



A discussion document produced
by Land Registry. This information
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Analysis of responses to
Defining the service –
Electronic Funds
Transfer
November 2005

with you



Part 1

Executive summary

On 4 April 2005, Land Registry published a discussion document entitled *Defining the service – Electronic Funds Transfer*. This document (hereinafter referred to as 'the discussion document') set out Land Registry's proposal for an electronic funds transfer (EFT) service to underpin e-conveyancing. It was issued, with a questionnaire, to a wide range of stakeholders.

Consultation audience and response rates

The discussion document's primary audience comprised conveyancing practitioners, lenders and banks. Its purpose was, first, to stimulate a debate among stakeholders about EFT; and, second, to seek their views on Land Registry's proposal. Respondents were given until 16 May to reply¹, which they could do in any of the following ways:

- by downloading a copy of the discussion document and answering the accompanying questionnaire via the internet at Land Registry's consultation site www.e-consultations.e-conveyancing.gov.uk
- by completing the questionnaire online
- by receiving a hard copy through the post, completing the questionnaire and returning it by the same method.

Part 2 of this report analyses the responses and sets out the conclusions that Land Registry has been able to draw from the exercise.

The questionnaire was divided into four sections. Section A consisted of general questions; Section B, of questions to banks as potential agent banks; Section C, of questions to practitioners; and Section D, of questions to lenders. The object of dividing the questionnaire in this way was to allow respondents to identify the questions that chiefly concerned them and answer only those questions. However, they were free to answer as many questions as they wished.

3,000 copies of the discussion document and questionnaire were issued and 181 completed questionnaires were returned, a response rate of 6.03 per cent. We have also received eight free format responses by letter or email, bringing the total number of responses to 189. Nearly all the responses came from conveyancers, with only two coming from banks and two from other lenders. Although the paucity of responses from banks and lenders is disappointing, it does

¹ The deadline was subsequently extended to 23 May so as not to disadvantage online respondents in comparison with those who submitted their responses by post.



not compromise the outcome of the consultation for the following reasons.

- Land Registry has had contact with several banks during the development of the EFT proposal and their views are largely known.
- Lenders have participated in focus groups from which it seems that their view of EFT is generally positive.

While their views on our detailed proposals would have been welcome, the absence of such views does not, therefore, invalidate the exercise or call into question the legitimacy of any conclusions we may draw from it.

Consultation publicity and availability

EFT had already been the subject of a formal consultation in 2002 and this exercise was designed to ascertain stakeholders' views on Land Registry's detailed proposals.

The exercise was launched by an initial invitation to register on Land Registry's e-consultation website and was advertised by press releases by the Law Society and APACS. The Law Society also issued emails about the consultation to members of its Property Section and Land Registry issued reminders to prospective respondents on 28 April and 11 May.

Consultation feedback

As mentioned above, eight respondents found the questionnaire unsuitable for their needs and elected to give free format responses. One respondent reported that the system seemed to have wiped their response when it was nearly completed.

Feedback from the users who completed the short questionnaire about the online facility was uniformly favourable.

Responses to the discussion document questions

As will appear in Part 2 of this document, although an overwhelming majority of respondents thought the proposal viable, many did so with reservations which they articulated in response to the appropriate questions. Broadly, those reservations may be grouped thematically, as shown below.

All the eggs in one basket

There were concerns that a single Agent Bank would be anti-competitive and would not diffuse risk. The service might be vulnerable to crime (fraud, money laundering) and would lack adequate contingency in the event of system failures. Many respondents felt that a single bank would not be able to cope with the volumes of transactions at peak times and, in the absence of competition, would not be motivated to provide a high quality service.



Some also thought that the award of a contract to a single bank would be challenged under competition law.

Flexibility

Some respondents considered that the EFT service would be too rigid and insufficiently responsive to changing circumstances, such as non-vacant possession, last-minute revocations or late redemption statements. There were also doubts that it would meet the requirements of complex transactions or the sudden and unpredictable changes caused by the human factor.

Costs

Cost will be an issue if users of the service feel that it does not offer value for money or investment costs exceed what the market will tolerate. Much depends on the level of the charges levied by Land Registry and/or the Agent Bank and the relation between such charges and the quality of the services offered. Many conveyancers were concerned that they would be faced with higher costs while losing interest on client account moneys.

Mixed chains

Opinions were divided on the feasibility of the proposals for dealing with mixed chains set out in the discussion document. Many respondents thought that compulsion was the answer and that no bank would be prepared to act as the Agent Bank unless compulsion was introduced at an early stage.

Pride goes before a fall

Several respondents commented that the proposed service was very ambitious (re-engineering the financial system for conveyancing in England and Wales) and suggested that Land Registry should beware of biting off more than it could chew.

Compliance

The system would need to comply with the (sometimes conflicting) requirements of various regulatory codes, for example, the accounts rules of solicitors and licensed conveyancers, and banking codes and protocols.

The devil's in the detail

Some respondents thought the proposals were not detailed enough, especially with regard to problematic or unusual transactions. They felt that the proposals naively assumed (a) standard transactions, and (b) that nothing would go wrong and nothing out of the ordinary would occur.

Who is responsible when things go wrong?

Accountability and liability were issues for several respondents who felt that the boundaries between the Central Service, practitioners and the Agent Bank were not drawn clearly enough.



The next steps

While it is pleasing to find that most respondents think our proposals are viable, it would be unwise not to take account of the reservations expressed in the responses to the discussion document. We have therefore decided:

- that the first phase of e-conveyancing, to be piloted in 2007, will not include EFT but will focus on chain management and on the preparation, exchange and delivery of electronic deeds and documents
- that we will nevertheless continue to work on our EFT proposals with the help of the banking consultants whom we have appointed to advise on banking systems and protocols
- that we will engage further with stakeholder groups and representative bodies in order to refine our proposals and, in particular, to address the issues raised by respondents.



Part 2

Introduction

This section records and analyses the responses of stakeholders to the questions in the EFT questionnaire, which was issued with the discussion document. Where criticisms were made, they have been recorded but not rebutted, the purpose of this exercise being not to refute criticism but to find out what our stakeholders think of our proposals.

General questions

Question 1

Is the Agent Bank approach viable for residential chains?

Total number of responses – 178. 113 offered comments.

89 per cent of respondents felt that the approach was viable, but their assent was often qualified, sometimes substantially. The following paragraphs summarise the commonest grounds for concern. However, two further facts must be noted. First, many respondents approved the proposal without reservation. Second, some of those who opposed it did not give reasons for doing so.

The main issues raised were:

Control and flexibility

One respondent said that solicitors who have their own Bankline modem already have greater control over the process than they would have with the proposed EFT service. Several other respondents expressed concern at the loss of control over the process that EFT would allegedly entail.

The existing system permits 'same day' exchange and completion and some respondents thought that this flexibility would be lost under the new service. One observed that only solicitors found the present system ineffective, banks and lenders did not². Others commented that the EFT service would be costly and cumbersome, and that it would stifle innovative measures by practitioners to overcome problems, for example, holding money to order pending compliance with a particular condition, providing last-minute undertakings.

