



BIS Consultation: Introduction of a Land Registry service delivery company

Conveyancing Association response

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?

From the information in the Consultation Document it is not possible to answer this question categorically.

It depends on not only the company's permitted functions but the control and ownership of it.

Anything less than 100% ownership by the Government would appear to be totally unacceptable and an unnecessary risk to be taken.

The constitutional documents of the proposed company with attendant safeguarding legislation should be placed before those consulted so an informed and balanced assessment can be made.

In approaching this issue it is of paramount importance to bear in mind that the Registry's prime duty is to hold and manage the dealing with title to land in England and Wales (Primary Service). It does that service extremely well, its staff are competent, helpful and generally efficient to a degree not always experienced in dealing with other public bodies. Even with the reduced fees to be charged from March it will continue to make a good profit. It is not a burden on the state. Whilst increased expertise and external investment might improve the Primary Service many stakeholder will feel that as it is not broken no attempt should be made to mend it! Members of this Association are a very substantial tranche of the users of the Primary Service.

Those running the Primary Service do so not in the pursuit of profit but in fulfilment of a extremely important service to the public. Particularly if its future delivery was entwined with other new service development and delivery the current level of service would likely be placed at unnecessary risk. If it were so entwined stakeholder will wish to see how it is protected from market and commercial risk.

The Registry has not articulated how that having services in a company would benefit service to customers at all or in a way that the Registry cannot achieve by its own means or sub-contracting. Sharing ownership and control does not as a proposition show benefit.

This Association has encouraged the Registry to proceed with the concept of holding and managing property data of various kinds. We will continue to support all steps to facilitate/enable the Registry to fulfil such an objective, including the obtaining of the required enabling legislation. We also see that obtaining of the necessary expertise and investment may best come from the private sector. Again, that does not imply as an essential requirement the sharing ownership or control.

This is where danger lies. Such involvement from the private sector should be encouraged only on a sub-contracted basis, not on a joint venture basis which cedes any aspect of ownership or control. There are risks even in the negotiation of a sub-contract basis but they may be acceptable if ownership and control remains with the Government.

It is probably improper, conceptually, for the Government to be contemplating going into business with the private sector.

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

Yes.

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

This question cannot now be answered for the reasons set out in answer 1.

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

Again, the answer will depend on the clarification of issues raised in answer 1.

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

As answer 4.

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.

As answer 4.

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.

In principle, yes, subject to there being necessary safeguards under the relevant enabling legislation and company constitution.

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.

No comment to make at this stage.

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.

As answer 8.

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

As answer 8.

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

Certainly not, it would be at variance with the principle of absolute Government control and would create the risk of conflict between public and private interest.

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?

It would be a matter for advising lawyers to ensure that ownership and control of data was protected in the public interest.

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

No comment to make at this stage.

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, there is clearly a greater risk to service the quality if you delegate it to someone else rather doing it yourself on a tried basis. The risk largely manifests in it being done by those whose targeted objective is to produce profit rather than provide public service. There may be potential benefits but there is bound to be greater risk.

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.

The answer to this question is, as is the answer to question 14 self evident. If the government ceded ownership, the reality is that it cedes total control which has risk which is not there if you retain control.

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

There appear to be no material constraints on maintaining the Primary Service. External expertise and investment may be needed to enhance that service and develop new services. However, this should be achievable without losing ownership or control.

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

The Government controls the required legislation to enable it to have a monopoly on the development potential new services. It should, therefore, have a strong bargaining position with potential participating private sector interests.

On the face of it to interfere with the Primary Service which is working satisfactorily and profitably by moving it to another vehicle seems imprudent.

If the Registry seeks to outsource any part of that service the costs of development should be borne by the appointed sub-contractor as part of its offering. Outsourcing providers understand that concept. Similarly, the same principles should apply for the development of new services

The Registry has ownership of the Primary Services and it will in reality be able to achieve the same in respect of potential new services. It need not and it would be a blatant dereliction of its duty as a Government Department to sell off the family silver by allowing anyone else to share ownership or control of either of those services. It is not necessary. Bidders for Government contracts will always be forthcoming.

Consequently, the Association representing a major proportion of Land Registry customers, believes that the proposals should be rejected.

Conceptually, it is unacceptable for the Government to go into business with a private enterprise. However, sub-contracting is acceptable if skilfully and prudently implemented. [All Governments have not always demonstrated an ability to achieve sound commercial deals but, alas, we will have to live with that risk!]

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.

No comment to make.

For further information please contact the Conveyancing Association on 020 7618 9141 or email conveyancingassociation@luther.co.uk