sufficient evidence that building works carried out meet the requirements of the building regulations?</p> <p><b>Yes: 45% No: 49% No View: 6%</b></p> <p><b>SUMMARY:</b> Many respondents were concerned that completion and final certificates would not guarantee that all the work done met the requirements of the Building Regulations. It was suggested that the information should carry a warning that the data is based on a limited inspection regime and that there should be an exclusion of liability where necessary. Some respondents had concerns that property purchasers may not be aware of the varying inspection regimes of the different BCBs.</p>
<p><b>8)</b> [Para 2.4 under “Proposal 1”] Do you think that full plans should be excluded?</p> <p><b>Yes: 92% No: 6% No View: 2%</b></p> <p><b>SUMMARY:</b> Although the views of respondents varied, the general consensus was that plans should be excluded. Those who were in favour of including plans suggested that plans be made available on line with a suitable charge. Others felt that LAs should publish selected scanned drawings at their discretion, to minimise FOI obligations. Some respondents had concerns that LAs would be disadvantaged if plans were on open display and felt commercial confidentiality must be considered.</p>
<p><b>9)</b> [Para 2.5 under “Proposal 1”] Do you agree with the proposed exemptions from disclosure?</p> <p><b>Yes: 86% No: 2% No View: 12%</b></p> <p><b>SUMMARY:</b> Most respondents agreed with this proposal and believed that the element of risks would be eliminated if the exclusions were included. It was also felt that as full plans were not going to be kept as proposed, the reference to security considerations needed greater clarification.</p>

**10)** [Para 2.5 under “Proposal 1”] Do you think there should be any other exemptions?

**Yes: 13% No: 75% No View: 12%**

**SUMMARY:** Some respondents believed that exemptions should apply and that details of a person’s disabilities and vulnerability should be excluded. Some took the view that all personal details should be excluded and that Data Protection should protect the names of individuals.

### **3 PROPOSAL 2: 3.1 (Questions 11)**

**11)** [Para 3.1 under “Proposal 2”] Do you agree with the proposal that information should be retained for 15 years?

**Yes: 94% No: 6% No View: 0%**

**SUMMARY:** Whilst some respondents felt that the information should be retained for 15 years or more, others felt it should be restricted to 5 years. One suggestion was that it should be linked to an extended enforcement period of 5 years after which the architect/owner should retain the plans. It was also suggested that the proposals should be careful not to encourage the disposal of historic data which was over 15 years old. The majority of those respondents who did not use the proforma response form did not comment on this proposal.

### **4 PROPOSAL 3: 4.1 – 5.1 (Questions 12-14)**

**12)** [Para 4.1 under “Proposal 3”] Do you agree that the Department should not prescribe that information should be retained in a particular format, and that the decision should instead be for each LA to make?

**Yes: 81% No: 17% No View: 2%**

**SUMMARY:** Most respondents believed that clarity on what would be an acceptable format is necessary and that the Department should prescribe this. Other respondents felt that prescribing the format would be too restrictive. The majority of respondents who did not use the proforma response form felt that the Department should endorse the EIR as well as the EC Directive on the Reuse of Public Sector Information 2003/98/EC.

**13)** [Para 4.2 under “Proposal 3”] Do you agree with the proposals in this paragraph relating to the manner in which the register should be maintained?

**Yes: 46% No: 51% No View: 3%**

**SUMMARY:** Most respondents felt that the information which would be retained was too excessive and that it should only identify specific situations (i.e. what, where and when). Other respondents thought that this would lead to much inconsistency and suggested that guidelines would be required. It was felt that the information should only show that an application had been received, i.e. application number, description of works, etc. and that flexibility would be required as the information would be held in different formats.

**14)** [Para 5.1 under “Proposal 4”] Do you agree that members of the public should be entitled to copies of information simply on request and payment of the appropriate fee?

**Yes: 37% No: 63% No View: 0%**

**SUMMARY:** Most respondents felt that information requests should be in writing with a reasonable timescale given in which LAs can respond. Some respondents took the view that FOI principles should apply and customers should be able to access any information on LA websites. Others felt that consideration should be given to reduce costs for more than one piece of information and information should only be made available to those who have a genuine need.

**5 PROPOSAL 5: 6.1 (Questions 15)**

**15)** [Para 6.1 under "Proposal 5"] Do you agree that LAs should be entitled to charge fees to members of the public whenever they request copies of information?

