



Department for Business, Innovation & Skills

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

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

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

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Shareholder Executive
Department of Business, Innovation and Skills
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Email: bis.lr.consultation@bis.gsi.gov.uk

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

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

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

<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative

	Local Government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
x	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:

We can see no evidence in the consultation or from our experience of existing Land Registry services to suppose that creating an arms-length delivery arm would increase efficiency and increase customer service.

We agree that Land Registry provides a function to record title, guarantee land ownership but they also are a repository of deeds and documents which makes it easier to transact business in the UK property market. All three aspects are important to us as customers of Land Registry.

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 would expect the OCLR to retain exclusive responsibility for the functions referred to.

Question 3

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

Comments:

Yes, we consider that the OCLR would effectively be the regulator and would need to encompass far more than as envisaged by paragraph 49. It would need to guarantee the delivery company's work and ensure that company remains compliant within the legislative framework.

For example, it would need to retain overall responsibility for: -

- payments of indemnity. This is fundamental to ensuring the Government retains a vested interest in both the quality and controls within the delivery company.
- Assurance, fraud and audit controls over the deliver arm
- Complaints regarding the service of the deliver arm
- Training and practice material

Consequently we would expect to see the OCLR largely the same size and feel as their existing head office with for example, practice, audit, fraud and assurance functions.

Question 4

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

Comments:

The fact that it is recognised that certain functions will be shared is also a recognition that there will undoubtedly be a need for duplication in both the OCLR and the delivery arm. A similar situation occurred within the legal profession with the split away of the Solicitors Regulation Authority. Both organisations found the transition difficult with some delivery issues.

Consequently, as a service contract would reveal much of the detail of how this would work in practice we would have expected to see greater details on what this contract would contain.

Disputes will be likely but we cannot see in the consultation reference to how these are to be dealt with. In addition if there should be a catastrophic financial failure of the delivery company how will the OCLR ensure that the UK property market will not collapse?

Nothing in the list of shared facilities looks at what will happen if the delivery arm, particularly if privately owned, seeks to exploit the data to maximise profits. There does not appear to be any escalation vehicle for disputes so presumably this would be through the courts

Question 5

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

Comments:

Our contact with Land Registry is confined to commercial conveyancing as we are a niche practice; we are therefore involved in the more complex aspects of land registration rather than the mainly

administrative transactions that the consultation refers to. The consultation therefore fails to take into account the percentage of cases that are extremely complex that are dealt with by Land Registry. In our view the primary focus of Land Registry is their knowledge and experience which is of equal importance to their ability to effectively process the applications.

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 consider that the overall design provides the right checks and balances to protect the integrity of the Register. The consultation does not provide any detail on how the indemnity regime would be impacted by this change. Indemnity liability and payments must remain with Government and therefore within the OCLR if there is not, in our view, to be an adverse impact on the UK property market.

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:

It would appear that this whole consultation is about the need to reduce the number of civil servants. We are aware that over the last few years there have been considerable job cuts within the Land Registry which we believe has been initiated due to the down turn in the property market. Whilst it is commendable that the Land Registry has maintained service delivery if there is an upturn we continue to have concerns that we will see the length of processing time increasing. If this exercise is therefore to continue to downsize Land Registry and to place the work in less skilled hands, then we would have concerns.

In other cases where non civil servants have been employed to deliver Government Services there has been a question over their activities and in the case of previous contracts (for example, outsourcing prison services and the Olympics contract) there are well publicised concerns.

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 want to see the following escalated to the OCLR

- All indemnity applications. We do not consider it appropriate that where the delivery company is being questioned then these cases are handled by that company. This is because there should be

clear oversight of issues by the OCLR and they would need the ability to require the delivery arm to complete cases in accordance with their directions

- All fraud cases. We consider that a similar issue will arise in cases where fraud is claimed. Again we consider the need for fraud cases to be handled by the OCLR to give them the necessary oversight. In addition, they should be able to direct the delivery arm to complete fraud cases as they direct as well as direct them to provide fraud prevention services. For example, the recent Form RQ and Property Alert services are offered for free. For how long would this be the case if the delivery arm was part or wholly privately owned?

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:

No, we consider that complaints should be handled by the OCLR.

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:

No, we consider that complaints should be directed to the OCLR in the first instance and that they should be corresponding with the aggrieved party, rather than the delivery company.

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, it would seem sensible for someone from the operational aspects of the business to sit on the Rule Committee to add a practical perspective to the proceedings.

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:

We would prefer the added protection of Government being responsible for holding the information rather than reliant upon the DPA which can be breached

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:

We would expect there to be a continuation of the existing complaints procedure and a need for the ICR.

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:

We consider there would be a difference in the opportunities and risks depending on who undertakes the service.

Currently Land Registry has 14 offices around England and Wales and each office has a variety of civil servants completing our registrations. We find the level of skill generally to be a very good standard within Land Registry; they are bound by the Civil Service code. Applications are completed quickly which means we can check the results of registration whilst transactions are fresh in our mind.

Moving to a private sector company will inevitably result in a deterioration of the service, whether this is temporary or permanent only time would reveal. Your consultation seeks our views on

- 100% owned within Government
- Outsourcing; and
- Part privately owned.

Although you do not specifically refer to outsourcing, your question regarding the risks of handing the delivery work to a private company encompasses both outsourcing and part ownership of Land Registry's delivery company.