Ancillary matters which might lead to late revocations, such as registration of matrimonial homes rights or failure to give vacant possession, could cause problems as the EFT proposal does not

² This, however, is contradicted by feedback from Land Registry focus groups, which suggests that most lenders are strongly in favour of the EFT proposal



appear to provide for them. Nor does it seem appropriate for non-chain transactions.

However, one respondent said that the existing system provided no guarantee that banks would transfer funds on the day of completion by the time specified in the contract and that the proposed EFT service would therefore be preferable.

Service levels at the Agent Bank

Several respondents also questioned whether one provider could deal with the volume of transactions, especially at peak times, such as the Friday before a bank holiday weekend. It was pointed out that the service levels required would be far in excess of what any bank currently offers its customers. There is a possibility that funds will be wrongly credited or lost in the system.

Some respondents thought that performance standards backed by penalties would be required in order to ensure that the Agent Bank met the market's needs as the standards currently attained do not inspire confidence. The Agent Bank would also need mechanisms, controls and back-up facilities in case of system failure. Several respondents considered the level of resilience required (that is, no possibility of failure) unattainable, and pointed out the potentially calamitous consequences of a system crash on a Friday before a bank holiday.

Many respondents said that it must be possible to replace the Agent Bank, should this become necessary. The implications for conveyancers and other parties will need to be considered.

Liability

Several respondents asked who would be liable in the event of money being lost or wrongly credited in the system, or system failures causing possibly substantial loss to house buyers (for example, hotel accommodation, removal charges).

Complex transactions

One respondent acknowledged the desirability of a single Agent Bank but questioned the need for the Central Service, which he described as “entirely unnecessary” and “a tiresome bureaucratic tier”. He also warned that not all transactions are sufficiently straightforward to permit simultaneous completion and registration – for example, some unusual entry, which will need time to consider, may be required against a title. Several other respondents said that delays in completion might require re-calculation of apportionments and suggested that, while the Agent Bank approach would work where no problems arose, it was not clear how, or even whether, it would be able to cope with the huge number of different difficulties, delays and last-minute changes that may arise on any particular transaction.



Pre-funding

There are doubts about the workability of pre-funding. The Agent Bank will need to see funds in place 24 hours before completion in order to have time to notify a defaulting party of any problem and also to notify the other parties in the chain if the problem is not promptly addressed. However, moneys could take all day to reach the EFT system if sent by CHAPS. Should funds therefore be pre-positioned two days before completion?

Mixed chains

Many respondents commented that the proposed service would have difficulty in accommodating non-users and that it would work only if everyone used it. Two respondents thought that the system was complicated and few people would want to use it. One respondent said that use of EFT should be compulsory and another intimated that no bank would take on the Agent Bank role unless compulsion was introduced within a very short period.

HM Revenue & Customs (HMRC)

There are doubts that HMRC Stamp Taxes (HMRC – formerly Inland Revenue) would have the capacity to participate in the EFT service, as changes in their procedures have led to unresolved problems with Stamp Duty Land Tax payments.

Lenders

Lenders often do not release redemption statements until the day of completion and such statements are often inaccurate. Two respondents doubted whether lenders would be prepared to release funds prior to completion. One respondent commented that everyone involved – conveyancers, lenders and the Agent Bank – would have to be much more disciplined in order to make the system work.

Cost to clients

Clients must be prepared to pay extra interest to allow for the pre-positioning of funds. Many respondents pointed out that conveyancers will lose the interest they currently earn from their client accounts. This loss would either significantly (perhaps catastrophically) reduce their profits, or be made good by increased fees to their clients. They suggested that cost might be an issue, depending on the level of the Agent Bank's charges to customers and the relation between such charges and the quality of its service.

Compliance

Three respondents said that either the EFT service must comply with the solicitors' accounts rules, or, if necessary, those rules must be amended to accommodate its exigencies. Thought must also be given to the protection of funds, liability for loss, the circumstances in which money can be recalled and compensation. Two respondents also commented that there was insufficient detail about the relations between EFT and solicitors' client accounts: if the service effectively doubled the workload in each firm's cash office because of the need



to maintain duplicate ledgers, take-up would be negligible. One also enquired whether the Agent Bank would owe a duty of care to the conveyancer or Land Registry.

Security and risk

Security, especially with regard to access to accounts, is a major issue, as is clarity for audit purposes. One respondent also suggested that e-conveyancing might facilitate fraud, though how it would do so was not specified.

Several respondents thought the proposal ought to be abandoned on the grounds that the associated risks were too high and the possible consequences too serious to be sustainable. Their view was that the present system, despite some shortcomings, works well enough. One of them considered that the time, money and effort being expended on e-conveyancing would be better applied to providing more information on the register, especially in relation to restrictive covenants, and making official copy leases generally available. He also thought that, while the public want to exchange contracts quickly, there is no evidence that they are interested in how quickly a title can be registered.

Other respondents warned that the EFT service was extremely ambitious and suggested that Land Registry and the Agent Bank would be assuming an enormous responsibility by taking on the entire financial system for conveyancing in England and Wales.

Communication

One respondent asked how Land Registry proposed to communicate completion. Another asked whether receipt and payment confirmations would be issued by e-mail.

Low users

One respondent said that conveyancing was only a small part of his firm's business and chain sales were even less. Should people like him be encouraged to use EFT, or would that prove a needless complication?

The human factor

Three respondents thought the problems with the current service were due more to human failings on the part of conveyancers, their clients or lenders (for example, dilatoriness, absence from work due to illness or accidents, incompetence, unscrupulousness) than to systemic problems, and that the EFT service would not change this.

Question 2

Do you have any suggestions for improvement to the Agent Bank approach?



Total number of responses – 176. 85 offered comments.

35 per cent of respondents offered suggestions for improvement. 65 per cent were satisfied with the proposal as it stood. Some of the respondents to this question disagreed in principle with the EFT proposal. Understandably, their suggestions are not so much ideas for improvement as alternative concepts. In the following paragraphs, no distinction has been made between these two categories. It will, in any case, be evident where the respondents' sympathies lie.

Improved funds transfer systems

Some respondents suggested enhancements to the existing system of funds transfer which might, if adopted, obviate the need for an Agent Bank. These included real time online money transfers operated by solicitors, and requiring exchange to take place at least three days before completion in order to ensure that all moneys and pre-completion searches were in place.

Many respondents said that funds transfers needed to be quicker, whether EFT was adopted or not. CHAPS payments needed to be processed more quickly (even under the EFT proposal, completion could be delayed until an incoming CHAPS payment reached the Agent Bank) and funds should be pre-positioned early on the day before completion so that checks could be made. One respondent said that conveyancers should be allowed to accumulate all the necessary funds the day before completion and then pay the required amount into the Agent Bank.

Stalled or aborted chains

A method for dealing with stalled or aborted chains is required (unfortunately, no such method was suggested).