**Yes: 100% No: 0% No View: 0%**

**SUMMARY:** The respondents who agree with this proposal also felt that it was essential in order to cover the costs of providing the service. The respondents believed the Department should set the level of charge and that it should be reasonable and meet audit requirements. Some felt that LAs should have the freedom to charge for duplicated copies previously issued whilst others felt there should be a distinction between what is available via CON29 and what is available from Building Control Departments. The majority of respondents who did not use the proforma response form felt that the Secretary of State should prescribe the circumstances in which LAs may charge for copies of EIR information to be kept in the register.

**6 PROPOSAL 6: 7.1 – 7.4 (Questions 16-18)**

**16)** [Para 7.1 under "Proposal 6"] Do you agree that LAs should be entitled to recover the [estimated][actual] cost of providing copies to members of the public?

**Yes: 98% No: 2% No View:**

**SUMMARY:** A number of respondents felt that certain overheads (e.g. time spent searching for information, entering information, and maintaining the register) should be included in the costs. The majority of respondents who did not use the proforma response form felt that there was no reference to the Markinson decision, EIR or existing government guidance and that it failed to take account of the application of Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulation 2004. Although these respondents had no objections to proposals 7.2 (ii) and 7.2 (iii), they felt that if no encouragement was offered to LAs to provide electronic information, then it would be reasonable for LAs to recover the cost of paper and postage copies if it was economically efficient to do so. Also, they were of the view that the information should be provided electronically (EC Directive) as other Government initiatives, such as CONNECT and PARSOL, suggested that in addition to planning information, building control information should be available on line.

**17)** [Para 7.2 under "Proposal 6"] Do you agree with the suggested method for calculating the fee to be charged by LAs for providing copies to members of the public?

**Yes: 73% No: 19% No View: 8%**

**SUMMARY:** Some respondents felt that there should be a standard scale which should be reviewed annually and some felt there should be no standard fee. Others suggested that customers should have a choice to pay for an express service and the cost should include the maintenance of any information system.

**18)** [Para 7.4 under "Proposal 6"] Do you agree that the proposals for charging will address the issues of inconsistency and lack of transparency in relation to the charges made by LAs for supplying information for CON 29 searches?

**Yes: 38% No: 10% No View: 4%**

**SUMMARY:** Some respondents were concerned that there was no national standard for the period of time CON29 relates to and that the costs of CON29 was broader than what the consultation allowed for. It was felt that the charges should be included in the Building Regulations model charges and that it should also be kept separate from CON29. Some respondents felt that charges would vary between LAs and felt that a clear distinction was needed between charging for access (the "search process") and charging for outputs (the "results of a search").

**7 PARAGRAPH 8.1 (Questions 19)**

**19)** [Para 8.1 – 8.3 under “Copyright”] Do you agree that the position as described in relation to copyright offers adequate protection?

**Yes: 80% No: 14% No View: 6%**

**SUMMARY:** Some respondents were concerned that plans and calculations were sometimes copied, adapted and re-used. They considered that adequate protection would be possible only if such documents were not made available. Other respondents felt the protection needed to be stronger to prevent possible court action. It was suggested that completions and approvals be scanned to the register and there be a shorter retention (excluding plans and calculations).

**8 PARAGRAPH 9.3 (Question 20)**

**20)** [Para 9.3 under “Data Protection”] Do you agree that it is very unlikely that building control information would lead to persons accessing the register finding out sensitive personal data?

**Yes: 82% No: 12% No View: 6%**

**SUMMARY:** A high majority of respondents felt that sensitive information was contained in the plans and careful consideration should be given to descriptions which could indicate any disability, etc. Others were of the opinion that the information related to buildings and so the names, addresses and description of the work was unnecessary.

**9 PROPOSAL 7: 10.1 – 10.4 (Question 21-23)**

**21)** [Para 10.1 – 10.2 under “Proposal 7”] Do you agree that the Department’s proposals would deliver the listed benefits for both the public and LAs?

**Yes: 30% No: 70% No View: 0%**

**SUMMARY:** Some respondents felt that only commercial organisations would benefit unless the system was adequately self-financed. Others felt that plans should have an approved stamp to avoid misrepresentation and that LAs should keep files as long as enforcement powers are within the time-limits. Once the time has expired, it is felt that builders and owners should keep their own files. In reference to 10.3 of the consultation paper, the respondents who did not use the proforma response form felt that there was already a duty on LAs to maintain and make available the contents of the register.

**22)** [Para 10.2 under “Proposal 7”] Do you agree that the LA register will have benefits for the Home Information Pack when it comes into effect in June 2007?

**Yes: 87% No: 11% No View: 2%**

**SUMMARY:** Some respondents felt that there would be little impact on HIPs. Others felt that the consultation did not adequately address cost recovery matters.

**23)** [Para 10.4 under “Proposal 7”] Do you agree that there are strong justifications for commencing section 7 SSBA and making regulations under section 91A BA to bring into being a comprehensive publicly accessible register of building control information?

