Introduction of a Land Registry service delivery company - PwC response to consultation questions

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

To deliver efficiently, Land Registry requires investment to achieve its business strategy including digitisation. This requires both funding and skilled resource to implement the strategy and to drive efficiency and customer outputs from the investment. Land Registry also needs an incentive to deliver efficiently and effectively. We look at each of these factors in turn below.

Funding investment in digitisation: The new organisation will need to include an approach for how funding will be allocated, released, managed and accounted for. For example, whether there will be direct grant funding for investment, or will the service company maintain a privately-financed asset base, with charges to customers covering debt service?

Being arm's-length from Government could support direct grant funding by including it in the service contract. This would set out the committed funding from the Government sponsor and the obligations on the entity to deliver. This could provide more formal budget release and outcome reporting than might exist if the LR were funded as an internal part of a Government Department. It could help protect LR from unexpected budget shifts, although annual settlements would be likely to remain a factor.

If the LR entity is to raise external finance for the digitisation investment, it would (normally) require a private sector owner or part-owner to avoid constraints on public sector entities' borrowing. Being at arm's length from Government with appropriate contracts in place would be a precursor to this change of ownership but would not, by and of itself, deliver third party financeability.

Skilled resource to manage investment and deliver benefits: It should not be assumed that the only way to recruit the right skills is to be free to recruit and pay outside civil service terms. Simply being on an arm's-length relationship with its sponsoring body would not enable LR to do this in any case: it would need specific powers in its contract with its sponsoring department. However public sector staff, Departmental centres of excellence, experience sharing and outsourcing can all bring skills without requiring recruitment of highly-paid staff. All of these are available regardless of the arm's-length nature of the LR as an entity. However if LR is more arm's-length and "delivery-focused", then it may be more ready to access the right skills, without having to clear so many internal hurdles, and it may be able to avoid Departmental staff rotation when it has taken on the right people. Experienced external recruits, who would not contemplate a Civil Service career, may find the idea of a public sector arm's-length entity attractive, without requiring private sector rates of pay.

The arm's-length nature of the LR body should also enable it to implement its own HR and management structures, all aimed at promoting delivery and efficiency. And if the LR entity can also be freed from public sector pay constraints, this would increase further its ability to engage the right skilled people.

Incentive: It is not enough for an entity to have the funding and the skills to deliver efficiently and effectively: it needs also to be incentivised to do so, whether through rewards for success or sharing the pain of failure. This is even more so where there is an ambitious transformation strategy to deliver as well as business as usual. In many markets, the business as usual incentive is delivered by the customers themselves, who can take business elsewhere. However Land Registry's monopoly means that customers cannot do this and that incentive needs to be applied on their behalf. An arm's-length body could be highly incentivised if for example there were clear delivery targets and monitoring, with meaningful sanctions that can be applied on behalf of customers. However, without these, a gap can develop between the Department, who is ultimately answerable to customers for service, and the arm's-length body tasked with delivery. There have been some recent notable instances of arm's-length bodies being brought back under Departmental management when service is perceived to have failed.

Public interest: While addressing these high-risk requirements and engaging in new commercial relationships with the private sector, LR must continue to deliver the public service which is at its core and be seen to do so with the highest levels of probity and transparency. The data it owns and manages is a national asset in an environment where cyber security is a growing concern, but public confidence in the data accuracy and integrity is critical. Characterising the LR as a purely "administrative" delivery body may not place sufficient emphasis on this key feature of the organisation.

Summary: We have discussed above 3 main drivers for efficiency and effectiveness of delivery in LR and considered whether these would be enhanced in an arm's-length, delivery focused entity. The table below summarises the views on each.