Compulsion

Many respondents said that use of EFT should be made compulsory sooner rather than later.

If it ain't broke, don't fix it

Some respondents said that the existing non-EFT system was adequate and should be left alone. One added the proviso that law firms should use online banking systems. Another said that, if the present system need be changed at all, it should be simplified, not complicated. A third admitted that the Agent Bank might be viable, but questioned the need for it. The existing non-EFT system should be enhanced by reducing the time taken to transfer funds and allowing the buyer's conveyancer to receive funds the day before completion.

More work needed

Many respondents said that more work was needed and more detail required to ensure that the wide variety of problem transactions could be accommodated within the Agent Bank approach. Delays may



arise for many reasons, not all of which are accounted for in the EFT proposal: the robustness of the system could be properly evaluated only if each of the potential scenarios was fully worked through and a solution produced.

Communication

Some respondents argued that there was a need for a method of instant communication between conveyancers and the Agent Bank and that completion should not be effected until express authority to complete had been obtained from all parties in a transaction.

One respondent said that the Agent Bank's confirmation of payments out should ensure that the chain matrix was promptly updated so that it could be viewed by all parties and the keys released. He added that revocation should be very limited and time-sensitive (a point made by several respondents, one of whom suggested that revocations should be possible on the day of completion only in extreme circumstances) and that emergency provisions must be in place to cover system crashes.

Cost of investment

Several respondents considered that the cost of investment in the technology needed to make the EFT service work would be more than the market could bear, especially where small firms and sole practitioners were concerned.

Regulatory framework

Another respondent suggested that the *Standard Conditions of Sale* for residential property might have to be altered to provide for cases where funds had been transferred but a problem had arisen which prevented the buyer/seller from physically completing. A centrally funded ombudsman might also be needed to deal with issues which would otherwise result in a costly court case. This would require commitment from the Government.

Question 3

Do you have any views about the use of a single Agent Bank?

Total number of responses – 177. 132 offered comments.

74 per cent of respondents answered 'yes' to this question. Some of the responses amounted to suggestions for improvement. Others (the majority) expressed concern at some of the implications of the proposed EFT service and the remainder reinforced their approval of the single Agent Bank concept with mild (if any) qualifications.

There were two main areas of concern to most respondents: competition (or the lack of it) and risk.



Competition issues

Many respondents thought the Agent Bank might abuse its monopoly and feared that EFT would create a 'superbank', able to dictate to the market and effectively accountable to no-one. One respondent considered that the power vested in the Agent Bank and Land Registry was excessive and smacked of totalitarianism. Several felt that the absence of competition and the knowledge that there would be considerable practical difficulty in transferring the EFT service to another bank, would act as a disincentive to the Agent Bank to set and maintain high standards. Some respondents pointed out that standards in the banking industry ranged from the acceptable to the dire, the identity of the Agent Bank was therefore a cause of concern, as some banks have a better reputation than others.

One respondent suggested the Bank of England should be the Agent Bank – “no competition and the Government will love it”!

Risk

Many respondents thought more than one bank is essential in order to guard against system/banking failures and capacity issues - could the Agent Bank cope with the volume of business, especially at peak times? They were concerned that a single Agent Bank would concentrate risk in one area instead of diffusing it, as the present system does. This was linked to fears that systems would crash and back-ups prove inadequate with potentially catastrophic consequences, for example, on a Friday before a bank holiday weekend. They also pointed out the heightened susceptibility to terrorism and certain other sorts of crime (for example, fraud, money laundering) entailed by total dependency on a single service provider. And one respondent suggested that indemnity insurance might not be available if there was only one Agent Bank.

Multiple Agent Banks

Several respondents thought that multiple Agent Banks would be preferable so as to ensure flexibility, cost competition and comparables on delivery in relation to agreed service standards. They considered that competition would improve service.

Two respondents suggested that a consortium or duopoly with a lead bank, or primary agent, would be the optimal solution.

Another respondent said that, while the Agent Bank must appear to users to be a single bank, it would be feasible for every bank to have an EFT 'bolt-on', relying on a current and reserve account structure, which many banks use, all operating seamlessly as one client account. All firms' EFT accounts, taken together, would compose 'LREFT'.

Two novel suggestions were that the big five should form a new bank, or that Land Registry should set up its own internal bank. It was also suggested that solicitors should hold both client and office



accounts in the new bank, which would receive instructions directly from conveyancers, probably via the internet. Conveyancers would keep enough money in the accounts to meet funds required for projected completions. One respondent thought the discussion paper underestimated the myriad financial adjustments that are required on completion and the frequency with which they arise. He thought the EFT proposal unrealistic and unworkable. He also questioned the need for set completion times, as this would reduce flexibility which might be needed in some cases.

Single Agent Bank

Several respondents favoured the approach outlined in the document, some of them strongly. One said that a single Agent Bank was the only sensible approach and must be defended vigorously. Another commented that homogeneity of processing and terminology would be a helpful consequence of using a single Agent Bank. Two others said that a single Agent Bank would work best as long as there were strict controls on the service levels and robust security measures. It was also claimed that, in order to ensure that everyone could participate in mixed chains, the Agent Bank would have to accept anyone as a customer. One respondent, while favouring the single bank concept, thought there might be banking compliance issues which would need to be addressed.

An even-handed response suggested that, while a single Agent Bank would be risky, multiple Agent Banks might apply different, and mutually inconsistent, procedures. Lack of co-operation between banks might also be an issue. On balance, the respondent favoured a single Agent Bank.

Several respondents suggested that service level agreements must ensure that the Agent Bank could be replaced in the event of poor performance, but another respondent thought this would be difficult to achieve.

Other issues

Some other issues were mentioned by several respondents. These included the loss to conveyancers of interest on funds held in their client accounts, possible incompatibility with current conveyancing timescales and client requirements, loss of flexibility and cost to both the conveyancing profession and, ultimately, their clients. The first and last of these are closely related and are matters of great concern to the profession. Many conveyancers undertake their work at cost in order to survive in an increasingly competitive market and rely on the interest earned on client account funds for their profit.

Question 4

Are there any competition issues that concern you?

Total number of responses – 175. 95 offered comments.



41 per cent of respondents were concerned about competition issues.

Competition law

One suggested that competitor banks might refer the appointment of a single Agent Bank to the Office of Fair Trading. Several said that competition law issues might arise if use of EFT became compulsory, or non-users were disadvantaged.

One respondent described the EFT service as “a private function” which was “not a matter for Land Registry or any Government body”. He said the proposal was that one bank be given a unique privileged position to carry out private banking functions from which all other banks would be excluded, which he deemed “clearly anti-competitive”. If any other bank offered to provide the same services, acting as a central location through which net payments could be calculated and paid, it should be permitted to do so. To prevent it from doing so, or to place a hindrance in its way, could be in breach of competition laws. In this respondent's view, if the bank were a European bank (a number of Irish banks are well placed to provide this service), the proposal would contravene European competition laws. The respondent concluded that Land Registry was right to bring this subject up, but should not seek to control the system.

