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Kirun Patel
Shareholder Executive
Department of Business Innovation and Skills
1 Victoria Street, London SW1H 0ET

By post and email (bis.lr.consultation@bis.gsi.gov.uk)

Dear Kirun

Re: CLLS response to BIS consultation "Land Registry: new service delivery company"

The City of London Law Society ("CLLS") represents approximately 15,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees. This response in respect of the *BIS consultation "Land Registry: new service delivery company"* has been prepared by the CLLS Land Law Committee.

We have read the BIS consultation on the introduction of a Land Registry service delivery company https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/274493/bis-14-510-introduction-of-a-land-registry-service-delivery-company-consultation.pdf and have the following observations.

An overriding and perhaps understandable weakness at this stage is the lack of detail in the proposals. A number of statements are made which read well on paper, but there is nothing or very little to show how they will be achieved.

Page 7 of the consultation document

Paragraph 3 states there will be significant benefits to customers from the proposals including reduced risk of error and fraud. Until we see a concrete action plan, one has to remain sceptical and possibly dubious because of the possibility of the service delivery company (“the company”) being privately owned in whole or in part. The stated benefit of reduced processing times brings with it a concern about reduced accuracy and quality in the provision of the service. The benefit may be a richer data set, but is it as reliable?

Paragraph 5 - While the current legislative constraints are portrayed somewhat negatively, the flipside is that they provide public benefits in terms of the control over Land Registry activities.

Paragraph 8 – the Office of the Chief Land Registrar (OCLR) will be responsible primarily for “regulatory” functions – does this extend to the practice notes? If so, would the OCLR, in view of the small number of staff, have sufficient resources to do this?

Page 11

Paragraph 21 – it is fundamental that the State Guarantee is in no way interfered with or diminished by the proposals. The Government must continue to stand behind this.

Page 12

Paragraph 24 (at top of page) – the aim of maximising the re-use of data for the benefit of the wider economy must not be at the expense of data protection – there needs to be robust control mechanisms, especially if there is private ownership of the company where the data could provide important corporate benefits to the owners of the company.

Paragraph 28 – the paper states that BIS considers that the Land Registry would benefit from a separation of policy and delivery, but does not explain why. Such separation could lead to overlap of functions, confusion, excess administration and cost (certainly, in the short term).

Page 13

Paragraph 30 – The company will be “subject to Government oversight”. What does this entail?

Paragraph 31 – BIS wishes to protect the integrity of the Register, but must provide concrete plans as to how this will be achieved.

Paragraph 32 – what does BIS mean by the “Chief Land Registrar” (CLR) under the proposed new regime? Is this the individual and what other functions are included? What happens if the company (being outside the civil service and being subject to company law) becomes insolvent? CLR would manage or oversee relationships with the Rule Committee etc “depending on the circumstances” – those circumstances need to be specified.

Page 14

Paragraph 34 - would there be any control on who could buy the shares in the company?

Paragraph 39 - the Board would be presided over by an independent Chair. Independent of what or whom?

Page 15

Paragraph 41 - if the company fails to fulfil the service contract, the Government must take back delivery responsibility within a short specified period to protect the public interest.

Paragraph 43 - the OCLR would have ultimate responsibility for the keeping of the Register. What does that mean in practice?

Paragraph 47 - the OCLR would need to not only define the "business rules", but also devise and implement the legal rules and practice.

Page 16

Paragraph 48 - What does OCLR's "overall control" involve?

In terms of sharing responsibility for certain functions between the OCLR and the company, there is a danger of confusion and gaps as to responsibilities. Each entity's respective roles must be carefully prescribed.

Page 17

Paragraph 50 - The operational parameters must be precisely crafted. Point (c) implies that the company will not make any decisions - please clarify this.

Paragraph 51 - How easy will it be in practice to share these functions? How is it determined who does what? Could there be duplication, excess administration and cost?

Page 18

The OCLR remains ultimately responsible for the indemnity. So does that mean that the Government stands behind the OCLR in that regard? This is a crucial point for the successful operation of the property industry.

Paragraph 54

What will the company do with the fees received from customers?

Page 19

Paragraph 55

In terms of the split of functions between OCLR and the company, what happens if there is uncertainty over who carries out a particular function? Who is the arbiter as to who carries this out?

Page 20

The flow diagram seems over-engineered.

Paragraph 57

There is the obvious danger here of private concerns overriding the public interest. What protective mechanisms will there be to prevent this happening?

Paragraph 58

How would the private sector company be selected?

In the third bullet point, how much control would the Government have over the private sector company?

Page 21

Paragraph 61

The Government needs to be more specific on the benefits for the public of the proposals, particularly in view of the inherent risks referred to above.

Paragraph 66

Data protection procedures may need to be strengthened for the company, in view of possible private ownership.

Paragraph 68

Would the staff impact e.g. potential loss of staff, adversely affect resourcing and the quality of the service?

Generally, has any research been carried out into whether privately owned companies have run Land Registries in other jurisdictions and whether this has been successful or whether it has deterred investors from investing in the jurisdiction?

Conclusions

The proposals in this consultation are of fundamental importance. They impact on the Land Registry and the way it delivers its services in relation to a most critical asset of this country - its property. The integrity, independence, efficiency, established systems and processes and "one-stop shop" nature of the Land Registry, supported, critically, by


the state guarantee of title provided by the Land Registry on the Crown's behalf, are major reasons why the public and investors (from this country and overseas) choose and feel confident to invest their money in this country. The proposals in the consultation raise questions over whether the Land Registry will still be able to deliver some or all of those attributes. If it cannot, this could deter investors and, potentially, have an adverse economic impact.

If there is to be both the OCLR and a service delivery company, this will lead to the splitting of functions, which are all currently performed by the Land Registry. This risks adverse consequences of overlap, greater administration, delay and cost, none of which will be in the public interest. This will also not assist this country as regards surveys like the World Bank's Report on 'Ease of Doing Business'.

These are all significant concerns, but the key one is that, in view of the fundamental nature of the proposals, we consider that inadequate information has been provided in the consultation. Many statements have been made, but insufficient evidence has been provided to support the statements. The consultation is critical enough to warrant informed responses from stakeholders and other interested parties and a general outline of the proposals does not provide enough content to fully elucidate their implications. Therefore, the responses, received by BIS, will not be as helpful to BIS as they might have been, because so much important information is missing. This could result in critical issues not being addressed in any proposed new structure for the Land Registry.

It would also be really helpful for BIS to publish, generally, the analysis and detail that underpinned the consultation, which may help to alleviate some of the concerns of respondents.

Yours sincerely



Jackie Newstead
Chair, Land Law Committee

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