

Response to Proposals from the Department of Business, Innovation and Skills that HM Land Registry should cease to be a Government Department

The Proposals

The Department of Business Innovation and Skills (BIS) has published a Consultation Document:- *'The Introduction of a Land Registry Service Delivery Company'*. BIS propose that, after 150 years, Her Majesty's Land Registry should cease to be a public department of government. It proposes to create a new company to undertake the registration of title to land and all associated legal interests.

It confirms that its proposals:

'include options for moving assets to the private sector where there is no longer a strong policy reason for continued public ownership . . . '

Whilst it asserts that no decision has been made yet on ownership the models being considered for what it describes as the *transformation phase* include:

- *a service delivery company which is 100% owned by Government*
- *a service delivery company which is jointly owned by both Government and a private sector company*
- *a service delivery company which is 100% owned by Government but day to day operations would be the responsibility of a private sector company on the Governments behalf*

Significantly it makes clear that:

- ***'beyond the transformation phase'*** *Government will review the ownership and control of the service delivery company . . .*

The Government has made clear its policies on privatisation of public services. It is plain that this is the impetus which is driving these proposals. It appears evident that the service delivery company would be but a transition stage toward full privatisation.

In making this radical proposal the Government confronted a difficulty. The Chief Land Registrar, a statutory office holder, has clear and necessary statutory powers and obligations to keep the land register, to grant title, to provide the state guarantee and to ensure that land registration is conducted impartially and free from any conflicts of interest.

Recognizing that these statutory powers could not be passed to a company or, after the transformation phase, wholly to the private sector, the Government propose to retain the post of Chief Land Registrar, and a small unit of supporting staff, as civil servants within BIS

in what it describes as the 'Office of the Chief Land Registrar (OCLR)'. It imagines that this odd organisational device squares the circle of statutory independence with the 'commercial' type operation it envisages for the Land Registry as a company and would not act as a bar to any future sale of the Registry to the private sector.

There is much wrong with these proposals

In determining the endless succession of new legal interests to be guaranteed on an ever-changing public land register the staff of the Land Registry act in the name of the Chief Land Registrar. Decisions are effected by the Registry's lawyers and specialist staff experienced in land registration law and practice. The Consultation Document erroneously describes the act of registration as 'administrative' failing to understand the legal basis of land registration or the adjudicatory decisions made by the Registry's staff in determining title. To decapitate the Land Registry in the way proposed is to misunderstand the clear lines of authority that flow from the Chief Land Registrar through to his or her staff and the upward lines of reference that ensure the constant development of land registration practice.

Creating an unnatural separation between the Chief Land Registrar and the Land Registry would confuse the clear lines of accountability and management that flow from the Chief Land Registrar. It would make for an unnecessary interface, destroy cohesion, generate demarcation issues and lead to uncertainty and doubt as to where responsibility lay.

Government corporations are said to be "*entities created by a government to undertake commercial activities on behalf of an owner government*". The Land Registry clearly *responds* to demands made upon it - primarily by the property and mortgage markets. It is necessarily a statutory monopoly operating impartially. Those who choose to buy or lend or have other dealings in land must have just one trusted source of guaranteed and authoritative information backed by indemnity. It can have no competitor. The Land Registry has been described as '*the one sure place*' in the sometime complex, contentious and competitive world of property rights and property transfer. Land Registration is in no way a 'commercial operation'.

Those dealing in land and property, whether citizens, companies, banks, public authorities or the Crown, do operate in a commercial environment. But the Land Registry, in impartially examining and then guaranteeing new legal interests in land, does not have a commercial agenda. It does have a very proper management aim to be efficient and to keep costs at the lowest level consistent with a good public service. It has a long and acknowledged history of achievement in meeting those aims. As a self financing body it achieves this at no cost to the exchequer. It has steadily reduced fees. A five time winner of the CharterMark for excellent public service it achieved a 97% customer satisfaction rating on the most recent independent survey by Ipsos Mori.

Aside from the registration of title to new legal interests the Registry responds to the essential pre-contract and pre-completion enquiries made by conveyancers and lenders before a transaction can be effected. These statutory applications account for the great majority of information enquiries made. The millions of official copies and search results issued each year are guaranteed by the Registry and backed by indemnity.