Loss of freedom to choose

Quite apart from competition law, the loss of the freedom to choose which bank to use was seen as a drawback by many respondents. One said that some solicitors had banking services (for which they paid more) which were superior to those of other solicitors, so that the former could supply the service their clients would pay for. Such clients would not be content with the proposed service. Bulk users with inferior services would perhaps use it with copious insurance, the cost of which would be funded by volume.

Unfair advantage to Agent Bank

Another respondent thought the fact that the successful candidate for the role of Agent Bank would have an opportunity to test the EFT system and apply it in practice, would give it an immense competitive advantage when the initial contract expired and a second tendering exercise was carried out. However, any such advantage might be partly negated if unsuccessful bidders proved unco-operative.

Another respondent said that any proposal to the effect that all conveyancers should maintain an account with a sole Agent Bank, represented a high risk to the e-conveyancing business case on the grounds that, not only could it be deemed anti-competitive, but there might also be some accounts that the Agent Bank did not wish to maintain. Conversely, the conveyancer might not wish to hold an account with the particular Agent Bank. The respondent pointed out that a single Agent Bank would be able to court accounts from other



banks on the basis of cost, as book transfers would be cheaper than CHAPS payments.

Many respondents noted that banks, as commercial organizations, aimed primarily at maximizing profit and only secondarily at providing good customer service. It was widely felt that giving one bank the opportunity to operate the EFT service would strengthen their position and act as a barrier to a new bank's taking its place. It would also put it in a strong position to attract the accounts of components of the conveyancing market.

Even respondents who favoured a single Agent Bank were concerned that the possibility of appointing multiple Agent Banks in the future should not be ruled out.

Cartels

One respondent said that there were not enough providers of the services in the market place and, with big corporates controlling the market, high street practices would have less choice and a poorer service because of the absence of competition. He feared that the monopoly would also lead to higher fees. Another respondent said that small firms might find it difficult to invest in the technology required to use the EFT service (most case management systems are not XML-based). He presumed that Land Registry would be required by the Government to run the service at a profit, which would add to the client's costs. He was also concerned that a government monopoly would be running the system without any free market competition.

One respondent thought that large lenders already had a disproportionate influence in the market and no one banking organisation should be given so fundamental a role. He contended that the Agent Bank should be independent and non-commercial but queried how it would be funded, given the considerable resources needed.

One respondent said that large firms (and companies vying for the appointment of the Agent Bank) would have an inevitable monopoly since they would be better able to bear certain costs, such as those of transferring money to and fro. Another thought that the five clearing banks would tender at unrealistic figures and then fail to perform. He asked if, in the event of system failure, the Agent Bank would be liable for losses on 60,000 transactions.

Some respondents asked why only one bank would be appointed. One noted that service level agreements were sound in principle but asked how conveyancers and clients should monitor performance. He considered that the Agent Bank should be responsible to the client, not to Land Registry or practitioners. A monopoly was not, in his opinion, the best provider of services.



One respondent feared that the Government might conclude that the interest earned on the funds in the Agent Bank accounts would be better applied to other purposes. It would be only a short step for the commitment to paying interest to the parties involved to be abandoned in favour of, say, funding the EFT service.

Another respondent was unconvinced of the merits of completions' taking place at a particular time and wondered why this idea had been adopted. He pointed out that currently most chains complete at various times of day and move independently of the time of transmission of funds. The timing depended rather on how long removal vans took to load, etc. He asked why a particular time of completion was thought necessary.

Some respondents thought there had to be a level playing field, with no advantage to either users or non-users of EFT.

Costs and interest rates

These were issues for some respondents. One suggested that such rates would have to be linked to rates imposed by the Bank of England or some other independent body. Any costs to users (for example, for CHAPS payments out) would have to be regulated or fixed for the period of the contract. Another asked whether, in the light of its monopoly, the Agent Bank would be able to increase its charges during the contract period. He indicated that this would not be acceptable. He also asked what would happen if the service provided by the Agent Bank was not of an adequate standard. Would Land Registry be able to terminate its contract and engage another bank? A third respondent considered that the EFT service should be free.

One respondent said that, assuming the banks would tender for the work, the data should be kept in the U.K. for processing. Another said that, if multiple Agent Banks were appointed, they must all impose the same charges and offer the same level of interest rates. A third said that stakeholders should be involved in the procurement negotiations, as commercial operators would be likely to win better terms than civil servants.

Some respondents were concerned about the transparency of the procurement process, the criteria that would be applied, and whether or not only UK banks would be eligible.

One respondent asked who would guide clients through the process.

Question 5

What is a reasonable time in which to get from receipt of funds to completion? i) 30 minutes; ii) other (please specify).



Total number of responses – 177. 55 elaborated on their response. 58 per cent of respondents thought 30 minutes a reasonable time.

Other responses ranged from “immediate” to “24 hours”, with 17 respondents saying that an hour would be more reasonable. The wide variation between responses suggests that the question was understood in different senses by different respondents. This inference is borne out by some of the accompanying comments. For example, one of the respondents who thought one hour was a more reasonable time said that it took account of removals and the distance between properties. Another said that 30 minutes was insufficient in a long chain, while a third commented that relevant personnel might be unavailable. Five respondents declined to state a time on the grounds that it depended on the circumstances. Another said that accuracy was more important than time targets, a point forcefully **made** by others elsewhere in their responses.

One respondent questioned whether the phrase “receipt of funds to completion” included time to verify that the amounts received were correct, or referred only to the interval between the time when the Central Service advised the Agent Bank to make the payments, and that when the Agent Bank confirmed that such payments had been made. In the latter case, the respondent thought the process should be virtually instantaneous in an electronic age.

Another respondent suggested that an independent party should monitor receipt of payments and that this would enable Land Registry to agree the optimum time in which to get from receipt of funds to completion. The respondent thought that a single Agent Bank would not work on the grounds that conflicts (operational and commercial) between the Agent Bank and other banks with which it had to deal, would be inevitable. An independent party could not only monitor what was being achieved, but also set performance criteria for the banks to effect prompt settlement. If any bank did not conform, payments could simply be routed to other banks that did.

Question 6

Funding the day before is a change to current practice, but one that we think will facilitate the process. What are your reactions to this?

Total number of responses – 168.

Some respondents indicated that this was not a change from current practice. Others, however, saw it as a radical change. Given this difference of opinion over this most fundamental point, further differences were unsurprising.



Points that may require further consideration are:

- how conveyancers will react to the loss of interest accrued on money in their client accounts
- whether or not all lenders and buyers will agree to the proposal
- how the service will accommodate simultaneous exchange and completion
- whether CML requirements, *Standard Conditions* etc require amendment as a result of this proposal.

To expand on these points:

Interest which accrues on money in their client accounts is a significant income stream for conveyancers and the loss of that income will present them with a choice between three options:

- absorbing the loss
- passing it on to the client in the form of increased charges
- making savings elsewhere, possibly by re-structuring their practice.

