

PCS response to the “Introduction of a Land Registry service delivery company” consultation exercise

Introduction

The Public and Commercial Services Union (PCS) is one of the two recognised Trades Unions in the Land Registry with well over 3000 members and represents the vast majority of staff.

Over the past few years, our members have continued to make a fundamental contribution to the service of land registration, despite the unprecedented upheavals, and have constantly delivered change to benefit customers, exceeding the ever increasing targets that have been set.

PCS has also engaged in extensive Formal Consultations with Land Registry management over the Land Registry Business Strategy, Commercial Model and planned Operational changes.

The consultation exercise asks for comments on a new Land Registry Commercial Model where it is proposed that Land Registry, currently an executive agency Trading Fund, ceases to be part of government. Instead, it is proposed that Land Registry is separated into a policy arm, called the Office of the Chief Land Registrar (“OCLR”) of about 30 staff and a separate commercial service delivery company. It is also proposed that during the “transformation phase” [note, this is not the end point], that the service delivery arm will either be a 100% Government owned company or a company jointly owned between the government and other shareholders (a Joint Venture Partnership) or a Government Owned Contractor Operated body.

PCS rejects the proposal that Land Registry should cease to be a Trading Fund and separated in the manner proposed as part of the Consultation exercise. We provide many sound and good reasons for Land Registry’s remaining part of government – and these are out, below, in the main body of our response.

Before moving to the main body of our response, we would like to express our regret that during the parliamentary business of 13 February 2014, when the Minister was asked about plans for delivering Land Registry’s service in the future, he declined to provide central information to parliament.

The Minister saidⁱ,

“The way in which Land Registry's services are delivered will likely change as the business pursues a digital, efficiency and modernisation agenda through its Business Strategy. This will continue irrespective of the outcome of the consultation—including if the status quo is maintained.”

and

“The Target Operating Model (TOM) [which is the Land Registry service delivery plan] includes initial operational planning based on a number of LR business delivery assumptions. The consultation reflects a broader and different range of issues, as it considers and seeks views on a range of Land Registry commercial models. Some parts of the TOM will be affected by the consultation's outcome. Therefore, it would be misleading to provide further details.”

Even if some parts of the TOM [the service delivery plan] are affected by the outcome of the consultation exercise, we know – because we have been part of the Formal Consultation on these areas – that most of the central plans are not so affected.

Moreover, even if some of the service delivery planning depends on the eventual commercial model, the *key* (unpublished) changes to service delivery - those that flow from the Business Strategy - are planned to take place irrespective, as the Minister himself says, of the *“outcome of the consultation—including if the status quo is maintained.”*

Although this is partly correct, the Minister has not pointed out that the whole purpose of the proposals in the current consultation exercise (which do not, by the way, include the status quo – as this is not an option mentioned in the consultation questions) **is precisely to facilitate** new methods of service delivery. (See for example our comments in paragraphs 18-21 below, on how the attempt to avoid government procurement rules, that bind the Civil Service, is instrumental in the plans to move Land Registry from the Civil Service.) There is, then, a close connection between the unpublished plans for key and central changes to service delivery and the current consultation exercise.

We have therefore asked for these key and central plans to be revealed because,

a. They contain information on the significant changes planned in Land Registry, flowing from the Business Strategy, and *which have not been made public*. (This is what the minister refers to, obliquely, as a “digital, efficiency and modernisation” agenda) and

b. Where, without knowledge of these significant changes, no party is able to provide an informed response to this consultation exercise. Rather than its being misleading, as the Minister claims, to provide further details, it is grossly misleading that key central changes have not been revealed.

Our request (to have these changes made public) has been refused. To date, we are therefore unable to provide this information due to confidentiality requirements, which we explain further at paragraph 8 onwards, below.

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Opening Comments

1. Her Majesty’s Land Registry is a government agency, Trading Fund and part of the Civil Service. It functions to register land and transactions in land and is a great success. As a Trading Fund it takes no money from the public purse whatsoever; i.e. it incurs no cost to the tax payer *at all*. As well as paying its own way, it has made no losses and has turned in a surplus for all of the past twenty years, bar one. It regularly returns this to the public – by money it gives to the Treasury and by frequently reducing the fees charged for the service of registering land and land transactions.

2. Given this success, why would a radical change in the way land registration is delivered be proposed? What could be the gain in separating

the Land Registry into a policy hub (OCLR) and a commercial service delivery company?

Part (i)

The purported advantages of the proposed changes:

3. The consultation exercise should fully address the question of *why* the changes are proposed. But it provides scant explanation - focusing less on the 'whys' and more on the 'hows'.