	Arm's-length delivery-focused entity	**Entity within a Department**
Investment in digitisation: funding	Grant funding can be committed through framework, but amounts may still be subject to annual settlements.	Wholly subject to Departmental budgeting and resources.
People and skills	More scope to recruit, manage and retain the right people. This is increased if public sector pay and grading limits are relaxed.	Subject to Departmental HR policies and requirements.
Incentive to deliver	Depends on the strength and effectiveness of the arm's-length contract with sponsoring Department and on the latter's monitoring and oversight.	Political, but can be readily applied from Minister to teams.
Public service	NDPB structure can be used to achieve separation from Departmental issues. If adequately empowered and governed, then being an arm's-length body can be seen to provide a more effective assurance of public service than an entity within a Department.	Provided there is confidence that the Department will deliver its sponsorship with the public service objectives given due priority, then this structure can also work. Clear line of political accountability with Minister.
Overall	The arm's-length, delivery focused entity should deliver customer efficiency and effectiveness, but a strong and clearly delineated governance arrangement is required with the sponsor Department.	On balance, LR's need for digitisation and transformation would be more challenging for an internal Departmental body to deliver efficiently and effectively.

2. Do you agree that the OCLR should retain exclusive responsibility for the functions set out in paragraph 49?
We agree that there should be a sponsoring body within Government which takes responsibility for regulatory and statutory matters.

3. Are there additional functions that should be retained in the OCLR? Please explain what and why.
We think that the OCLR role should be extended to include overall responsibility for LR's performance, cost effectiveness and delivery to customers, given that the latter will have no levers over the new LR delivery entity. Unless another Government body is taking on the role of setting cost and performance targets, and holding the LR delivery entity to account, then the OCLR will need to do this.

4. What are your views in respect of the proposals for shared functions set out in paragraphs 50-51? We think you will want to go through a detailed exercise of separating these “shared” roles into clearly separated roles and responsibilities. “Shared” responsibility leads to uncertainty and grey areas. This does not help Government to set cost and performance targets, or to hold the LR delivery entity to account.

5. What are your views on the proposed approach to service delivery company functions in paragraph 52? We agree that these functions are capable of being included in the service delivery entity’s remit. However the need for transformation and digitisation to deliver the business strategy is a more complex challenge which needs to be delivered alongside the business-as-usual administrative tasks, and this should be acknowledged as a major part of the entity’s role.

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.
It is not wholly clear whether there is enough protection for the integrity of the Register. The document is silent on quality of the maintenance service to be provided by the delivery entity in respect of the register. Protecting quality must be a key part of protecting the indemnity. We would suggest that this is enshrined in the service contract, as well as in company articles and Director’s duties. The OCLR should exercise measurement and monitoring aimed at ensuring this.

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.
We have no issue with this.

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.
As mentioned above, we think that the OCLR should play an active role in monitoring the delivery entity’s performance, particularly with respect to the quality points mentioned at 6 above and in relation to implementing the strategy and transformation.

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.
We do not have a view on this.

10. Do you agree with the escalation process set out for objections in paragraph 56? If not, please state your reasons why not.
We do not have a view on this.

11. Do you think the Rule Committee should include a representative from the service delivery company? Please explain why or why not.
There is no obvious need for it, though they may be consulted on practical aspects.

12. The Data Protection Act would protect personal data that is provided to the service delivery company. Would you like to see any protections beyond this? If so please explain what and why?
We do not have a view on this, although the DPA would appear sufficient.

13. What are your views on the proposed system for safeguarding customer service issues and the continued role of the Independent Complaints Reviewer?
There is a risk of a lack of clarity on customer service responsibility as between the service delivery company and the OCLR. The ICR should still remain independent of either, but will need to be clear as to which entity is responsible.

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?
The private sector company envisaged here is not, under any of the para 58 options, a wholly privately-owned one but rather a partly privately-owned one or a Government-owned entity established as a as a Companies Act Limited company. Operational control under each option could be described as follows:

	Public sector	Private sector
Option (a) 100% government ownership and delivery of service co.	Own company and deliver service with full operational control. May let contracts for elements thereof.	Some contracting roles.
Option (b) JV for service delivery company (responsibility for delivery not defined)	Part-own company and as JV partner have part-responsibility for and operational control of service delivery. May let 1 or more contract(s) for services – may be tied to the private sector partner on these.	Part-own company and as JV partner have part-responsibility for and operational control of service delivery. May also have a separate single service delivery contract or hold a number of service delivery roles.
Option(c) 100% government ownership with delivery of service fully contracted out.	Own company and have operational control of management of service delivery contract.	Full control of service delivery within terms of the contract.