Since the land register was open to public inspection in 1990 the Registry also handles a far smaller number of information enquiries unconnected with the property market. It also provides property price information and associated data – again a by-product of its major transaction work. This non-statutory information is dwarfed in volume and in importance by the statutory functions of maintaining the ever changing land register as the property and mortgage markets daily generate new rights and interests in land.

It does seem that those advising the Department of Business Innovation and Skills have not grasped the sheer scale and importance of the statutory functions of the Registry and are only aware of the lesser non-statutory information provision seeing this as the rationale for justifying its belief that the Registry is a commercial body.

It seems clear that the Government's aim is to prepare the Land Registry for privatisation - selling at a later date any holding it would have in the new company. Recognizing that it could not pass a statutory function to the private sector it has proposed the device of retaining the Chief Land Registrar as a civil servant and converting his role to some kind of imagined regulator of the Land Registry. It mistakenly believes that the statutory authority and powers vested in the Chief Land Registrar can somehow be divorced from the organisation exercising those powers and authority – which of course they cannot.

'Digital by Default'

The BIS Proposals centre in part on the Government's 'Digital by Default policy where it looks' *to offer world class digital products and services provision*'. It believes that the private sector will be better placed to provide that service provision.

In its quest to improve and simplify conveyancing the Registry has successfully developed one of the largest transactional databases in the country offering fast online enquiry services to the land register. It is extending the scope for online application lodgement where electronic documents can be submitted to the Registry for registration. This already offers improvements and savings for all those who deal with the Registry.

The Registry's Computing Centre at Plymouth has been recognised as an award winning success. There has been very little turnover of specialist staff - many of whom had a land registration background. Unlike government computing centres in London staff were not constantly lost to the private sector. It is not an exaggeration to say that the Registry's successful computerisation of the land register, its fast online enquiry services and the development of on line lodgement succeeded where others in government, dependent on major outsourcing to private IT companies, either foundered or came in over budget and out of time. It would be wrong to disrupt this successful specialist unit on which the property market depends.

The 'Digital by Default' objectives can be better achieved by retaining this experienced and successful computing operation within the Land Registry rather than risk the overruns on time and budget likely with any substitute provider.

What the Land Registry does

In understanding why successive administrations have been so clear about the Land Registry's position as a public department of Government it is helpful to restate what the Registry actually does – and to reflect on whether this crucial activity should realistically be passed to a private owner.

There is, every day, a massive movement across the country in interests in land. These can arise from sale and purchase, inheritance, mortgage, discharges, leases, restrictions, matrimonial and family matters. In addition bankruptcies, repossessions, the protection of third party rights and Orders of the Court relating to land rights require protection by registration. Because it is constantly maintained, and records the priority of all pending land dealings in England and Wales, the land register stands to give authoritative and guaranteed notice to all. It is the maintenance of the national land register which enables vendors to demonstrate proof of ownership, and power to dispose, and enables purchasers and lenders to carry through their intentions to contract and to completion safely and simply.

The input to this dynamic land register is the constant flow of agreements, contracts, deeds and documents - freely made between people, banks, institutions, local and central government and the Crown – in any combination and at any time. Decisions are made, contracts are agreed, registration is effected. The ever changing legal relationship of land and people is constantly and instantly reflected in a public place. What would otherwise be hidden is synthesized into a common, guaranteed and public record open to all. Security, confidence, transparency, choice - all become possible. Publicly registered land rights are 'good against the world' under the express terms of the LR Act. Individually they protect the interests of the registered owner; together they constitute the underwritten record of the collective wealth of the country.

The secured credit activity of Banks, Building Societies and other financial institutions depend on the guarantees provided by the Land Registry. These guarantees and reserved priorities are essential before any decision can be made to generate a secured loan or to go to contract. All lenders secure their power of sale in the event of default by substantive registration of their mortgages.

On every transaction the Registry is responsible for ensuring that conveyances, transfers, mortgages etc, are properly executed and legally effective. The Registry's staff must verify that an owner has the power to sell and that the transaction is made having regard to any prior claims by third parties affecting the property. This constant curative process ensures, before the legal estate passes, that the interests of all parties affected by the registration are properly considered and that any necessary Notices have been served on those entitled to receive them. Quite apart from ensuring that any legitimate interests are protected the Registry is able to resolve potential problems, disputes or ambiguities at an early stage so avoiding, as far as possible, future dispute and litigation. Impartiality and complete trust and confidence in the process are crucial to this function.

