



“Land Registry, Wider Powers and Local Land Charges”

A response by

**The Chartered Institute of Legal
Executives**

07 March 2014

1. The Chartered Institute of Legal Executives (CILEx) is the professional association and governing body for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 22,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers.
2. CILEx welcomes this opportunity to respond to the Land Registry consultation. The response follows consultation with members of our Council, together with a wider consultation with members of CILEx who undertake conveyancing work.
3. Our response deals with the proposals in the order in which they are raised in the consultation document, so far as CILEx wishes to offer a view.

Wider Powers

Question 1

Do you agree that there is the potential to (a) streamline and bring greater efficiencies to services in the property sector and (b) introduce new services?

4. There is always potential within the property sector, as with other sectors, to introduce efficiencies and streamlining of systems. However, any measures need to be proportionate, and measured.
5. There is always scope, within any sector, to introduce new services. However, whether they are necessary or essential is another thing. When introducing new services, it would be more appropriate to assess whether there is a genuine demand or need across the property sector for an introduction of such new services. It is not appropriate that such services are introduced simply as a result of a desire on the part of the Land Registry to improve its financial position in preparation for future market fluctuations.

Question 2

Do you agree that Land Registry should play a greater role in the property market by providing (a) information and register services additional to land registration services and (b) consultancy and advisory services relating to land and other property?

6. CILEx practitioners have mixed views on whether the Land Registry should have wider powers. Most who expressed a view believe that there is no evidence to suggest that the Land Registry would be better suited to provide information and register services than the current providers, or any future providers.
7. CILEx practitioners have concerns around the potential creation of a monopoly in the provision of information and register services with potential risks that:
 - competition will be stifled
 - continuity will be endangered, and
 - innovation will be discouraged.
8. The commercial risk of development of such services would perhaps be better left to the market. The Chancel Repair Liability situation is an example of when the market acted to find a resolution to a conveyancing problem, which the public sector had failed to do.
9. Whilst the consultation does not provide substantive details on the type of consultancy and advisory services the Land Registry may offer, it is clear that there are a number of ideas in early development. (We appreciate that there will be a detailed consultation on the proposals going forwards). However, if other services are to be offered, the Land Registry must ensure that it acquires the relevant knowledge and expertise to undertake such services.

10. There is potential for conflict of interest if the Land Registry has the power to register land and provide information beyond that which is within its current remit. An example of such a potential conflict would be where the Land Registry seeks to register possessory title and difficulties arise due to a public right of way through the land subject to the application.

Question 3

Do you have any suggestions as to new services Land Registry could consider?

11. We take the view that the Land Registry should identify opportunities for the development of such services, encourage best practice and provide a forum for the development of such services.

Question 4

Do you agree that Land Registry should have the power to set the charges for new services?

12. CILEx has no comment to offer at this stage.

Question 5

Do you agree that Land Registry's power to form, purchase or invest in companies should apply to activities carried out under Wider Powers?

13. CILEx has no comment to offer at this stage.

Question 6

Do you have any other comments relating to this part of the consultation?

14. CILEx has no comment to offer at this stage.

Local Land Charges

Question 7

Do you have any comments about the reasons to change Local Land Charge services and do you see any benefits?

15. It is clear that, as with all processes, streamlining could improve efficiency. Although we acknowledge that there is room within the current system for modernisation we are not persuaded that the way forward outlined in the consultation is the right way to go.

16. The Land Registry has identified variations within local authorities in cost, speed and the format in which local land charges information is held. We recognise that this may affect the ability of property professionals and the public to access the information.

17. However, it has not been widely reported to CILEx that these issues cause significant problems. CILEx understands that the majority of local land charges searches are produced in a matter of days rather than weeks, and therefore there is no detrimental impact on the time taken for the average conveyancing process.

18. While CILEx recognises the potential for benefit, in theory at least, of holding all local land charges information in a central register we have a number of reservations (which are raised appropriately throughout this response).

