



## 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](http://www.gov.uk/government/consultations/land-registry-new-service-delivery-company)

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

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

---

Name: Martin Allsopp, President  
Organisation (if applicable): Birmingham Law Society  
Address: 43 Temple Row, Birmingham B2 5LS

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
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input checked="" type="checkbox"/>	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
	Other (please describe)

### 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:

No evidence has been provided that the creation of a private sector Service Delivery Company and division of responsibilities with the OCLR would provide the claimed benefits set out in the Paper.

The main problem with the ideas set out in the Paper is that, although it recognises that the Land Registry has other functions, the proposals concentrate on only one aspect of these activities – that of information delivery. It fails to understand that the main function of Land Registration is the registration process itself - to ensure that land ownership is secure and as risk free as possible. Even with regard to information delivery the drafters of the consultation document have failed to grasp the fact that the vast majority of requests for information are based upon the statutory services of official searches and requests for official copies of the register. These are not services that can be promoted or marketed by a private service company, because their need arises only at particular times – when land or property is about to be sold or mortgaged.

Moreover, the basis of the split between policy and delivery in this instance would create an artificial and unhappy division of responsibilities in a manner which will not be understood by the general population and would create the potential for demarcation disputes between a Service Delivery Company and OCHLR. If a division is thought necessary to enable greater use of data gathered by the Land Registry, then a DataCo could be created to exploit the data created by the Land Registry as a stand-alone company as proposed in this document and answerable to the Chief Land Registrar, and thus to Her Majesty's Government. Commercialisation and other services could then be added (as and when proposed/envisioned) without interfering with or disturbing the smooth running of the core business of the Land Registry (i.e. registration of land transactions and the maintenance of the State Guarantee). The current system has the ability when adequately resourced to deliver dealing registrations within 24 hours and the obstacles to this becoming universal are not within the control of the Land Registry. For example delays and failures to remove prior charges/mortgages are the

responsibility of the mortgage providers but that is a separate issue to be addressed with the Council of Mortgage Lenders.

## 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:

We therefore believe that the Land Registry headed by a Chief Land Registrar must retain exclusive responsibility for all current functions and any new functions or services it develops. Indeed, there is absolutely no reason (other than a mistaken ideology that private business is good and public service bad) which requires any change to a service which most conveyancers accept is one of the finest services offered by a Government department in this country. As was noted by MP Sian James, the Land Registry has a customer satisfaction rating of 98%, which does not suggest customers or practitioners want or see the need for change.

## Question 3

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

Comments:

In addition to Q2 above, the OCLR must have the obligation to register a transaction/dealing under the Land Registration Act 2002 (LRA). The 2002 Act as currently in force is defective as although there is an obligation, with penalty effects on the transfer of legal title, to submit transactions/dealings within a fixed timeframe accompanied by appropriate forms and fees (or the electronic equivalent), there is currently no obligation on the Land Registry to action such application and register the matters listed in the Application. If there is to be amending primary legislation to deliver the outcome of this Consultation, this omission needs to be addressed.

## Question 4

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

Comments:

We cannot see how this could possibly operate and we have not been supplied with any evidence that splitting functions between two organisations would make the registration process any more efficient or indeed customer friendly. The Proposal to artificially divide functions between the OCLR and a Service Delivery Company would appear to add

unnecessarily to the costs of running the current service, as well as increasing the bureaucracy of the operation.

Efficiencies have been made over many years. The Land Registries' own figures (as shown in its 2013 annual report) shows that the cost of running the business in 2008/9 was over £373 million, which had reduced in 2012/13 to just under £238 million. It would, of course, help house buyers in an increasingly difficult market if fees were reduced, but they appear to remain unacceptably high only because the operating surplus of the Land Registry is unacceptably high. In previous times, one of the main purposes of the fee order system was to react rapidly to changes in the property market. If it looked as if fee income would not cover the costs of operating the Land Registry fees would be raised, but equally, if it looked as if the Land Registry was on target to make a significant operating surplus, then fees would be lowered. The fact that this year it looks as if the Land Registry may make a surplus of around £90 million means that purchasers of land and property are paying a hidden tax on every transaction. This continual annual surplus (£67 million in 2011 and £72 million in 2013) amounts to a hidden tax on every purchaser of land and property in England and Wales, but of course also "fattens up" the business to make it attractive to anyone wishing to run the service delivery company.