In relation to outsourcing we have experience at acting for outsourcing companies who are skilled at such work. However, ordinarily they will be competing in a market that they are familiar with and have

experience in. Land Registry is a monopoly organisation; no-one outside the Government therefore had the skill and experience needed to deliver these services effectively. It is difficult to see how they would maintain the existing standards without retention of a large number of existing Land Registry staff. Outsourcing, however, ordinarily encompasses the downsizing and rationalisation of the outgoing company.

In private companies and outsourced companies we expect there be to be a more frequent turnover in staff and therefore training will be an on-going need.

As regards outsourcing, we assume that if the delivery company is 100% owned by Government that the same limitations that will apply to government departments will apply regarding, for example, procurement. There seems to be little advantage therefore over a trading fund other than a headcount of civil servants.

As regards outsourcing it is usual practice for contracts to be let on a fixed term, say 3 or 5 years. If this is the case then every few years the profession will be exposed to changes in quality whilst a new delivery company beds in. We think this would be detrimental to our business.

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:

Our practice specialises in corporate law as well as commercial conveyancing. There is no doubt that there will be a significant risk if the delivery company is owned outside the protection of the UK Government and is part or wholly owned within the private sector. This is because

- the state backed guarantee is an essential part of land registration and is needed to ensure that there is confidence in the registration of titles. If the outcome of this consultation were to vest the delivery aspects of land registration within a private company then
- there would be difficulties in ensuring that the company could not be controlled by those who do not have the UK property market as their principal concern. Even if there were limitations on who could own, such as a UK company this would not preclude overseas ownership of the corporate entity. This, at worst could result in deliberate terrorist intervention, money laundering or fraudulent infiltration;
- if a private company was to part own or wholly own Land Registry then there would be a serious concern if they also retained responsibility for the state backed guarantee. In the case of fraud LR has unlimited liability to compensate victims of registration fraud and is also responsible for errors on the register. Realistically no directors of a private company would accept unlimited liability on behalf of their company. Consequently, there would either need to be comprehensive private insurance to allow the company to trade effectively or the retention of ultimate responsibility by the Crown. If this were the case then the OCLR would need to be a much larger entity than it appears is envisaged.
- if a private company accepted unlimited liability but was faced with large claims that it could not meet. Insolvency legislation would mean that it would have to be dissolved. In those circumstances there would be greater risk to the UK property market by the inability of the private delivery company to meet its registration obligations. Consequently, we consider that it is absolutely imperative to retain 100% ownership within Government.
- If it were not the intention of Government to privatise Land Registry then this consultation would have included an option for Land Registry to remain as a trading fund. It is our view that the current model effectively allows flexibility to Land Registry to develop good customer services under section 105 of the Land Registration Act 2002 and to ensure land registration remains affordable. This would not be the case under a private company whose entire purpose is to raise profits for its shareholder. This is

completely at odds with the needs of the property market to have a stable method of registration of land backed by the State.

- vesting delivery of land registration services into a private company might result in further expense to property owners as they may no longer trust the product and seek private insurance. Tampering with an effective model has caused the Government problems in the past, for example, the ill-fated HIPs packs. We consider it would be an unacceptable risk to risk destabilising the UK property market.

Question 16

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

Comments:

It would appear from the consultation that you have summarised Land Registry's business strategy as

- further improving the ease and efficiency with which land registration services are accessed
- meeting the needs of customers and stakeholders
- facilitating digitisation of land registration services
- improving the management and re-use of land and property data.

16.1 Constraints

- It would appear a main part of this strategy concerns re-use of data. We find this worrying. There appears to be a trend within Government of releasing more and more data sets into the private sector in an attempt to increase economic growth. Whilst it is commendable and undoubtedly some data sets are useful, we recall in 2009 that in response to concerns over fraud Land Registry removed on-line access to charge documents. A significant constraint must be how counter-fraud issues are to be managed and dealt with. There must be a balance between freely available data and the protection of the ultimate owners against property fraud. Whilst you say this strategy will help to prevent fraud we cannot see any evidence of how this is to be achieved within the consultation. We would have expected this to have been included.
- The ownership data within the proprietorship register would be particularly valuable to the private sector. Currently this is protected and can only be accessed by limited access arrangements specified in the Land Registration Act 2002. It is vital that this protection is retained.

16.2 Dependencies

- It appears to us that much of what you are envisaging cannot be done within the existing legislative framework and consequently you will need to obtain further legislation. We assume that we will have an opportunity to consult in detail on the proposed legislation and that on that occasion you will allow a reasonable length of time for a response, rather than this limited 8 week period.

As a general point we cannot see at this stage how you might further improve the ease and efficiency in which land registration services are accessed. We can access services through Land Registry's business service and also their Find A Property public facing service, their website information is clear as well as the helpful practice guides. Recently they have released MapSearch which allows on-line access to the mapping service

Question 17

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

Comments:

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

You have not sought consultation on whether there should be no change to the delivery of land registration services. This seems to us to be a far more sensible approach to the at all. In our view this is the most appropriate option. Land Registry senior staff has the experience to deal with the complex conveyancing transactions we deal with as a niche commercial and commercial conveyancing practice.

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

Please acknowledge this reply ☐

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

☐ Yes

☐ No

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