Question 8

Do you agree with the stated perception that the current Local Land Charges services would benefit from reform? Please provide comments to support your views

19. Whilst there will always be room for improvement and greater efficiency, in all markets including conveyancing, CILEx would question whether the proposed reform will improve the LLC service in the way suggested.
20. The proposal that the Land Registry deals only with the LLC1 form, with the CON29 services remaining the responsibility of the individual local authorities is a significant issue. Whilst the CON29 addresses enquiries of a local authority, it is currently unusual for the LLC1 and CON29 forms to be submitted separately. The current proposals largely ignore the cross reference necessary between the forms to provide accurate answers.
21. Such a proposal will result in property professionals liaising with the Land Registry *and* the local authority in order to obtain all property information required. This would not necessarily reduce the current burden, and could potentially increase the burden on the property professional.
22. No account has been taken of the experience reported by our members that the CON29 is usually more complicated, and takes longer to complete as the information may be held in different departments across the local authority. This negates the intended benefit in terms response times, if the LLC1 is completed but the property professional still requires the completed CON29.
23. CILEx believes that rather than simplifying the system, this would in effect lead to a more fragmented service. Questions would also be raised around the reliability. It would appear that despite the Land Registry intention to set the LLC fees, there would ultimately be no standardisation of overall costs, as the local authorities would still be responsible for charging for the CON29 service.

24. Furthermore, it has been recognised in the research accepted by the Land Registry that customers would not accept just the LLC services (without CON29) and that it must be the full service or nothing¹. It is not clear why the Land Registry is now proposing this as the way forward. It appears to go against the rationale for the initial proposal, which was to provide a single integrated service.

25. By extension, the Land Registry has recognised that the obligations to maintain and process searches of the Local Land Charges register are statutory. This obligation currently sits with the local authority. If such an obligation is removed, there is the potential that local authorities may refuse, or be unable to, continue any involvement with the local search process (as the CON29 enquiries are not a statutory obligation). This potential is increased should local authorities lack the resources to undertake such services due to the removal of the LLC services.

26. CILEx is concerned about the loss of local knowledge from the Local Land Charges process. Local knowledge, together with the ability of local land charges officers to discuss issues with other departments within the local authority, ensure that the current service provides accurate information, which usually results in an efficient service.

27. Comments from practitioners suggest that the mismanagement of the LLC service has been overstated by the Land Registry.

Question 9

Do you think Land Registry has considered all feasible options? Please provide comments to support your views

¹ Page 8, "Land Registry – Local Authority Study" Synovate UK.

http://www.landregistry.gov.uk/data/assets/pdf_file/0007/66877/LLC_LA_Study_Report_FINAL_Dec13.pdf

28. In terms of the ultimate aim of the Land Registry, to provide a more efficient conveyancing service to the property buyer, CILEx considers the Land Registry has not given consideration to the possibility of LLC services remaining with local authorities. Research needs to be undertaken, to investigate whether it would be more cost and time effective for local authorities to undertake projects to digitise the data currently held in various formats. If this course of action were appropriate, it would result in far less disruption to the market, and ultimately the consumer.

29. CILEx is not convinced that the Land Registry has considered the operational implications of creating a centralised Local Land Charges Register, or the full nuances of dealing with searches. The levels of service that could be delivered during any transitional period are also a major concern which has not been adequately addressed.

Question 10

Do you agree that the definition of a Local Land Charge requires simplification? Please provide comments to support your views

30. CILEx does not consider it necessary to simplify the definition of a Local Land Charge. The current definition is well known to those practising in the area of work. There would be a risk of unintended consequences as identified by the Land Registry, without strong enough justification.

Question 11

Do you agree that sections 3, 4 and 5 of Local Land Charges Act 1975 should be amended as proposed? Please provide comments to support your views

31. CILEx does not consider that sections 3, 4 and 5 of the Local Land Charges Act 1975 should be amended as proposed by the Land Registry at present until due consideration has been given to the Local Land Charges services remaining with local authorities.

32. Should amendments be required in the future, then they should be consulted on, and any amendments proposed only once the market and services as a whole have been thoroughly considered.

Question 12

Do you agree that Land Registry will provide Local Land Charge searches for a limited period going back 15 years? Please provide comments to support your view.

33. Feedback from CILEx practitioners on this issue was clear. The proposal that the Land Registry will only provide LLC searches for a limited period going back 15 years is not acceptable, workable or in the public interest.

34. There is no proposal from the Land Registry as to how earlier land charges will be revealed. If it is intended that enquiries be made of the local authority, then the cost to the property professional and the public in undertaking these additional enquiries could potentially outweigh any savings. It is also likely to increase the time spent on making enquiries and remove certainty.

35. The proposed 15 year cut off fundamentally undermines confidence in the accuracy of searches. Currently, searches provide an authoritative and comprehensive record of all notices and charges affecting a piece of land. Limiting LLC searches to 15 years would result in searches failing to disclose a number of different charges including, but not limited to, tree preservation orders, smoke control orders, compulsory purchase orders, conservation area restrictions and statutory listing.