The Consultation suggests that BIS and HM Government are not yet resolved as to whether any Service Delivery Company or DataCo would be a separately managed legal entity/a separately owned legal entity and it is therefore essential that HM Government have sufficient reserve authority and powers to run the complete service (whether devolved or not) without the need for further primary legislation. There also needs to be a power reserved to the Secretary of State at BIS to amend the allocation of the Shared Functions (subject to ratification in Parliament)

## Question 5

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

Comments:

We disagree. The majority of the Land Registry's functions cannot be described as administrative: they are a mixture of administrative and quasi-judicial. For example, when an application for first registration of a piece of land is lodged the evidence of title produced by the applicant is examined by experienced staff who decide whether or not to grant a title and, if so, the quality of that title and/or any qualification that might be attached to the registration. This does mean that there are times when a technically inadequate or incorrect "paper" title can still be granted an absolute registered title, or it could be rejected altogether (as is often the case with applications for possessory (squatters') title). Even with what often seem to be straightforward transfers of whole there might be defects in the execution of the documents or inadequacies in dealing with existing register entries that would prevent completion of the registration of such a transfer. Therefore it is a fallacy to assume that the registration of even a simple transfer can be likened to the registration of the change of ownership of, say, a car. Furthermore, one of the main considerations in dealing with changes of ownership of land and the decision by Land Registry staff to complete a registration is whether any flaw in the

documentation would render the registration unsafe and possibly lead to a payment of indemnity.

Therefore, there seems little or no benefit to changing the management and policy direction of the current processes. Indeed, the Paper states on a number of occasions that the proposals “would have a very limited impact on customers” which begs the question why change what is a perfectly good and respected system? The Proposals are not at all persuasive from the customer perspective.

The introduction of further or novel services could be the commercialisation of the Land Registry data with the risks attendant on such commercial exploitation: it is strongly recommended that this risk profile be separated and held distinct from the State Guarantee and reputational integrity enjoyed by the Land Registry in its present form. The proposed organogram would not allow this and should be abandoned.

## 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:

We do not see anything in the Proposals that achieve this aim and, in fact, the Paper is largely silent on the protections that are currently in place around the State Guarantee.

Under the current system Land Registry staff constantly apply a series of checks and balances. If a problem is spotted, a junior employee will refer the matter to a more senior member of staff, quite often a qualified solicitor or barrister with many years of expertise in the law of real property and land registration practice. Whatever checks and balances might be put in place under the new Proposals, the physical splitting of responsibilities in the way suggested can only result in a greater risk of error. The State Guarantee of title can only operate if the State is confident that, a rigid examination of the transfer and other documents have taken place. It cannot have that same confidence when a remote organisation is operating the registration process as a purely administrative function. The question of indemnity insurance to back up that State Guarantee remains unanswered and the Paper remains silent on it. This is a key aspect of the current system. It is not, in our view, good enough to transfer responsibility to a Service Delivery Company without addressing this fundamental question.

The new proposals therefore walk a very fine legal line of statute interpretation and construction which will not be understood by the vast majority of the proposed users of the service and could well occupy many days’ of legal argument before the Higher Courts. In short, it is over-legalistic and could be open to legal challenge for obfuscation. The administrative function of land registration together with the duty to register transactions coupled with the duty to keep and maintain the accuracy of the Registers and the State Guarantee should all rest in the one location. i.e the OCLR. There is no merit in dividing the functions as the Proposal suggests.

## 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:

The benefit of the current system is that the Land Registry employees are civil servants but that independence of function cannot be guaranteed with a private Service Delivery Company. The Paper remains silent on the wider debate concerning e-conveyancing and the implications for that, in terms of independence and security of information, if a Service Delivery Company is established to process land registration services. The privatisation of elements of the prison service and the outsourcing of responsibilities to private sector businesses does not provide a re-assuring model in this respect.

In addition, there is a potential tension where a private company's aim to generate profits is set against the need continually to maintain the existing high standards shown by the Land Registry's current staff when queries do not necessarily attract a fee because the resolution of problems is mutually beneficial. At the moment it is possible for a solicitor or conveyancer to telephone an experienced member of the Land Registry to discuss a possible problem with a transaction and get assistance on how to solve the problem. The solicitor knows what he has to do to achieve registration and the Land Registry has solved a problem when there is a chance of that happening, i.e. before completion of the transaction, so it can be confident it will not be wasting time trying to sort out a problem when the seller has received the sale price and is no longer interested in any difficulties on the part of the buyer and his solicitor. There is a need for qualified staff to be on the end of a phone call or urgent communication to assist with complex issues particularly as to how the Land Registry might prefer to deal with those issues from their end taking into account how the law fits into the practical side.