4. The only attempt to explain and justify the proposals is given at paragraph 28 of the consultation document;

Land Registry strives to deliver the Business Strategy and become an efficient, digital and data centric organisation which can play a wider role in the property market, we consider that it would benefit from a separation of policy and delivery, a greater focus on service delivery, greater flexibilities to operate around pay, recruitment and possibly provide other services and a more clearly defined relationship with Government.

5. The reasoning in paragraph 28 therefore amounts to this:

- There is a Land Registry 'Business Strategy' (which this consultation exercise does not include, nor does it provide a link), summarised baldly as Land Registry becoming a "digital and data-centric organisation" which can play a "wider role in the property market" and
- Where, or so we are told, this Business Strategy will **benefit** from removing Land Registry from its current status as a Civil Service Trading Fund and turning it into a company.

6. What will this benefit comprise? The only comments that address this question are the claims that a service delivery company will help the Business Strategy by allowing;

"a greater focus on service delivery" "greater flexibilities to operate around pay, recruitment and possibly provide other services" and "a more clearly defined relationship with Government".

Taking these points in turn;

“A greater focus on service delivery”

7. Why would the delivery of land registration by a newly formed company allow "***a greater focus on service delivery***" than the current land registration service provided under Trading Fund status? No answer is given in the consultation document. Given the complete success of Land Registry as a Trading Fund - and no suggestion of any deficiencies - it is inconceivable that a commercial company could better the **current** service delivery of land registration under the present Trading Fund structure. So there is nothing in the present Trading Fund status that impedes the **current** service of land registration; nothing that a company could provide than is not already provided with maximum efficiency.

8. There are, however, new and unpublished plans for radical changes in how the service of land registration will be delivered in the future. Conveyancers will know the background to this: Land Registry's "e-conveyancing" programme was abandoned as unworkable in 2009, at a cost of £15m, and since that time various different e-initiatives have been made available - for instance the current "e-DRS" system that allows conveyancers to e-lodge scanned paper applications, for Land Registry to process, by electronic channels.

9. But the new (unpublished) plans for significant changes in the way land registration is delivered are of a *wholly different* type than merely e-lodging applications. Unfortunately, because no information on this new service delivery method has been put in the public domain, although the information has been provided to us, PCS, we are unable to divulge this due to confidentiality restrictions. We can, however, understand that conveyancing firms and businesses might have concerns about whether the planned (non-disclosed) changes to service delivery methods will allow them to preserve their current working practices.

10. We therefore invite people to form a general picture of what the planned (unpublished) new service delivery methods may comprise - and to do this from information already contained in announcements that have been placed in the public domain:

11. For instance, it is claimedⁱⁱ that 90% of the new service delivery methods will be online – and where these service delivery methods go beyond, and are not linked to, electronic lodgement of applications:

*“Land Registry wants to be a pioneering force in providing innovative solutions in line with the governments Digital by Default strategy, and intends to have achieved **90% of services** online by 2017/18.”*

*“Digital Service Delivery will drive up the rates of e-lodgement and **automation**, resulting in significant increases in productivity.”*

12. Also, it is worthwhile considering that the new (and undisclosed) service delivery methods are so far-reaching that they require a whole new Land Registry ‘IT network system’. Work on this is already underwayⁱⁱⁱ:

“Work will also begin to design the system architecture in agreement with the Government Digital Service, delivering the platform for more efficient operations.”

“A critical part of the Business Strategy will be the investment needed in our IT and other infrastructure to develop appropriate systems to ensure digital by default”

13. People may also be aware of the Land Registration (Network Access) Rules 2008 and the Land Registration (Electronic Conveyancing) Rules 2008; these formed part of the secondary legislation needed to implement an electronic **conveyancing** system and to allow people outside the Land Registry access to an e-conveyancing network. In August 2013 - when it was concluded that because Network Services Access transactions rules involve a far more complex scheme of e-conveyancing rules than e-lodgment of *applications* require (because e-lodged applications are not created and completed within the Land Registry’s network) the public was also warned, *“We will continue to innovate in the development of our e-services, and to move towards the government’s policy of ‘digital by default’ in public services.”*^{iv}

14. The Government’s digital by default policy is, of course, designed to ensure that the public (including customers, who may be firms and companies) go online and directly self-serve their own transaction. And it is informative that Land Registry’s **e-conveyancing** Network Services Access transactions (albeit *currently* limited to simple electronic conveyancing, due to IT network limitations, **but see our paragraph 12 above for the work underway to end these limitations**) require users who opt for this self-service **to make direct alterations to register of titles**, which are updated automatically and without any input from Land Registry.

15. Of course, there is no *current* requirement for conveyancing firms and businesses to use the ***e-conveyancing*** Network Service Access system to begin with - but firms and businesses may wish to ask if the planned (non disclosed) changes to service delivery methods, including the revolutionary new IT system architecture, *could* mean they become mandated to follow a self-serve ***e-conveyancing*** method. Again, they may consider how any such a mandate, if one existed, may have a significant affect on their current working practices, perhaps in terms of how their own systems may need to change to interface with new Land Registry IT platforms.