The risks and opportunities associated with these envisaged different definitions of "operational control" are set out below.

	Risks	Opportunities
Option (a) 100% government ownership and delivery of service co.	Government retains all risk other than for delivery of specific contracts' scope(s). Risk that the scope of individual delivery contracts by and of themselves will not deliver the wider outcomes desired. If the Director's powers vis-à-vis the OCLR are strengthened by being a limited company there is a risk that, without shareholder returns as a measure of success, the Directors act in the entity's interests, without any guidance as to what these are intended to be. The Directors can therefore create their own mission and then defend it successfully. OCLR needs to act in the owner role to create success objectives that are very clear and measurable.	Can only take risk and therefore be incentivised against the scope of its individual contract(s). If the entity is a Limited Liability company, the Director's duties under Companies Law give them some additional obligations which strengthen their interaction with the OCLR (eg cannot trade insolvently etc). This can ensure that they have adequate budget for their agreed scope of activities, which can help particularly where there is a major transformation to fund.
Option (b) JV for service delivery company (responsibility for delivery not defined)	Public sector retains too much control and the transfer of risk to the private partner is not achievable. Private sector role as contract delivery body and co-owner is confused and conflicted. Public sector does not apply sufficient resource to its co-owner role and becomes increasingly reliant on a partner while still sharing a significant part of the risk.	Private sector part-responsibility for operational control enables it to take risk, investing funds up front or linking its return to success. It can therefore be incentivised in relation to successful delivery. This could be particularly important for the digitisation and transformation project. Public sector retains visibility of the outsourced activities so it can influence decisions that are made. The continued public sector role

	Private sector's profit-maximisation objective is the only one operating on the JV because other public objectives are weak or not enforced by an ultimate owner on the Government side. Success factors are unclear as a result. The value of the private sector stake does not act as an incentive to succeed as it would in a fully privately-owned entity because it is impossible to transfer or value and in any case may operate inversely from the partner's overall profit level.	means it retains the ability to replace the private provider, unlike in a full privatisation.
Option(c) 100% government ownership with delivery of service fully contracted out.	Similar risks to option (a) above. However there is greater scope in the fully outsourced delivery contract to incentivise the private partner to deliver the full set of outputs and performance that the entity requires. Public sector loses understanding and intelligent client capability in relation to contract and is reliant on the incumbent contractor.	Having full control of service delivery within terms of the contract means that if the latter are appropriately-scoped then the private contractor can take risk on delivery. Again this could be particularly important for the digitisation and transformation project. Depending on the control ceded and commitment to fund the contract, it may also enable the private sector to act as a partner despite not having an ownership stake, with a significant % of its return linked to success and significant risk transferred.

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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.
This is covered in our answer to the above.

16. What do you think are the constraints and dependencies for Land Registry's successful delivery of the business strategy?
As mentioned earlier, the key constraints and dependencies include funding for the investment; availability of skills to deliver transformation in this setting; clear objectives and success criteria from Government and a governance and management structure to drive delivery of these; and incentives for the entity and its contractors to do so. The transformation must be delivered without any adverse impact on the day-to-day performance of LR's key function.

17. Do you have any other comments on the proposals contained in this consultation?
The work needs now to focus on what success looks like. In particular, how and by whom the transformation, digitisation and efficiency drive is best funded, resourced, delivered, incentivised and the outcomes measured within a governance structure. Ownership models are a means to an end and should ideally be assessed against their ability to deliver success, while visibly and assurably protecting the long term public interest.

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.
We have no further comments, but appreciate the opportunity the consultation has provided.