For example, if a lawyer needs rectification of a title but before doing so wishes to consult with a qualified lawyer at the Land Registry would this be so easy in the hands of a private enterprise? Whilst there would be the OCLR how many people will there be to deal with the daily problems that can arise? If, as implied by the Proposal, there is a drive to make a profit on behalf of the privately owned Service Delivery Company such a service would most likely attract a fee, whereas at present such resolution is seen as mutually beneficial and is covered by the initial registration fee.

Furthermore, the Land Registry is often in a situation where it is in possession of important commercially sensitive information relating to proposals for large scale property transfers or mortgage book acquisitions before they are completed. There is a minimal risk of a leak of such information arising out of the Land Registry. However we could not be so confident in the future if a private company became the Service Delivery Company. For example, if the Service Delivery Company were a subsidiary company of a bank or other large financial corporation, what precautions could be taken to ensure that the subsidiary company did not pass on confidential information about a future asset transfer by a rival company of the parent? There is nothing in the Paper which provides comfort on preventing the Service Delivery Company from selling on personal data to third parties, as has been recognised in the Parliamentary debate on the consultation. Equally, nowhere does the Paper address the question of conflicts of interest.

Moreover the management and control of such operations must remain a function of Government via the Civil Service in order to retain quality and integrity. As highlighted by the Parliamentary debate, the changes brought into the Ministry of Defence and the use of GoCo for defence procurement does not inspire confidence. The proposed privatisation of the operative part of the Land Registry will have TUPE issues and the possibility of the cadre of experienced operatives being lost resulting in a deterioration of service / suspension of service due to industrial action by trade unions. The proposed service contract would need to have detailed and enforceable quality standards with a cadre of civil servants performing the “intelligent client” function to ensure that the standards and speed of service delivery is being maintained and there is no hazard to the State Guarantee or the reputational risk of UK Plc in its land registration and management. This management function would need to be very actively managed to ensure that the risks are acceptable to all stakeholders. We cannot see that this is of benefit.

### 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:

We would not want to see a situation arise where an escalation process is necessary. If the whole registration process were in the hands of one organisation, as it is now, then no such situation could arise.

However, in looking through the Proposal, the breach of the service level agreement and failure to innovate / bring additional benefits to users and stakeholders should create an escalation to OCLR with power for the Secretary of State on the recommendation of the OCLR to terminate any new arrangements created in consequence of this consultation with the aim of restoring the position to as it currently exists.

### 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:

If the Proposal were to proceed then broadly, yes. There is no review by the OCLR of the outcome from the First Tier Tribunal and that would need to be built into the complaints process given the serious implications for the policy aspects of the OCLR’s responsibilities. However the answer here and to the following Q10 – 13 is predicated on the Proposal being followed through. As we have made clear, there is no compelling case to support the Proposal from the customer perspective. The Proposal over-complicates and adds unnecessary



administrative burdens, with likely consequent increased costs of operation which are not currently there.

### 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:

If the Proposal was to proceed then broadly yes, subject to previous comments at 9 above.

### 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:

Yes, because the workability of any Rule or Fee must be understood by the administrative operatives and be capable of being delivered using the existing methodologies. If changes are required for any new Rule or Fee, then those charged with its implementation should be entitled to comment on the practicality and deliverability within the time scale that the Secretary of State may deem expedient.

### 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:

The Service Delivery Company should be subject to the Freedom of Information Act and comparable legislation to ensure that it is held properly to account for the holding of such information kept on the Register because of the inherent sensitivity of the data.



### 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:

The current system appears to be perfectly functional, and should therefore be retained.

### 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:

The Government has, via the Civil Service, consistently failed to demonstrate commercial acumen and therefore there are more likely to be commercial opportunities arising if the service delivery company is a private operator. There is a wider question of whether that would be a good thing for the service delivery element of the Land Registry which benefits customers, rather than providing revenue for a privately owned company instead of HM Government. If a privately owned Service Delivery Company is put in place to generate profits for its shareholders, we are sceptical that this would result in a benefit to customers, through lower fees. Any service level agreement would therefore have to be carefully prepared and rigorously monitored.

We see only additional unnecessary costs and no benefit if the Service Delivery Company concept was established and maintained by HM Government. The existing system would not require a split in responsibilities, so we can only assume that the aim of setting up a Service Delivery Company would be ultimately to hand it over to the private sector, if not immediately, then at some stage in the future.

