



Department for Business, Innovation & Skills

Introduction of a Land Registry service delivery company: Consultation response form

This consultation response form is available electronically on the consultation page:
www.gov.uk/government/consultations/land-registry-new-service-delivery-company

Alternatively, this form can be submitted by email or by letter to:

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Shareholder Executive
Department of Business, Innovation and Skills
1 Victoria Street
London
SW1H 0ET
Email: bis.lr.consultation@bis.gsi.gov.uk

This closing date for this consultation is **20 March 2014**.

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

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Please tick the box from the list below that best describes you as a respondent. This allows views to be presented by group type.

<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise

	Individual
	Large business (over 250 staff)
	Legal representative
	Local Government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
	Trade union or staff association
✓	<p>Other (please describe)</p> <p>I am making this response from my perspective as Independent Complaints Reviewer (ICR) for Land Registry, and as a specialist in customer issues and dispute resolution. I will focus particularly on the proposals in the report that relate directly to the role of my office. However I will also offer comments on other issues on which I feel that I can usefully contribute. My comments are based on my experience as an independent but informed commentator on Land Registry's role, responsibilities and effectiveness, especially in the area of customer service.</p>

Question 1

Do you agree that by creating a more delivery-focused organisation at arms length from Government, Land Registry will be able to carry out its operations more efficiently and effectively for its customers?

☐ Yes

☐ No

☒ Not sure

Comments:

I can see that the model has the potential to be effective. On the basis of the information given in the consultation document, I can see two main areas where problems might arise.

First, in view of the way in which responsibilities will be split, there is a risk of duplication of activities by the OCLR and the service delivery company. This would be inefficient and also potentially confusing for customers (though I appreciate that the expectation is that the service delivery will be the primary point of contact for customers). I note that this risk is recognised in paragraph 55 of the consultation - 'the OCLR/service delivery company split should not add cost or time to the process'. This will no doubt be a central concern for those drafting the detailed provisions of the contract between Land Registry and the service delivery company.

Second, while the great majority of the applications handled by Land Registry are relatively routine, some are very complex in both legal and practical terms, and mistakes can have costly consequences. A mistake in a first registration, for example, may not come to light until several years later, and correcting it may require considerable staff resources as well as large indemnity payments to registered owners who may have suffered loss as a result of the mistake. It will be important, therefore, for the contract between Land Registry and the service delivery company to build in effective incentives/accountability arrangements to ensure that the service delivery company focuses on 'getting it right first time' particularly in complex cases.

Land Registry's current project to implement operational separation so as to mirror the proposed OCLR/service delivery company split will clearly provide the opportunity to identify and resolve risks in the areas that I have identified.

Question 2

Do you agree that the OCLR should retain exclusive responsibility for the functions set out in paragraph 49?

☒ Yes

☐ No

☐ Not sure

Comments:

It seems to make sense that these very specific and purely legal functions should be the responsibility of the OCLR.

Question 3

Are there additional functions that should be retained in the OCLR? Please explain what and why.

Comments:

I do not have any suggestions for other functions that should be retained exclusively by OCLR.

Question 4

What are your views in respect of the proposals for shared functions set out in paragraphs 50-51?

Comments:

As far as I can see it will be necessary for these functions to be shared in order to enable the service delivery company and the OCLR to perform their respective roles. In my view the success of the project will depend on ensuring that the contractual arrangements work effectively in practice – that they avoid inefficiency and also that they incorporate appropriate incentives and provisions for accountability.

Question 5

What are your views on the proposed approach to service delivery company functions in paragraph 52?

Comments:

I have no comments on the approach itself. It seems to follow from what has already been said about shared functions and functions retained by OCLR. I note, however, that the consultation says that the '*vast majority of functions in relation to land registration are administrative in nature*'. I am not sure of the definition of '*administrative*' here, or the data on which this statement is based. I would simply comment that my experience of investigating complaints about Land Registry suggests that a significant proportion of Land Registry's registration functions require the exercise of statutory discretion and could therefore be classified as '*quasi-judicial*'. I will return to this point in my response to question 10.

Question 6

Do you agree that the overall design provides the right checks and balances to protect the integrity of the Register and safeguard the provision of indemnities and state title guarantee? If not, please state your reasons why not.

☐ Yes

☐ No

☒ Not sure

Comments:

In principle there appear to be appropriate checks and balances to protect the integrity of the Register and the state guarantee of title. Whether they are effective in practice will clearly depend on the way in which they are implemented in detail and operate in practice.

Question 7

Would you be comfortable with non-civil servants processing land registration information provided they do so within the framework set out by the OCLR through the service contract? If not, please explain your reasons why not.

☒ Yes

☐ No

☐ Not sure

Comments:

I can see no reason to object to non-civil servants processing land registration information, as long as the contractual framework includes effective checks, balances and controls.