16. Conveyancing firms and businesses might even consider that should any new IT systems require them to self-serve and become directly responsible for creating new registers of legal title and legal interests (rather than this be undertaken by Land Registry staff), then whether there may be consequences for indemnity insurance. Again, small firms and businesses may particularly like to consider these matters, especially asking if any of the undisclosed service delivery changes may adversely affect their costs, which would need to be passed onto the public.

17. We have noted at paragraph 9 above that although information and detail on the new service delivery method has been revealed to us, PCS, because this was provided in confidence, we are unable to reveal the content of these methods. Yet a series of visits by senior directors to speak with staff at local Land Registry offices has led to it being mooted that the size and shape of Land Registry as an organisation and public service provider, including the way that land registration is carried out, will be subject to radical change. We have told our members that we believe these changes are highly damaging to the public service of land registration. **None of this information on the new service delivery method is contained in the current consultation document and we believe this needs to be rectified.**

" ... greater flexibilities to operate around pay, recruitment and possibly provide other services"

18. Why would the delivery of land registration by a company, which would permit "***greater flexibilities to operate around pay, recruitment and possibly provide other services***", make Land Registry's Business Strategy more achievable?

Taking the points in turn:

i. Pay flexibility

a. We accept that the ability to vary pay will depend on the commercial model chosen; for instance, a 100% owned by government company (a Gov Co) would not be able to make any changes compared to now as it cannot differ from the rules governing Trading Funds. As the rules on public sector pay state, *“Although the staff of a government-owned company would no longer be civil servants, they would still be subject to public sector pay guidelines and thus conversion to a limited company would offer few advantages.”*^v This means that if we are to take seriously the proposition that varying pay is a means to achieving the Business Strategy, then it is intended that the *ultimate* commercial model would not be a government company but a private company, for a commercial company *would*, unlike a government company, be able to vary pay.

b. But even if this is possible, why is the ability to vary pay essential or helpful to achieving the Land Registry Business Strategy? We are simply not told *why* this will make Land Registry better placed to achieve its Business Strategy. There is a vacuum here where there should be an explanation.

ii. Recruitment flexibility

a. Why will removing Land Registry from Trading fund status allow it more recruitment flexibility to achieve its Business Strategy? Again, we are not told.

b. However we, PCS, do have some additional information in this area: During previous exchanges on this very subject, we expressed incredulity that any recruitment requirements (key IT leaders and analysts, for instance) needed to fulfil the Business Strategy will require Land Registry to cease its Trading Fund status. In particular, we noted that there is nothing in the regulations governing Trading Funds that precludes them making ‘key’ appointments; for instance, we pointed out that our parent government department (BIS – the Department for Business, Innovation & Skills) frequently appoints key specialists via off-payroll hiring of specialist staff - provided criteria are met, so this would be possible at Land Registry as well. But we were told that “experience” has shown it is difficult to obtain agreement from BIS to sign off necessary expenditure. We responded by saying;

“It cannot be right that such intransigence becomes the very obstacle to Land Registry, under its current Trading Fund status, being able to

deliver the Business Strategy. We request an explanation for why BIS is permitted to cause this costly consequence for the public purse. If necessary, and if there is a genuine problem with obtaining timely signing off for necessary spending, then a review of the BIS/LR interface and the Chief Land Registrar's reporting lines to the Minister should be undertaken. To suggest otherwise, and to propose ending [Trading Fund] Civil Service status as the solution, is to use a sledgehammer to crack a nut."^{vi}

c. But we were told our position was unrealistic: *"It is unrealistic to expect that Land Registry would successfully argue the point that we have a special case/exceptional reasons for controls to be relaxed whilst within the Civil Service – central government is clearly not going to set such precedent."*^{vii}

d. Clearly this is false. BIS frequently utilises public sector appointees via off-payroll hiring of specialist staff, thus no precedent is required. So for it to be claimed that a Civil Service Trading Fund, like Land Registry, needs to be changed into a commercial company in order to be able to "flexibly" recruit is astonishing.

iii. Flexibility to possibly provide "other services"

Why will removing Land Registry from Trading fund status allow it more flexibility to provide *other services* (and what are these other services?) that cannot be delivered by the existing Trading Fund model rather than a commercial company? We have already asked why this is the case but have been given no reply. And no evidence or explanation is given as part of this consultation exercise. (But see our comments on other services, that could be provided, contained on the final page of our response, below.)

"a more clearly defined relationship with Government".