Larger firms may be better equipped to absorb the loss of income. For smaller firms, however, the latter two options are likely to be the only realistic ones. Some small firms/sole practitioners fear that they may be forced out of business – as some conveyancers undertake work at cost and rely for their profit on interest and income from CHAPS payments, this fear may not be unfounded. And if they are forced out of the market, that will impinge on the competitiveness of conveyancing services generally.

Many respondents said that, while some lenders are willing to pre-fund, others are not. They queried how the service would deal with buyers or lenders who were late in positioning their funds. Reliability is also an issue with some lenders- , they may agree to pre-fund in principle, but fail to deliver in practice, either because they are late in positioning funds or because their redemption statements are inaccurate. Some respondents also felt that the proposal did not take sufficient account of the number of last-minute problems that may arise, for example, lenders come up with additional requirements, a borrower fails to provide an insurance schedule, or data provided by the two parties to a transaction conflicts.

Simultaneous exchange and completion is common in certain areas of the country, for example, parts of Lancashire. Timescales may be problematic and it may be advisable to undertake some investigative work (for example, process mapping and business modelling) to see either how this cultural practice can be reconciled with pre-funding, or how it can be accommodated within the e-conveyancing process without pre-funding.



Compliance with (or amendments to) existing regulatory requirements, such as the Law Society Account Rules, any guidance issued by the CML and any standard industry practice, should be the subject of further discussion with relevant stakeholders.

A minority of respondents thought the proposal unrealistic for various reasons, mostly relating to the human factor, for example, that completions sometimes take place very quickly (that is, within hours or even minutes); that buyers without mortgages invariably transfer funds at the last minute; that figures cannot be confirmed until the last minute because managing agents of leasehold properties are late in providing service charge/ground rent figures; that there are grounds for believing that the Agent Bank will not perform satisfactorily; and that buyers cannot reasonably be expected to put up moneys before completion is definite. However, these reservations are, to some extent, negated by other practitioners' having confirmed that pre-funding is already an established practice.

Cost and susceptibility to fraud, technological failure, and power cuts were also raised as possible issues that require further consideration.

Question 7

What are your views on the solutions proposed for mixed chains?

Total number of responses – 157

All respondents recognised that mixed chains constitute a problem for the EFT service. Many felt that the difficulties posed could be resolved only by a swift move to compulsion. Others considered that non-users of e-conveyancing, including DIY conveyancers, had to be enabled to participate in EFT by some means and that compulsion should be deferred until the service had proved itself.

Most respondents who opposed early compulsion thought that non-users should be granted limited access to e-conveyancing, though some warned that this risked providing non-users with everything they needed free of charge. Few thought that staggered completions were a good idea, with many objecting that they would create uncertainty and prove unreliable, thus nullifying the main purpose of the EFT service. Several respondents said that the proposal would be workable only if the Agent Bank could not refuse to accept a new customer: a stipulation which is unlikely to prove acceptable to a bank.

Other issues raised included:

- who would be responsible for correcting errors and resolving problems within a particular transaction
- what would happen if the chain involved an unregistered title or a property in Scotland



- how will parties to the various transactions which make up a chain know who is using EFT and who is not
- should incentives to complete on Monday to Thursday be provided?

These questions need further consideration and analysis.

Question 8

Are there any other solutions for mixed chains you would like us to consider?

Total number of responses – 171. 62 offered comments.

Again, many respondents favoured compulsion, with some saying that no other solution existed. It is probably true to say that only compulsion will solve the problem of mixed chains once and for all. However, as other respondents pointed out, it raises problems of its own – for example, loss of the customer's freedom to choose, possibility of system failure, leading to loss of confidence in the EFT service and e-conveyancing generally – and would probably be politically unacceptable until the service had been tested in practice.

For customers without electronic capability, it was suggested that small high street practices might provide, for a fee, a point of access to EFT. This, however, would be for the market rather than Land Registry to decide. Other suggestions were that Land Registry itself might provide such access, perhaps through its own high street shops, or that practitioners who lacked electronic capability could appoint another firm with access to EFT to hold funds on their behalf.

One respondent suggested there should be sanctions against firms who did not use EFT but participated by opening accounts at the Agent Bank, and then failed to comply with the requirements, for example, by consistently paying in funds late, thus spoiling the system for other users.

Respondents who disliked the EFT proposal said that the banks should offer a better telegraphic transfer service; EFT would then be superfluous.³

One respondent recommended forceful publicity followed by a gradual rollout. This would give Land Registry and others an opportunity to identify and solve any problems. He suggested that a

³ It is worth noting that the Payment Systems Task Force chaired by the Office of Fair Trading has recently secured agreement by the banks to reduce clearing time on electronic payments to same-day or next-day clearing, depending on the time of day the payment is initiated. However, this will not be introduced until late 2007.



hard launch would risk alienating potential users if, as he thought likely, it was followed by system crashes or other difficulties.

Question 9

Is the separation of the requirements into residential and commercial appropriate?

Total number of responses – 174. 70 offered comments.

Many respondents with extensive experience of commercial conveyancing stressed that the requirements differed from those of the residential market. Chains seldom arose, but complex transactions involving a mixture of first registrations, dealings with the whole, dealings with part, transfers, conveyances, leases and other instruments, and payments in different currencies, were common. There was conceivably a role for EFT in processing these transactions, but the nature of that role and the way in which it might best be filled, were matters to be further researched and discussed between Land Registry and its stakeholders. In general, the proposals set out in Chapter 10 of the document were well received.

The following paragraphs expand on some of the comments offered and raise questions which need to be addressed before an EFT solution for the commercial market can be formulated.

A commercial property transaction is often a part of a larger transaction, for example, the transfer of a lease could be part of a transfer of the assets and business of a company. Completion of the transfer of the property might need to be simultaneous with the completion of the sale of the remainder of the business and assets. The EFT system, if it is to be used in this context, will need to be flexible enough to deal with the financial aspects of the whole transaction, if that is how the parties wish to proceed, or to operate side by side and simultaneously with the transfer of other assets.

Large commercial transactions may be conducted in a deal room set up by any of the legal firms involved and the EFT system would need to be flexible enough to work seamlessly in that context.

The issue of the rate of interest payable is even more significant in the context of commercial transactions. Clients expect their legal representatives to invest funds that they are holding on the clients' behalf, possibly millions on large commercial transactions, so as to earn the highest possible interest. In some cases, clients may insist on setting the interest rates themselves. Would interest paid by the Agent Bank be at a competitive rate? Would solicitors and their clients be able to retain the same control over rates of interest in sophisticated deals? If the answer to either of these questions is 'no', commercial customers will be reluctant to adopt EFT.



The EFT service relies on the word of the Agent Bank as a trusted third party, to confirm that it has transmitted the completion moneys to the appropriate parties and completion relies on that assurance. But how long will it then take to credit the completion moneys to the accounts of the various recipients? The transfer protocols currently followed by banks sometimes result in unacceptable delay and will therefore not adequately support EFT.