Question 8

Are there any situations, other than those set out in this consultation, in which you would want to see an escalation process to the OCLR? Please explain what and why.

Comments:

The situations in which escalation to the OCLR is proposed, as I understand it, are complaints about decisions, indemnity claims and where there is a dispute that cannot be resolved. These appear appropriate. I suggest, however, that it may be appropriate to give more consideration to some of the practicalities of escalation. I will expand on this in my responses to questions 9 and 10.

Question 9

Do you agree with the proposed approach for handling complaints, as set out in paragraph 56? If not, please explain your reasons why not.

☐ Yes

☐ No

☒ Not sure

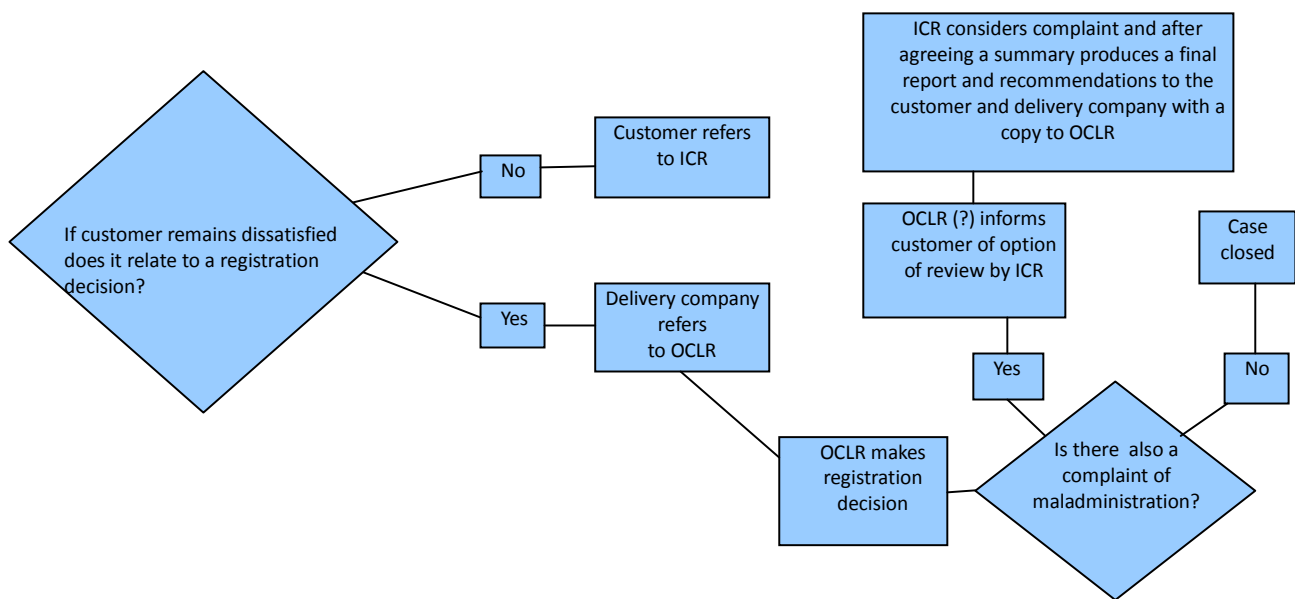
Comments:

I agree that:

- There should be a clear and straightforward escalation route. This should be able to handle both complaints of maladministration and concerns about land registration decisions
- Complaints of maladministration, if not resolved by the service delivery company, should be escalated directly to the ICR for independent review. This will ensure that customers have access to early arms-length review and effective resolution (subject to final review by PHSO). It will be important for the service delivery contract to include clear provisions on identifying and responding to complaints, including a requirement for customers to be informed of the option of escalation for independent review.
- Concerns about legal decisions should be escalated to the OCLR for a final decision. This will provide customers with an early and arms-length review of decisions (subject only to appeal (if available) or judicial review).

I have a significant concern however about the process diagram at paragraph 56 of the consultation document. The diagram appears to presume a clear distinction between cases that relate to a registration decision and those that relate to maladministration. In fact the majority of complaints are about alleged maladministration (e.g. bias, delay, failure to follow advertised procedures) in the way in which a registration decision has been made. Accordingly it will in most cases be impossible for the delivery company to make a neat split between cases to be escalated to the OCLR and cases to be escalated to the ICR.

This problem could be addressed by adding to the process the option for OCLR, after giving a final response on the registration decision, to refer maladministration issues to the ICR for review. This is illustrated in the diagram below.



Note: I am not sure whether it is envisaged that the OCLR or the service delivery company will inform the customer of the outcome of registration decisions. Channelling the information through the delivery company would have the advantage of simplicity from the customer's point of view and would be in line with the principles in paragraph 55. It might, however, cause confusion about who is responsible for the decision and the options available for challenging it.

Question 10

Do you agree with the escalation process set out for objections in paragraph 56? If not, please state your reasons why not.