19. Why would the delivery of land registration by a newly formed company allow *"a more clearly defined relationship with Government"*, let alone make Land Registry's Business Strategy more achievable? Not only does the current Trading Fund model, which is already part of Government, have a very clearly defined relationship with government (see below) but why a company could improve on this to the extent of better achieving the Land Registry Business Strategy is simply not explained.

20. **Procurement:** Part of the answer appears to relate to Procurement, for following consultations between us, PCS, and Land Registry management, we know as a matter of record there is a “steer” in place to enable Land Registry to *avoid* the espoused Government policy of awarding Civil Service contracts to small and medium businesses. This Government policy in question is that which avowedly tries to assist local companies by tying the award of Civil Service contracts to rules on procurement – rules designed to help local companies from missing out compared to multinationals, such as Steria and IBM.

21. We have been told that this *“current preference for use of SMEs”* will hold back the delivery of the Land Registry Business Strategy. Moving **Land Registry to a company (private or government owned)** will provide the Land Registration service delivery arm with *“unfettered ability to procure the most appropriate partners, whether they are in the IT field or beyond”^{viii}*.

22. Or take the Government Digital Service (part of the Cabinet Office) which has the core role of *“Changing the way government procures IT services”*. Previously, the need for these procurement changes was explained by Francis Maude as follows: *“Smaller, more innovative and efficient suppliers were finding themselves locked out of the supply of services to Government because of the powerful ‘oligopoly of large suppliers’*. Following these concerns, the Government Digital Service (GDS) was set up, allegedly to break up the oligopoly that had taken hold of Civil Service procurement.

23. Despite these fine words, levelling the playing field to help small suppliers is obviously not to the liking of government, for part of the driving force to turn Land Registry into a company is precisely to avoid these ‘fair-procurement’ rules: As we have been told^{ix}, *“Cabinet Office controls and GDS approach will limit choices. We believe that a move out of the Civil Service provides greater freedom to attract and contract with partners/individuals with the relevant capabilities.”*

24. **Procurement summary:** Evidence supplied to PCS shows the government does not want the procurement associated with Land Registry’s new Business Strategy to be subjected to ‘fair procurement’ controls (i.e. controls designed to assist smaller businesses in the face of large suppliers). As such, moving Land Registry out of the Trading Fund Civil Service status and into a company - whether a Government or a private company - is partly designed to give it the *“unfettered ability”* to avoid and sidestep these procurement rules. **For a Government Agency, like Land Registry, to be changed into a commercial company in order to avoid procurement controls - brought in**

by government policy to assist small and medium sized businesses compete against the oligopoly of large suppliers - is astonishing.

25. **Accessing funds:** As part of controls on Trading Fund surpluses, although Land Registry is required to break even each year, it is also required to set its fees in order to break even and not make a surplus – for rules regulating Trading Fund surpluses require that where surpluses arise, *“charging policies may need to be reviewed to ensure that the surpluses do not continue.”* and *“where Cash reserves should not be built up as a matter of routine”*^x

26. Where Trading Funds are permitted to retain some surpluses, these are held by way of reserves that cannot be spent without Treasury approval. (This way, any unexpected costs, for example, a large compensation claim made under the state guarantee of title can be paid.) If, inadvertently (for they are not permitted to deliberately aim at creating surpluses as this would be a form of indirect taxation), a trading fund makes a surplus, then there are strict rules, governed by the Minister, to ensure this surplus is used to reduce their charges and for the future to ensure surpluses do not continue.^{xi}

27. There are, therefore, controls of surpluses (statutory and Treasury controls) that serve as checks and balances on Trading Funds – controlling both what surpluses can be retained and what can be done with these surpluses.

28. Yet it is *precisely* these checks and balances that the government wants Land Registry to break free from, as can be seen in the following communication to PCS from Land Registry:

“Having freedom to access reserves and invest in the business is clearly a consideration of the model – at present we cannot simply tap into the reserves whenever we feel the need. Permission has to be sought from HM Treasury, normally in the form of a business case and a lengthy process, an outcome of which could be that access is denied.”

29. **Accessing funds summary:** *The evidence supplied to PCS shows the government does not want the checks and balances/controls over how surpluses are used to continue in Land Registry. Removing Land Registry from the Civil Service is designed in part to give it the unfettered freedom to “tap into the reserves” whenever it wants. For a Government Agency, like Land Registry, to have its status changed into a commercial company, to*

avoid checks and balances on how it spends its surpluses, is again astonishing.

Part (ii)

Disadvantages of delivering land registration via a commercial (profit) model

30. Land Registration involves granting of title to land and guaranteeing of legal interests and estates. This is not just of fundamental importance to every home owner in England and Wales but is also an essential requirement of the UK economy.