It is this which is the core and dominant work of the Land Registry. It is this activity which ensures the continuing existence of an up to date, trusted, register of legal interests in land. It is this central task of the Registry that employs the majority of its staff, many with highly

developed professional and specialist skills. It is this which makes possible a functioning property and mortgage market and underwrites security of tenure in England and Wales.

This is not an activity that any responsible Government can pass to the private sector.

We have been here before

In 2001 the Land Registry, along with other agencies and NDPBS, was examined as part of central government's programme of five yearly reviews. This, the Quinquennial Review, was the most comprehensive study of the Registry's role, functions, services, financing and organisation. It was conducted independently under HM Treasury oversight. Again the outcome endorsed the Registry's status as an Executive Agency and Trading Fund. It made clear that its statutory role required that it should remain as a public department of Government. It recognized, as others had before, that the granting of title and guaranteeing of legal interests must be, and be seen to be, conducted impartially and free from any conflicts of interest. This was essential to the trust placed in its crucial decisions on land ownership and rights.

In its conclusions it stated that *'privatisation should be decisively rejected'* and would be *'an act of considerable folly'* Significantly it stated that the Registry's core functions including those of maintaining the land register, providing services to customers and operating its guarantees and indemnity scheme, *'hang closely together like the particles in an atom'* it concluded that contracting out core functions would *'threaten the whole enterprise'* and be *'a great mistake'*.

Following consideration of this in depth and independent Review the Ministerial Statement made reiterated that Her Majesty's Land Registry must remain as a public department of Government. The Lord Chancellor specifically stated that *'public confidence in land and property depends on HM Land Registry's ability to guarantee title and to deliver its services impartially'*.

The Land Registry has been a Government Department for over 150 years. It has been subject over that long period to Royal Commissions, Independent Reviews, Law Commission Studies and successive government's own periodic reviews of public service departments. All have confirmed that this statutory monopoly must remain as a Government Department.

And of course all this explains why the Land Registry has the constitutional designation *'Her Majesty's'*. Land Registration was described by the Royal Commission that led to the establishment of the Registry as:

'the exercise of its sovereign power that the State declares the title after examination to be absolute and makes it valid against the world.'

Dowson and Sheppard, advisors to Government on Land Tenure, described the operation of land registration as follows

'The administration of the operations of registration of title must be entrusted to organs of Central Government. It is Central Government alone that has the power

to enforce and can assume responsibility for the sure, uniform and impartial working of a register in every corner of a country, while it must be remembered that the Courts of Law are required to take cognizance of its effects and that judgements on matters within its field do not become operative until registered. Assurance of security of lawful tenure and protection of all just interests in land are not responsibilities which any Central Government or the competent Courts of a country can divest themselves or delegate to others.'

It is inconceivable that this activity can be passed to a private company. It is inconceivable too that the Land Registry should be severed in such an arbitrary and clumsy way.

Summary comments

The system of land registration, unobtrusive though it may be, has served the country well providing the essential statutory infrastructure for a property owning democracy which recognizes private land rights. It has progressively developed its practice and procedures to respond to the demands made up on it. It has embraced the opportunities offered by emerging technologies. Its status and role has been examined and endorsed by a succession of external studies. The proposals in the Consultation Paper might be characterised as organisational self harm.

Land and Title Registration has been established world wide as the main agent by which Governments can promote private property ownership, investment and exchange. The Land Registry, on behalf of the Crown and under statute, grants and guarantees legal title on all new transactions maintaining an up to date, authoritative, public land register of legal interests, Land registration provides the essential security for owners, lenders and prospective purchasers, and for those with actual or claimed third party interests. Confidence in land and property as the ultimate source of wealth and welfare in society depends on a land registration system administered with integrity, commercial neutrality and free from any conflict of interest. This is not an activity that can be undertaken by a private company.

I hope that the Government, on mature reflection of the facts I have endeavoured to set out here, will recognize, as others have before, that England and Wales must be served by retaining Her Majesty's Land Registry as a cohesive entity and as a public department of Government – as it has been for over 150 years.

John Manthorpe, CB, HonRICS, CCMI
February 2014

Former Chief Land Registrar, and Chief Executive of HM Land Registry 1985-96, International Consultant on on land registration systems 1996-2007.

Email: landman@dircon.co.uk