The speed with which funds could be returned, if required for any reason for example, as a result of revocation, is an issue for many respondents.

Commercial property transactions may involve currencies other than sterling. They may also involve price-sensitive information which cannot be in the public domain.

Commercial property transactions may not involve the transfer of money or may involve the transfer of moneys to and from overseas bank accounts only. It must, therefore, be possible to achieve registration at Land Registry by some other means than the automatic trigger envisaged within the EFT regime.

Some completion figures in complicated transactions, such as the amount of SDLT payable, may not be available on completion.

It must be possible to transfer funds and to complete transactions 24 hours a day, seven days a week, 52 weeks a year. This is particularly important for firms with overseas clients.

Consideration might have to be given to an e-conveyancing solution that caters separately for a) residential, b) commercial, and c) mixed residential/commercial transactions. A co-hosted residential and commercial solution might require legal consultation between Land Registry and the Agent Bank. It must be borne in mind that residential and commercial are not mutually exclusive categories. Someone may sell a house to buy a shop with living accommodation. Others sell businesses and buy a house to move into, for example, on retirement.

Commercial requirements are often non-standard and a rigid system will not provide the required flexibility. Transactions may arise where no money changes hands, or where part of the transaction does not give rise to registration or SDLT requirements for example, goodwill, fixtures and fittings, and stock apportionments.

In the case of small businesses, for example, an hotel, the owner may live at the property and be selling up to buy a house. Such owners often have secured overdrafts. Banks will have to freeze these accounts a day before completion in order to pre-fund.



Commercial practitioners may wish to opt in to the system where circumstances permit, in the case of a straightforward single transaction for example or back-to-back conveyancing of commercial property.

Questions to banks as potential Agent Banks

Note: While the number of respondents who completed this section was low, not all of them were banks. Some practitioners who answered the questions using their experience of the service provided by banks they had dealt with. This, to some extent, explains apparent anomalies in the responses. It also complicates the task of interpretation and the attribution of evidential weight. The latter depends on the relative priorities assigned to expertise, on the one hand, and impartiality, on the other.

Question 10

Please confirm if book transfers are final at your bank.

Total number of responses – 4

There were only four responses, all 'yes'.

Question 11

Are there any legal or operational steps that need to be taken to ensure that book transfers are final?

Total number of responses – 8

The following paragraphs summarise the responses.

The general view is that payment by an intra-branch funds transfer is complete when the bank decides to make the transfer, that is, a) that the bank has the payee's authority to accept the transfer on his behalf, and b) that clear and sufficient funds are available to effect the book transfer. It is not imperative that the payee's account has been credited with the funds transferred (the payee need not even have been informed of the transfer), or that the payer has had his account debited. However, the chain of events under a) and b) above provides the courts with evidence that the bank has decided to make the transfer.

As this is a general rule, the Agent Bank should expect to enter into a clear agreement with Land Registry for example, by signing up to this in any contract with the Land Registry or in the Land Registry rules, that payment is not deemed to be complete until a specific event, such as the issuing of an advice, has occurred.

All the necessary safeguards must be adopted to prevent electronic theft of moneys, as with credit cards and theft of cheque books.



Two questions arise: a) will a bank still debit a client account if the payment is fraudulent? And b) could all payments on a matrix be frozen if one comprises laundered money?

One respondent said that electronic advices from the bank should be firm and irrevocable by the bank. He explained that, otherwise, lawyers would often not act until the money was returned to the bank account.

One bank commented that, as soon as the relevant entry had been posted to the beneficiary's account, the payment was considered final and the account holder's authority to debit the account would be required. Further research is necessary to establish how this requirement sits with the proposal that conveyancers will own the accounts at the Agent Bank but the Central Service will issue the payment instructions.

Question 12

What is the shortest time in which all the book transfers in a chain can be processed? (Please answer in minutes.)

Total number of responses – 8

The low response rate means that any inferences drawn must be tentative and subject to the finding of further evidence which may tend either to confirm or to disconfirm them. For now, we can merely record that four respondents gave 30 minutes as their answer, while times of one minute, five minutes, 15 minutes and 20 minutes attracted one respondent each.

Other comments are summarised in the following paragraphs.

One respondent said that, in order for an Agent Bank to make a book transfer, an instruction would be issued by either the Central Service (settlement) or the conveyancer (pre-funding). The respondent assumed that the question related to the time between receipt by the Agent Bank of a payment instruction and the issuing of advice to the Central Service.

In order to effect a book transfer the Agent Bank would have to ensure that there were sufficient funds (funds checking) in the remitter's account. The client account requires constant supervision to avoid small errors and all calculations require independent verification. This would necessitate some delay. As funds would be received on D-1 (pre-funding), the existing process would undertake funds checking when the transfer was effected. This would appear to be too late for the purposes of EFT as, in order to achieve the desired certainty of outcome, it would be necessary to know that the funds were sufficient well before the transfer was effected.



The Central Service would require an electronic advice that a book transfer had been either effected from, or credited to, the beneficiary's account. Although an advice for a book entry was not currently available for book transfers, the respondent noted that candidates for the Agent Bank role would need to consider the feasibility of generating such a service, which was normally restricted to receipts of CHAPS and International Payments.

As a book transfer would be effected on the successful funds checking process in the Agent Bank's systems, the real issue was how long it would take for the advice to be received by the Central Service to register settlement. Currently the advices offered for CHAPS and International Payments were available within minutes of the transaction's being effected. Further research may be needed to determine whether the advice service could be extended to book transfers. Early indications suggest that such an extension is feasible.

Some respondents indicated that the existing book transfer process would be able to effect transfers within five minutes within its existing systems but could not be sure that the advice to the central System would be received within one minute without further research.

One critical point is that, in their present business model, banks do not process chains of payments – each payment is a separate transaction. It follows that they have no mechanism for concatenating payments in the way envisaged by the EFT proposal. However, they do receive files of payments from customers and can process hundreds of such payments within minutes. Whether this capability could easily and economically be adapted to facilitate the processing of chains of payments, is unclear.

Question 13

How will this be affected if a number of chains are required to settle at the same time?

Total number of responses – 7

All responses showed no change from those to Question 12.

Other comments are summarized in the following paragraphs.

- A number of chains requiring settlement may reduce the speed of the process but, without detailed investigation, it is impossible to say how long the delay will be.
- Banks should be able to set up a method of simultaneously batch processing any number of book transfers if funds are pre-paid by users. This is a common occurrence in merchant banking and central clearing.
- One respondent considered that this element complicated the EFT proposal and diminished its attraction.



- One bank said that it was impossible to say, as no capacity/throughput modelling had been done. However, it processes over 80,000 items a day in its CHAPS processing system, and multiple millions in its BACS system, which suggests that volume will not be a problem. As previously noted, however, it is not volume but the (in)ability to concatenate payments that may be an issue.

Question 14

What is the shortest time in which CHAPS payments can be processed? (Please answer in minutes.) Please comment on feasibility and cost.