31. Since Land Registration began in 1862, all have recognised this as a service which must be provided by a body that is both free of influence and impartial in the face of commercial interests. This requirement, best summed up as the need for independence, is precisely why the public service of land registration has always been a function of government, not commerce.

32. Even the current consultation exercise pays lip service to this fact - as it tries (but fails) to preserve the necessary independence by attempting to cleave an artificial distinction between “keeping” and “maintaining” of the Land Register of titles: It proposes a small policy unit (called the Office of the Chief Land Registrar/OCLR) of about 30 staff retained in a non commercialised capacity, and who will “keep” the register. This is separated from the new service arm, the main part of the Land Registry, which is the commercial service delivery company and who will “maintain” the register:

Keeping a register of title, and other registers connected or ancillary to the main register of title, would be the ultimate responsibility of the OCLR, but the maintenance of these registers on a daily basis would be the responsibility of the service delivery company.^{xii}

33. The level of confusion here is alarming. Land Registry does not “maintain” registers in a way that a car might need regular maintenance, such as topping up oil, water or tyre pressure. Instead Land Registry grants new registers of title and creates and takes decisions on the transfer of ownership and legal interests such as charges (mortgages), easements (such as rights of way), leases - and this is just some of the work of Land Registration.

34. Land Registry staff therefore exercise a quasi-judicial function on behalf of the Chief Land Registrar where they make their decisions governing the aforementioned rights to land; as part of the Civil Service, this takes place with *full independence from commercial influence*, which is the very backbone of the system.

35. Moreover, confidence and trust in Land Registry, from the public and customers, is high and this entirely depends on the independence, impartiality and freedom from even the *possibility* of a conflict of interest when granting of title and guaranteeing legal interests and estates. This would inevitably cease were the activities of Land Registration to become a function of a service delivery company.

36. No amount of assurances (e.g. that OCLR will set the fees) will put people's minds at rest that a company can be subject to proper controls by the overseeing OCLR: Just as the public acknowledge that the regulator of the energy companies has become too close to the energy companies, so the OCLR will become subject to these same pressures when it tries to regulate a service delivery company – not least because the service delivery company will, unlike the current Trading Fund status, be required to make a profit. At present, controls over the Land Registry are statutory. Under the new proposals, the controls over *delivering* the service of Land Registration would become contractual, not statutory – and will be subject to all the bargaining that comes hand in hand with commercial contracts.

37. This can be illustrated by the attempt to reassure the public that personal information will not be “mishandled”: The consultation document states:

“Data protection procedures that currently apply to Land Registry would continue to be in place for the service delivery company to ensure personal information is not mishandled or exploited”)

38. The truth conveniently ignored is, of course, that Land Registry is **exempt** from the protections usually accorded to the public under the Data Protection Act (this is due to the s.34 exception contained in the Data Protection Act). As even Land Registry (elsewhere) admits:

“When we handle personal information supplied by you as part of our statutory functions, your rights under the Data Protection Act 1998 are limited. The Data Protection Act 1998 permits us to use personal information for these official purposes. The information is exempt from the disclosure provisions, as it falls within section 34 of that Act.

This exempts information that has to be made available to the public under legislation.^{xiii}

39. What, therefore, protects the public against unlawful misuse of personal data (such as, for example, selling people's names, addresses, who their mortgages are with etc) is therefore, not the Data Protection Act but the fact that Land Registration is regulated by statute and delivered by the statutory governed independent and autonomous Civil Service.

40. If this is changed, so that a non-statutory governed company handles personal data, there is *nothing in law* to prevent the service delivery company selling on personal data to buyers who want this information. Just as NHS patient data is (in England) about to be made available for sale to drug and insurance firms, so data held by Land Registry - which holds the ownership information for 23 million properties in England and Wales, such as people's names, addresses, who their mortgages are with etc - would become available, once this information is moved outside of Civil Service statutory protections.

41. Just in case the public believe that a Government owned company (one of the three transitional service delivery company models proposed) would de-risk all the above concerns, such a belief would be without foundation:

42. Firstly, Government owned companies historically function as an enabling device to move an organisation into the private sector (e.g. Royal Mail). Because there are few *commercial* freedoms available to Government companies that are not already available to Trading Funds, there is little rationale in moving a Trading Fund to a Government company - unless one eye is already on an eventual move to the private sector. See for instance, Treasury Guidance, that explains,

"...as a generality, government-owned company status does not offer any advantage over trading fund status."^{xiv}

43. There are some very few exceptions to this: Royal Mint, for example, moved from a Trading Fund to a Government company because the change in status allowed it to trade overseas and provide minting services for other countries. But in the case of Land Registry, no new *commercial* activities have been identified that warrant a move to Government Company status.