### 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:

As per 14 above, the only obvious rational for a private sector Service Delivery Company is to raise revenue for the Government and to then make profit for the shareholders, even where the OCLR retains responsibility for policy and fee setting. We do not see that that benefits stakeholders or users of the Land Registry.

## Question 16

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

Comments:

We believe that there are very few constraints against the Land Registry doing a first class job. As we have already explained we feel that the consultation document places far too much weight on the information provision aspect of land registration work. The most important aspects of this work are the registration process and the State Guarantee of title. The business strategy as set out in this Consultation is flawed and seeks to divide the existing land registration service down the wrong lines. The proposed strategy speaks of unlocking "efficiency in the public sector" and "increase and extend assurance and compliance provided to the market".

- As has already be referred to in earlier answers, the efficiency of the current arrangements is being hampered in the domestic market by delays in mortgage/legal charge redemptions caused by the Council of Mortgage Lenders and their members. This is outwith the control of the Land Registry and they should not be blamed for this. The speed of registration depends on all land in England and Wales being registered but this is not the case. Many large land owners, whether in the private or public sectors have large areas of land which remains unregistered and until there is primary legislation to force this over say a time frame of 10 years, (with financial assistance to Local Authorities to cover the costs of the relevant mapping surveying and legal work involved), there will remain a patchy delivery of quicker registration for non-residential property transactions.
- Efficiency in the property market is driven by market conditions in which the entire basket of factors must all be right for a vibrant market
  - Finance
  - Planning
  - Availability of buyers
  - Insurability of assets so created
  - Owners willing to engage with the market
- The creation of a Land Registry Service Delivery Company will address none of these fundamental requirements
- The business Strategy speaks also of the re-use of data for the benefit of the wider economy. This can be achieved by the creation of a subsidiary of the existing Land Registry or by a private sector company tasked by HM Government with the re-use of data licensed to it. The ownership of such a company is not material to its purpose or delivery, so that it should be expressly required to comply with all FOI and similar public sector data regulations.

To increase assurance in land registration, there must be no actual or perceived weakening of the State Land Guarantee and handing the work of land registration under any form of control or management to an organisation outside of HM Government would decrease such assurance. This action might not have this actual effect but the public perception and the opening to those opposed to HM Government policy would make the public relations risk of such actions a self-fulfilling prophecy.

### Question 17

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

Comments:

The Land Registry is already a highly efficient operator, one of the best in the public sector and a rival to the best in the private sector. We have already explained that if the fees order regimen were correctly applied, so that excess surpluses were eradicated, then its customers would benefit from lower costs. These would only have to rise if there were a need for the Service Delivery Company to introduce a profit element into the calculation. As indicated throughout these comments, this proposal is flawed as addressing the perceived issues from the wrong direction.

- The greater use of Land Registry data can be achieved without changing the vehicle for the administrative functions of the Land Registry.
- The speed of registration depends on all stakeholders giving the same priority to speed of registration, which is not the case now (see CML).

Efficiency in the property market is not dependent on the registration of the property transactions as they happen after the property event.

### 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

A forum of the CML, the British Property Federation, the Law Society and the Royal Institution of Chartered Surveyors should meet and engage with BIS and the OCLR to agree the obstacles and then with the assistance of the Secretary of State for Communities and Local Government work to an agreed agenda.

With fraud on the increase, surely it makes sense to have qualified staff scrutinising applications for registrations where experience in the legal framework can notice something that may be wrong more so than someone employed with a guidance sheet to follow amounting to a "tick list".

So far as First registrations are concerned these surely must still be dealt with by the OCLR as unqualified staff would find the issue too complex. Whilst the majority of properties are now already registered there are still numerous unregistered titles

Consumers receive a value for money product from Land Registry at present. Dealings are returned usually within 48 hours. Many fees are about to be reduced and Land Registry are making profits.

In the words of MP Sian James, 'The current system is tried, tested, evaluated and proven... if it ain't broke, don't fix it.'

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

© Crown copyright 2014

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. Visit [www.nationalarchives.gov.uk/doc/open-government-licence](http://www.nationalarchives.gov.uk/doc/open-government-licence), write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

This publication is also available on our website at <https://www.gov.uk/bis>

Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills  
1 Victoria Street  
London SW1H 0ET  
Tel: 020 7215 5000

If you require this publication in an alternative format, email [enquiries@bis.gsi.gov.uk](mailto:enquiries@bis.gsi.gov.uk), or call 020 7215 5000.

**BIS/14/510RF**