Total number of responses – 10

The variation in responses to the first part of this question suggests that it was not understood in the same sense by all respondents. Four respondents thought one to three minutes was the shortest time in which CHAPS payments could be processed; one respondent thought 10 minutes; two each gave 15 and 20 minutes as their answer, while one respondent answered 60 minutes.

It is possible that there was some ambiguity in the word 'processed'. However, the responses also suggest that banks and practitioners have very different views on this subject.

One bank commented that, if the term 'processed' meant the time for the Agent Bank to receive the payment and initiate an advice to the Central Service, then, in the case of an outward CHAPS payment, an advice would be generated to the remitter, in this case the Central Service, within two to three of minutes of the time when it was processed by the Agent Bank; and, in the case of an inward CHAPS payment, an advice would be generated to the beneficiary, again in this case the Central Service, within five minutes.

Other respondents, both practitioners, said that 10 minutes was the shortest time they had experienced when in private practice. Both thought the CHAPS system too dependent on bank staff – if a key person was unavailable to sign off (a common occurrence), the process could take as long as four hours. They also suggested that CHAPS charges should be standardised by all clearing banks instead of being negotiable, as at present.

Only one respondent expressed concern about the possible costs of CHAPS payments, pointing out that there was an additional cost (levied by the Bank of England) for CHAPS payments, as well as the extra costs of providing intraday liquidity to fund the payments.



Question 15

Account set-up for payments is a potential cause of costs and administrative effort. How might this be addressed?

Total number of responses – 12

Again, the comments reflected the division in the respondents between banks and practitioners.

One respondent suggested that the costs should be covered by the Land Registry fee paid by the purchaser.

Two banks said that they could set up as many accounts as were required by EFT (possibly using proprietary software) and one suggested that the costs of doing so might be set off against the total value of the payment transactions processed. Appropriate back-office support would be provided.

One respondent suggested that the Law Society, in collaboration with the Council of Licensed Conveyancers, should verify the status of applicant firms and in-house counsel so that accounts could be set up without the need to produce the usual proof of identity. Another thought that, if each firm had an account with the Agent Bank and each chain was given a unique reference number, then, moneys paid in by all parties could be identified as belonging to a particular chain. A telegraphic transfer fee per chain payment would be charged, as it is now, when moneys are transferred.

Most other respondents thought that costs would have to be borne by the client, though one warned that the maximum acceptable charge would be £30 + VAT.

Question 16

In particular, how much of the process should rest with Land Registry and how much with the Agent Bank?

Total number of responses – 10

It is evident that the question whether a single or multiple account structure is used, is fundamental. The single account is far simpler to operate than accounts holding funds in the name of each buyer, conveyancer or lender. Constantly having to open and close multiple accounts may be impracticable and will certainly prove expensive. Further research, feasibility and impact analysis, and discussion with the banks will be needed to clarify and refine this aspect of EFT.

Practitioners offered views which ranged from considering that Land Registry should be solely responsible for account set-up, through thinking that responsibility should be shared equally between Land



Registry and the Agent Bank, to thinking that the matter should be left entirely to the Agent Bank.

If no clear pattern emerged from the practitioners' views, the same could not be said of the banks. Account set-up is a laborious process involving know your customer/client (KYC) checks and administrative effort. The less the banks have to do with it and the more their role is confined to handling payments, the more pleased they will be.

Question 17

How should instructions to pay be given?

Total number of responses – 12

All respondents agreed in emphasising the primacy of security, though they differed over how best to achieve it. For example, some considered the internet unsafe and preferred other methods, while others were satisfied with an internet connection. Most respondents felt that passwords and other protections should be used.

The banks are developing various channels through which payments may be made, and are willing to discuss these in detail with Land Registry as part of the preparation for the Agent Bank procurement.

Question 18

Please give your reactions to the discussion of account structure in this document.

Total number of responses – 10

It must be admitted that the presentation of the account structure in the document was not entirely clear. The executive summary on page 7 implies that the accounts will be held by Land Registry, Chapter 5 is equivocal, and Chapter 7 offers a number of options from which to choose. Unsurprisingly, the responses are somewhat confused, reflecting not only genuine diversity of opinion among the respondents, but also a certain ambiguity in the document itself.

Nonetheless, several points which require further consideration and analysis emerged from the responses

It must be clearer who is responsible for checking with mortgage lenders about release of funds and redemption figures.

It is not clear whether use of a single account for multiple clients complies with the Law Society's Accounts Rules. However, banks pointed out that opening and closing multiple accounts would significantly add to the administration costs, at least partly owing to the need to carry out KYC checks. From the banks' point of view, a single account would be less complex, more economic and easier to



manage. There may, therefore, be an unresolved tension between legal requirements and banking protocols.

Some respondents felt that the proposed account structure was unduly complex, while others needed more information.

One respondent feared that the service would result in additional costs to practitioners, and thought it likely that big conveyancing factories would simply absorb the cost, while small practitioners would be unable to do so and would be forced out of business, thus reducing market choice for the customer.

Question 19

Could your bank effect the re-payment to users on the basis described in this document?

Total number of responses – 5

Some respondents assumed that Land Registry would own the accounts at the Agent Bank and that interest on the float and charges on transactions would therefore be attributable to Land Registry, and would need to be passed to the buyer via the conveyancers acting. They questioned whether the Agent Bank would be able to pre-calculate the interest payable in these circumstances.

One bank considered that it could pre-calculate interest on accounts, whether single or multiple, but another said that Land Registry should be responsible for apportioning interest, although the bank could play a facilitative role, the precise nature of which was unspecified.

Question 20

What is your reaction to the discussion of multiple Agent Banks?

Total number of responses – 14

Respondents were divided, with a slim majority favouring a single Agent Bank, others preferring multiple Agent Banks, and the remainder considering that the document did not give enough information to make a choice possible.

However, a consensus emerged that a single Agent Bank had the virtues of simplicity and speed, but also incurred risks associated with having a single point of failure and with a lack of competition to drive improvements in, or even maintenance of, service standards. Multiple Agent Banks would reduce both those risks but at the cost of making the service much more complex, perhaps unsustainably so.



Question 21

What is your response to the following issues listed in Chapter 11:

Business continuity and disaster recovery?

Total number of responses – 8

All respondents agreed that robust business continuity and disaster recovery provisions were indispensable, especially in view of the threat from terrorism and organised crime and the risks posed by having a single Agent Bank. The banks themselves were confident that their existing provision could guarantee the required level of service and pointed to the excellent record of UK banks in this area.

Security of communications?

Total number of responses – 9

Security is closely related to business continuity and responses here were similar to those to the previous question. Again, guaranteed high standards were seen as vital.

Accuracy and auditability?

Total number of responses – 8

All respondents agreed that accuracy and reliable audit trails were essential. One suggested that we should discuss our proposals with the Law Society and the Council of Mortgage Lenders to ensure that professional requirements were complied with. It is worth noting that, currently, discrepancies in solicitors' client accounts can lead to disciplinary hearings, a fact which underlines the importance to the legal profession of accuracy and auditability.