44. That a Land Registry Government company would be but a half way house to a private company is not just speculation; We, PCS, made a Freedom of Information request for a copy of the 2012 Feasibility Report

into Land Registry, by KPMG. This report, which is still current, directly recommended that Land Registry move to a Government company *precisely in order* to allow it to become fully privatized. This report perfectly exemplifies the ‘selling off the family silver approach’ for it recommended^{xv}, following Land Registry’s move to a Government company, a sell off along these lines;

“The preferred outcome [after a move to a Government company] would therefore be to undertake an early sale of shares (e.g., 30% stake) for a 3-7 year period of substantial restructuring, potentially followed by a sale of Government’s remaining shareholding”

“Market testing provides strong and consistent evidence of interest from the private sector in investing alongside Government to build such an organisation and a flexible approach to structuring it to meet both government and private sector objectives.”

“.... an indicative NPV of £1.bn to £1.2bn ... is potentially achievable by 2014/15, assuming that restructuring is substantially complete and Government’s remaining shareholding is sold during this period”

45. Secondly, the new (unpublished) plans to bring about significant changes in the way land registration is delivered (see above, paragraphs of 9 - 15) were already drawn up, just a few months ago, *under the very assumption* that Land Registry would move from a Trading Fund to a Government owned company. For instance,^{xvi}

“A number of potential ownership models, including our current [Trading Fund] status, were examined against a set of criteria based on what is needed to deliver the Business Strategy most effectively, whilst at the same time maintaining the confidence of our stakeholders.

The Board’s conclusion was to recommend that we should become a Government owned corporation (GovCo). Our Minister, Michael Fallon, supported this recommendation and direction of travel so work is now underway on a business case to obtain final approval from appropriate parts of government. A change of model will take Land Registry out of Civil Service status providing fresh impetus and new challenges, which will provide a strong framework for future success. [Italics ours] “

46. What is being said here accords with what we, PCS, already know from our consultations with Land Registry; that work underway to achieve the Business Strategy, i.e. the unpublished significant changes in the way land

registration is delivered, (see paragraphs 7 – 15 above), was predicated on a move from a Trading Fund to a Government owned company. **Importantly**, there would be *no point* making the costly move from a Trading Fund to a Government owned company (a move which, we are told by Land Registry Board members, is estimated to cost around £3 million pounds plus) other than to facilitate the yet unpublished significant changes in the way land registration is delivered.

47. Again, it needs noting that as a Trading Fund, Land Registry makes no call from the public purse. This will mean that no savings would be realised by becoming a Government owned company (and where the move itself is estimated to cost around £3 million pounds plus).

48. As the purpose of moving to a Government owned company is to make possible the (unpublished) significant changes in the way land registration is delivered, and because these (unpublished) significant changes will be highly damaging to the public service of land registration, we cannot support either a move to a Government owned company or to a private sector model.

PCS response to the individual consultation questions

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

No. This begs the question by asserting, without evidence, that the arms length organisation would be more delivery focused. So this question - about whether the proposals for a separate service delivery arm leading to greater operational efficiency for its customers - is at best a non sequitur and at worst, seriously misleading.

Why misleading? Because, as we have explained above, there are plans to substantially alter the whole system of land registration that are not revealed in this consultation exercise – see the main body of our response, paragraphs 8- 17 above, where the delivery of the vast majority of land registration will be removed from the proposed arms length service delivery company. Unless these facts are known, respondents to this consultation exercise will be responding from a position of a lack of knowledge.

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

No, because the OCLR should not be split from the delivery arm of Land Registry – in which case, this consultation question will not arise. Please see main body of our response paragraphs 1- 48 above and our reply to q.17, below.

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

The OCLR should not be split from the delivery arm of Land Registry – in which case, this consultation question will not arise. Please see main body of our response paragraphs 1- 48 above and our reply to q.17, below.

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

It is our view that the proposals for shared functions set out in paragraphs 50-51 are predicated on OCLR being split from the delivery arm of Land Registry. There should be no split, in which case, the proposals for shared functions are pointless.

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

The proposed approach in paragraph 52 is deeply flawed and confused, for it starts from the (false) assumption that the “vast majority” of functions relating to land registration are administrative. On the contrary, the vast majority of functions relating to land registration are quasi judicial. As this point has been missed, then the remained of the proposals in paragraph 52 become unintelligible.

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.

We are unclear what is meant by the “overall design”. If this means whether the creation of a new company could protect the integrity of the Register, safeguard the provision of indemnities and state title guarantee - compared to the current Civil Service Trading Fund model, then clearly not. Removing delivery from statutory control and placing them in the commercial sector means that no checks and balances could ever be as safe as the present system or protect against fraud.

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.