☐ Yes

☐ No

☒ Not sure

Comments:

In principle the process looks appropriate. However it is not clear how the trigger '*the parties cannot resolve their dispute*' would work in practice. My experience suggests that legal and quasi judicial questions about applications and objections can arise at different stages. For example:

- When an application is received it can be rejected immediately if it is judged to be 'misconceived'.
- After an application has been accepted, notice has been sent to interested parties and objections are received, they can be rejected as 'groundless' if they are judged to have no prospect of success.
- After an application and objection(s) have been accepted, the parties are invited to consider whether they wish to proceed, and if they do wish to proceed, whether they wish to negotiate. At this stage Land Registry may give an opinion on the legal merits of the application and objection.

- If the parties indicate that they wish to negotiate Land Registry has to make a judgement about how long to allow negotiations to continue before referring the dispute to the FTT.

It appears, therefore, that the process as currently designed may involve a risk of cases being passed backwards and forwards between the service delivery company and OCLR several times. This could be time-consuming and inefficient and could cause delay and uncertainty for the customer.

Question 11

Do you think the Rule Committee should include a representative from the service delivery company? Please explain why or why not.

☒ Yes

☐ No

☐ Not sure

Comments:

The proposal seems entirely reasonable.

Question 12

The Data Protection Act will protect personal data that is provided to the service delivery company. Would you like to see any protections beyond this, and if so please explain what and why?

☐ Yes

☐ No

☒ Not sure

Comments:

I have no specific suggestions. My only comment is that the level of assurance for customers will also depend on the terms and effective operation of the contract between OCLR and the service delivery company

Question 13

What are your views on the proposed system for safeguarding customer service issues and the continued role of the Independent Complaints Reviewer?

Comments:

Land Registry has been very successful in developing amongst its staff a culture of customer service. It is also a model of good practice in the public sector in terms of responding positively to complaints and using them to improve service delivery. From the point of view of Land Registry's customers, it is essential that these features should be preserved in the new model.

The new structure will bring important changes of practice and procedure. I note that the intention is that these should be largely invisible from the customer's point of view. In the event of mistakes being made, however, the complaints process will have a very important role to play in delivering customer feedback and also in enabling the service delivery company and/or OCLR to put matters right – both for the individual customer affected and for future customers. The ICR will have a key role to play - offering continuity and consistency as a monitor of service quality and also identifying systemic adjustments that will allow the new arrangements to deliver maximum benefit for customers.

There will also be new opportunities and new risks in relation to customer service. The ICR, as an external expert in complaints and dispute resolution, who also has a very good understanding of Land Registry's role, structure and ambitions for the future, will have a role to play in helping the service delivery company and OCLR avoid risks and make the most of the opportunities.

It is a well-established principle in the public sector that customers should have access to a clear complaints process, and that this process should include the option of independent review. The EU Directive on Alternative Dispute Resolution will ensure that there is similar provision in the private sector. Land Registry's ICR office has been a leader in the development of complaint review and resolution, and has experience in both public and private sectors. It is extremely well placed to continue to provide an effective service for customers of land registration and property data services, and to add value both for the service delivery company and for OCLR.

Question 14

Do you think there is a difference between the opportunities and risks depending on whether operational control over the service delivery company is entrusted to Government or a private sector company? If yes, what?

☐ Yes

☐ No

☒ Not sure

Comments:

As far as I can see the effectiveness of the overall service for the customer will depend mainly on the following:

- The clarity of the division and sharing of responsibilities between OCLR and the service delivery company
- The incentives and accountability built into the service delivery contract
- The effectiveness of the oversight framework used by the OCLR
- The availability of a easy to follow and credible process for customers who want to complain about maladministration or registration decisions
- The capability of the system as a whole to evolve and improve in the light of experience and to learn from mistakes.

Question 15

Do you think there is a difference between the opportunities or risks depending on whether the service delivery company is owned by the Government or a private sector company or both? If yes, please explain your reasons.

☐ Yes

☐ No

☒ Not sure

Comments:

See answer to question 14.

Question 16

What do you think are the constraints and dependencies for Land Registry's successful delivery of the business strategy?

Comments:

It is difficult for me to comment. I am not part of Land Registry and do not have a detailed knowledge of matters relating to resources and operations.

Question 17

Do you have any other comments on the proposals contained in this consultation?

Comments:

The consultation is clearly presented, though some of the implications are difficult to work out in view of the limited amount of practical detail. Perhaps, however, this is inevitable in the circumstances.

Question 18

Do you have any other comments that might aid the consultation process as a whole? Please use this space for any general comments you may have. Comments on the layout of this consultation would also be welcome.

Comments - No

Elizabeth Derrington, Independent Complaints Reviewer for Land Registry

14 March 2014

Thank you for your views on this consultation. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply ☒

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

☒ Yes

☐ No

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