36. It has potentially dangerous consequences both to the property buying public and their property professionals. It could lead to listed buildings being demolished or protected trees being destroyed for example. The potential effect this could have on the public, together with the real possibility of prosecutions as a result of unauthorised works on property or in breach of

orders not revealed due to the proposal, have not been considered by the Land Registry and are significant.

Question 13

Do you agree that sections 8 and 9 of the Local Land Charges Act 1975 should be amended as proposed? Please provide comments to support your views

37. As with the answer to Question 11, CILEx does not agree that the proposed amendments should be made at present. Any amendments should only be considered once further research has been undertaken, and once the searches procedure has been considered as a whole.

Question 14

Should Land Registry take over the Local Land Charge registration functions of Local Authorities? Please provide comments to support your views

38. CILEx understands that a significant element of quality assurance is currently provided by local authorities with regards to data registration. This can be offered due to extensive local knowledge and experience.

Question 15

Can you suggest other areas that could be considered under the proposed protocols?

39. CILEx has no suggestions to be included within the proposed protocols at this stage, but is pleased that they will be discussed with interested parties. This is vital if they are to be workable and sustainable. It will be no small task to reach protocols with each of the local authorities.

Question 16

Do you agree that a record of appropriate dates relating to the creation of a Local Land Charge will be required in order that Land Registry can accurately

maintain a Local Land Charges Register? Please provide comments to support your views

40. The recording of dates is essential to ensure that the most recent data is being relied upon. The Land Registry should ensure that appropriate dates are recorded in order to accurately maintain a Local Land Charges Register.

Question 17

Do you agree that Land Registry should retain the option to insure against claims and provide compensation when a claim is valid? Please provide comments to support your views

41. It would be both appropriate and desirable to insure the public against consequences of the supply of inaccurate or outdated information. CILEx understands that private search providers insure their reports for the benefit of the public and property professionals.

42. There has been no costing of insurance, but it can be assumed that such insurance would be costly. This would call into question the assertion by the Land Registry that it could provide Local Land Charge searches at a reduced/standard fee. Therefore, no further comments can be given at this time.

Question 18

Do you think an electronic process and providing digital information through a single registering authority will provide business with tangible benefits by being able to make LLC1 search applications by a method other than paper? Please provide comments to support your views

43. CILEx understands the market already accesses Local Land Charge searches using methods other than paper. However, this will not always be possible, and the Land Registry will have to keep in mind that there will be those who

still wish to continue ordering and receiving results in paper form. There may be firms of lawyers or others undertaking searches, which do not have the use of, for example, a high functioning case management system which could incorporate such requests or responses.

Question 19

Do you think you will need to make changes to your internal processes to make LLC1 search applications through LR channels?

44. It is not appropriate for CILEx to answer this question, as we do not undertake LLC1 search applications.

Question 20

Has Land Registry correctly assessed the impact of its proposals on members of the public and businesses? Do you consider that Land Registry has missed or under-estimated any substantive impacts? If so, what are the nature and scale of these impacts?

45. CILEx does not consider that the full impact of the proposals have been considered by the Land Registry.

- The proposed takeover of the Local Land Charges function is likely to lead to a more fragmented service, which has the potential to be more costly than the current system. The early proposals were to include all services (the LLC1 and CON29) and to produce a central register. The current proposals would not result in such a central register. Moreover, given that the local authorities will retain responsibility as originating authority for updating the Land Registry register with entries savings envisaged by the Land Registry are unlikely to be realised.
- Currently local authorities are able to provide quality assurance in relation to the search functions they undertake. The Land Registry will not be able

to provide such quality assurance, which will significantly reduce the ability for the public and property professionals to rely on searches.

- The Land Registry claims it will charge lower fees for the LLC1. This is based on searches for a limited period of 15 years i.e. not a valid comparison.
- CILEx questions whether the Land Registry has fully considered the volume of work and the expertise required to this function. It no longer has regional offices dealing with local matters, and its track record with IT initiatives is less than proven.

Question 21

Do you think that any other approaches to improving the provision of Local Land Charge searches should be explored? If so what are these? What would be the comparative advantages and disadvantages of any such approaches?

46. CILEx considers that further research and costing exercises need to be carried out in relation to the local authorities digitising their services.

47. Regarding the issue of cost, there is the potential to reintroduce a fixed fee for Local Land Charge search functions.

Question 22

Do you have any further comments relating to this part of the consultation?

48. CILEx has no further comment to offer at this stage.