*No. Firstly because the independence and impartiality of the Civil Service, who are governed by the Constitutional Reform and Governance Act 2010 would **necessarily** be lost, were non civil servants - who could not be subject to the 2010 Act - to provide the delivery of land registration.*

A service delivery arm of non-civil servants would, as we have explained at our paragraphs 35 and 36 above, be part of an organisation governed by commercial requirements; a company would necessarily have responsibility to make a profit and so the governance surrounding commercial contracts could not capture the independence and impartiality of the Civil Service.

Also, transparency would also be lost. This is because the 2010 Act makes Civil servants accountable to Ministers, who in turn are accountable to Parliament. This would be lost were the delivery of land registration be provided by a commercial company staffed by non civil servants.

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.

The OCLR should not be split from the delivery arm of Land Registry – in which case issues about escalation of decisions from a service delivery company to the OCLR will not arise. Please see main body of our response paragraphs 1- 48 above and our reply to q.17, below.

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.

The OCLR should not be split from the delivery arm of Land Registry – in which case, the issues surrounding how complaints are handled will not arise. Please see main body of our response paragraphs 1- 48 above and our reply to q.17, below.

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

The OCLR should not be split from the delivery arm of Land Registry – in which case new processes for escalating objections will no be needed. Please see main body of our response paragraphs 1- 48 above and our reply to q.17, below.

*Moreover the diagram provided in paragraph 56 of the consultation exercise is unclear: For instance (in the first diagram), when considering what happens when a customer does not agree with a registration decision made by the proposed service delivery arm, mention is made of “Delivery company refers **certain** complaints to the OCLR” What are these “certain” complaints (about registration decisions) supposed to be? What is not included? At present and under the Trading Fund model, the escalation process for complaints about registration decision moves seamlessly from Land Registry caseworkers, lawyers and the local Land Registrars – where the ultimate recourse, available to customers, is a judicial review. Under the consultation proposals, not only will there be a fracture in the process of complaints being taken forward - due to the proposed separation of the delivery company from the OCLR - but it is also unclear **what** complaints about registration decisions will be able to be taken forward and further unclear as to how will it be possible for a judicial review to take place on decisions taken by commercial companies who are non public bodies.*

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

The OCLR should not be split from the delivery arm of Land Registry – in which case, the content of this consultation question will not arise. Please see main body of our response paragraphs 1- 48 above and our reply to q.17, below.

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?

The information contained in this consultation question is misleading and false for it repeats the same flawed information contained in the consultation document itself, which is the claim that “Data protection procedures that currently apply to Land Registry would continue to be in place for the service delivery company to ensure personal information is not mishandled or exploited.

*The truth is that Land Registry is **exempt** from the protections usually accorded to the public under the Data Protection Act due to the s.34 exception contained in the Data Protection Act. As Land Registry itself admits:*

“When we handle personal information supplied by you as part of our statutory functions, your rights under the Data Protection Act 1998 are limited. The Data Protection Act 1998 permits us to use personal information for these official purposes. The information is exempt from the disclosure provisions, as it falls within section 34 of that Act. This exempts information that has to be made available to the public under legislation.”^{xvii}

What protects the public against unlawful misuse of personal data (such as people’s names, addresses, who their mortgages are with etc) is therefore not the Data Protection Act but the fact that the Land Registry is a government agency that is part of the Civil Service, with statutory controls, and is a non profit making Trading Fund which is accountable to parliament and delivered by independent and autonomous Civil Servants, who are governed by the Constitutional Reform and Governance Act 2010.

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

Our views are that because the OCLR should not be split from the delivery arm of Land Registry, the content of this consultation question will not arise. Please see main body of our response paragraphs 1- 48 above and our reply to q.17, below.

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?

*As the (unpublished) plans for how the service of land registration is to be changed under the Business Strategy are not contained in this consultation exercise, we do not see than **any** party can provide an informed answer to this question or question 15.*

Given that we, PCS, know the unpublished plans (see the main body of our response paragraphs 8- 17 above) but cannot disclose these, our view is that the risks will be high and the opportunities low regardless of whether Land Registry delivery is entrusted to a Government or private sector company.

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.

See answer to question 14.

16 What do you think are the constraints and dependencies for Land Registry's successful delivery of the Business Strategy?

The Land Registry Business Strategy is not part of this consultation exercise, has not been revealed within the consultation document, not has it been placed in the public domain. As such this question is extremely misleading to the public who will be unable to provide any informed, sound or reasoned answers to this question about 'constraints and dependencies' of the Business Strategy.

Given that we, PCS, know the (unpublished) plans, but cannot disclose these, our general view is that the constraints and dependencies for delivering the Business Strategy will be high and the opportunities low (see the main body of our response paragraphs 8-17 above) regardless of whether Land Registry delivery is entrusted to a Government or a private sector company.