**Yes: 30% No: 68% No View: 2%**

**SUMMARY:** A large number of LAs responded to this question. Some felt that there were some justifications. Other views were that obtaining information would be more straight-forward.

**10 QUESTION 24**

**24)** Do you agree that it will be LAs who will be most affected by these proposals?

**Yes: 94% No: 6% No View: 0%**

**SUMMARY:** A large majority of the respondents felt that LAs would be most affected and would be disproportionately disadvantaged when compared to AIs, particularly as LAs were not empowered to cross-subsidise other services. Some were of the opinion that AIs and CPs should pay a fee for their submissions to the register and that Central Government should provide funding.

**11 QUESTION 25**

**25)** Are there any other individuals or organisations that you think will be affected by the proposals? If yes, please describe who and how you think they will be affected.

**Yes: 37% No: 59% No View: 4%**

**SUMMARY:** Some respondents believed that search agents would benefit as well as AIs/CPs who would expect LAs to act as their agent to provide historic information. It was felt that CPs should complete LAs database and send a copy of the documents to the parent organisation. Other views were that AIs/CPs should improve their processes and provide their own information within certain timescales.

# Annex B

## Markinson Ruling

David Markinson inspected certain papers at the offices of the Kings Lynn and West Norfolk Borough Council. The papers related to the original planning application for his house and he requested photocopies of them. A Council representative drew his attention to its printed leaflet of fees and charges, under which £6 for each building control or planning decision notice and 50p each for other photocopy sheet contained in a planning file. The level of the Council's charges meant that Mr Markinson could not afford to take copies of all those he wanted.

Mr Markinson complained to the Information Commissioner that the Council's charges under the Freedom of Information Act 2000 (FOI) were unreasonable. It was believed that the complaint fell under the scope of the Environmental Information Regulations 2004 (EIR) but was subsequently established that the documents in question fell within the meaning of "environmental information." Their availability to the public had to therefore be judged under the EIR 2004 and not the FOIA. The Council was required to permit Mr Markinson to inspect the material at its office free of charge and was entitled to charge him for copies at rates that satisfied the reasonableness (para 1-3 of Regulation 8). The Information Commissioner carried out an investigation and concluded that the Council which revised its charges at least twice during the course of the investigation had acted reasonably in setting the charges that it did.

Mr Markinson appealed to the Information Tribunal. The Tribunal held that the Commissioner was required to consider:

- (i) whether the Council honestly believed that the charge structure it had set out did not exceed a reasonable one
- (ii) and if it did so, to consider whether that was a belief that a reasonable authority, properly directing itself to the relevant law and facts could hold or
- (iii) was one that had been arrived at by either taking into consideration irrelevant factors or ignoring relevant ones.

The Council sought to justify its charges on the grounds that the charges were similar to those charges by other local authorities: and the staff time in locating and retrieving the information. It also referred to the possible drop in revenue and a possible increase in workload if the charges were reduced. All these factors were said by the Tribunal to be irrelevant. The Tribunal decided that the Council did not comply with its obligations under Part 2 of the Regulations, in that although the information was available for inspection at the Council's office free of charge, each of the charges made by the Council for the provision of copies of the information failed to satisfy the requirements of Regulation 8(3).

## Annex C

### List of Respondents

Local Authority Building Control

Jha Innovation Ltd

A – P Building Control

Building Control Partnership Ltd

Salus BC & Fire Safety Consultants

Celtech Consultancy Ltd

Electrical Safety Council

Institution of Structural Engineers

C-NLIS CIC

OFTEC (The Oil Firing Technical Association)

CNC Building Control Consultancy

LABC

The Chartered Institute of Building

The Association of Building Engineers

Royal Institute of Chartered Surveyors

Council of Property Search Organsation (CoPSOP)

X-Press Legal Services Ltd

Assured Searches Ltd

Total Property Searches

Independent Personal Search Agents (IPSA)

Pali Ltd Property and Land Information

OCALS (O'Connor Associates Legal Services)

Local Authority Search Network Ltd

Greenlines Property Searches

1st Call Property Searches

Homezones Searches

Martin Conlon

Jim Cooper

Roy Dyson

Paul Meadows

Mark Hodges

Terry Pack

Bernice Chan

Jan Boothroyd

Jennifer Gardiner

Kevin Love

Paul Everall

Veronica Dunn

Roz Walton

Lynch Suzanne

Fiona Foyle

Christian Lister

Ian Benger

Simon Carpenter

Steve Davies

N D Small

Jeremy O'Connor

Pete Mullen

David Donovan

George Gibb

Paul Canning