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

a. Land Registry Business Strategy (see paragraphs 8-17 of the main body of our response, above): There are undisclosed, unpublished and key overarching plans to both embed the Land Registry's Business Strategy (itself unpublished) in the Government's Digital Default agenda, where customer self-service is the goal and in the Land Registry IT planning that encompasses e-conveyancing. Unless these are made known, their absence renders this consultation exercise wholly misleading.

b. We note that our PCS Freedom of Information Request (paragraph 44 of the main body of our response, above) led to the disclosure of plans for a Government company as a half way house to full privatisation.

c. We note how the moving from a Trading Fund to a Government company serves no purpose and gains nothing; the costs of the move would be high (est £3 million); would save nothing for the public tax payer because as a Trading Fund, Land Registry already takes no money at all from the public tax payer and also returns its surpluses. (See paragraphs 41-48 of the main body of our response, above.)

d. We note how the rationale for moving from the current Trading Fund model (whether to a Government Company or a joint venture etc) is explicitly acknowledged to allow avoidance of government procurement rules designed to support Small and Medium sized enterprises - done for the purpose of delivering the (undisclosed) Land Registry Business Strategy. (See paragraphs 20-24 of the main body of our response, above.)

e. We note how moving from a Trading Fund (part of Government) is explicitly acknowledged to avoid rules governing use of surpluses (profits) - done for the purpose of delivering the (undisclosed) Land Registry Business Strategy. We note how the rationale for moving out of a Trading Fund model (whether to a Government Company or a joint venture etc) is explicitly acknowledged to be to avoid rules (protecting the taxpayer) emanating from HM Treasury - done for the purpose of delivering the (undisclosed) Land Registry Business Strategy. (See paragraphs 25-29 of the main body of our response, above.)

f. We note how moving from a Civil Service Trading Fund would mean the current quasi-judicial function undertaken by staff, on behalf of the Chief Land Registrar, would cease; note that a non-civil service company would lack independence from commercial influence, the very backbone of the trust in Land Registry, for it could not help being governed by commercial interests when it grants of legal title and guarantees legal interests and

estates in land. (See paragraphs 30-40 of the main body of our response, above.)

g. We note how the trust in, and independence of, the current Land Registry Civil Service Trading Fund is not just essential to the granting of legal title and guaranteeing legal interests and estates in land but is also a pre-requisite for Land Registry's taking on wider powers for the benefit of society - such as the creation of a Register of Landlords (and potential regulatory role thereafter); playing a leading advisory role in the planning for land use, development controls and expanding Affordable Housing; assistance in developing a land value tax system; and creating a Doomsday Book for the 21st century (which requires completion of the Land Register).

We therefore conclude that splitting Land Registry into OCLR and a Service Delivery Company is neither appropriate nor necessary: It will also be harmful, for in order for a high class public service to continue to be delivered, Land Registry must remain part of the Civil Service.

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- i <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140213/text/140213w0003.htm>
 - ii http://www.landregistry.gov.uk/__data/assets/pdf_file/0007/56239/13-09-06-Recruitment-Pack-Finance.pdf, p.6
 - iii http://www.landregistry.gov.uk/__data/assets/pdf_file/0004/39082/Annual-Management-Plan-2013-14-Ver-3.pdf
 - iv http://www.landregistry.gov.uk/__data/assets/pdf_file/0016/48301/consultation-response-NAA-tech-manual.pdf
 - v http://www.hm-treasury.gov.uk/d/Guide_to_the_Establishment_and_Operation_of_Trading_Funds.pdf; p13
 - vi PCS submissions to the Land Registry Board on the Commercial Model 29 April 2013
 - vii Land Registry Board response to PCS submission on Commercial Model, dated 8 July 2013
 - viii *ibid*
 - ix *ibid*
 - x http://www.hm-treasury.gov.uk/d/Guide_to_the_Establishment_and_Operation_of_Trading_Funds.pdf; p42
 - xi *ibid*
 - xii Point 51 of the consultation document
 - xiii [http:// www.landregistry.gov.uk/public/information/privacy+&cd=2&hl=en&ct=clnk&gl=uk](http://www.landregistry.gov.uk/public/information/privacy+&cd=2&hl=en&ct=clnk&gl=uk)
 - xiv http://www.hm-treasury.gov.uk/d/Guide_to_the_Establishment_and_Operation_of_Trading_Funds.pdf, p13
 - xv HMLR Feasibility Study Version 1.4 – 03 February 2011 by KPMG
 - xvi http://www.landregistry.gov.uk/__data/assets/pdf_file/0006/56238/13-09-06-Recruitment-Pack-CIO.pdf
 - xvii <http://www.landregistry.gov.uk/public/information/privacy+&cd=2&hl=en&ct=clnk&gl=uk>