Standards (Land Registry's right and capability to replace Agent Banks or run multiple Agent Banks in parallel)?

Total number of responses – 9

Respondents agreed on the importance of standards but were divided on the question how best to guarantee that high standards were set and maintained in practice. Some recommended that Land Registry should set the standards for the EFT service – anything less would mean that Land Registry was not in control of the process. Others pointed out that bespoke standards might render it difficult to move to another service provider and recommended the adoption of industry standards, such as SWIFT, that all banks use.



Service levels including compliance systems and contracts?

Total number of responses – 8

Banks were confident of their ability to meet all reasonable levels of service required. Practitioners considered that high service levels backed up by contractual commitments and robust compliance systems would be needed in order to ensure that the service met the needs of the market.

Reliability?

Total number of responses – 9

Again, banks expressed confidence in the resilience and reliability of their existing systems. Practitioners considered that responsibility for breach of contract if the chosen service provider proved unreliable, should rest either wholly with Land Registry or jointly between Land Registry and the Agent Bank.

Capacity?

Total number of responses – 7

As with the previous issues, respondents agreed on the importance of capacity, especially at peak periods, for example, on a Friday before a bank holiday weekend, when as many as 100,000 completions might take place and the Agent Bank would have to be able to process all the related payments. Banks did not consider that volumes of transactions would pose a problem. But practitioners alleged that current levels of service from banks were poor and strongly suggested that the staffing and communication implications of the proposed service made it impossible to deliver at an acceptable cost.

Availability outside normal banking hours?

Total number of responses – 11

Respondents were divided, with some seeing this as pre-requisite to the introduction of an EFT service for commercial property, while others disputed the need for any extension of normal working hours and were concerned that, whether this was intended or not, such an extension might oblige practitioners to work longer hours in order to deal with problems and enquiries from clients. This would add to costs and would also drive small firms or sole practitioners out of the market, as they would lack the resource to meet this requirement.



Question 22

What do you see as the main risks associated with EFT?
Please list and rate the magnitude from 1 to 5 (where 1 is low and 5 is high).

Total number of responses – 10

Interpreting the responses to this question precisely and accurately is complex because different respondents may have used different words to denote the same risk. For example, one respondent may have identified susceptibility to crime as a risk, while another respondent, without essentially disagreeing with the first, may have seen such susceptibility as merely one aspect of the total reliability of the service. And a third respondent, again without disagreeing with the first two, may have raised the same issue under the name 'security'. The following analysis will therefore be couched in general terms and will not attempt either to quantify the risks or to rank them in order of magnitude.

For most respondents, the risks associated with the EFT service seem to centre on reliability, security and accountability. A few words may be said about each of these.

Reliability

The system must be available when it is supposed to be available. Computer crashes leading to prolonged 'downtime' will be unacceptable. This means that robust business continuity and disaster recovery systems must be in place. Such systems must be underpinned by guarantees set out in any service level agreement between the Agent Bank and Land Registry. It is important to realise that this requirement applies equally to the Agent Bank and the Central Service.

There are also other aspects of reliability including capacity of the Agent Bank to process the volume of payments required at peak times; and accuracy of raw data and of calculations performed, and payment instructions issued, by the Central Service.

Security

This includes immunity from various categories of crime for example, fraud, money laundering, and appropriate protections to guarantee confidentiality. Moneys and communications must reach their intended recipients and must not be accessible to any unauthorised persons.

Accountability

The division of responsibilities between practitioners, the Agent Bank, and Land Registry must be clearly understood by all parties. In particular, the circumstances in which compensation will be provided, and the mechanism for determining liability, must be clarified.



Other risks identified included high costs of implementation, a single point of failure in the Agent Bank; and low take-up of e-conveyancing.

Question 23

How might these risks best be addressed?

Total number of responses – 4

Very few respondents were prepared to suggest ways of managing or mitigating risk. This is probably due to the difficulty of imagining how a service which exists only as a concept will work in practice, and to an understandable reluctance to engage in speculation.

Respondents agreed that, where appropriate, Land Registry should co-operate with regulatory bodies, such as the Council of Mortgage Lenders and the Law Society, to ensure compliance with existing codes and to agree processes to address certain issues – for example, data protection. Other risks, for example, those relating to capacity, security, reliability, availability and performance standards could be managed by suitable provisions in the service level agreement between Land Registry and the Agent Bank.

One respondent suggested that Land Registry itself should act as the EFT Bank, but this is not sustainable for three reasons. The provision of banking services is outside Land Registry's remit. To act as a bank might bring Land Registry within the regulatory scope of the Financial Services Authority. It would greatly increase Land Registry's liability to claims for compensation.

Questions to banks about pricing

Question 24

Land Registry envisages that there will be no capital cost of set up. The costs will be recovered by the Agent Bank solely via transaction charges. Is this feasible? Are there any caveats?

Total number of responses – 8

Practitioners who replied to this question were concerned that EFT should not make conveyancing more expensive than it is at present. Some thought that charges levied by the Agent Bank would have exactly that effect. Others feared that the Government might add a sales tax to the Agent Bank's charges and warned that EFT would not attract a high take-up in that event.

Banks, in their responses, indicated a willingness to discuss preferential pricing, but also warned that development costs and the



feasibility of recovering such costs through transaction fees, required further research. In order to determine their pricing levels, they would also need assurances regarding volumes of transactions.

Question 25

What level of costs/income should Land Registry envisage with regard to:

book transfers over the Agent Bank's own books per item?

Total number of responses – 7

Not all respondents answered all of the question and details of their responses are confidential. However, some general points were made which are set out below.

Banks considered charges unquantifiable at this stage because the number and fundamental nature of the imponderables made accurate pricing impossible.

Practitioners were concerned that book transfer charges should be either the same as, or lower than, the current levels, and that the system should be self-financing and not require subsidy.

CHAPS payments out per item?

Comments were similar to those noted above. One respondent offered the additional observation that CHAPS payments incurred extra costs charged by the Bank of England.

BACS payments out per item?

Again, respondents' comments were similar to those noted against i) above.

Interest rate earned on balances at Agent Bank?

All comments here were confidential.

Recharge/rebate to users calculation and payment as a per item charge? (If you prefer, we would be prepared to accept pricing in different volume tranches.)

Comments were confidential, with the exception of a suggestion by one respondent that it would be anti-competitive to reward volume service providers.



Question 26

Do you have any other comments on pricing or other issues?

Total number of responses – 6

Few respondents offered any comments other than general approbation.

One respondent observed that, if Land Registry was looking for development costs to be paid via tariff/interest margins, it needed to understand the costs of development before committing to any pricing model.

Questions to practitioners

Question 27

Does the approach to revocation outlined in the document appear appropriate?

Total number of responses – 149

Of the total of 189 respondents, 40 expressed no view on this question. Of the remainder, 76per cent endorsed the approach to revocation outlined in the document. The replies to the next question must be interpreted in the light of these statistics.

Question 28

Do you have any additional suggestions?

Total number of responses – 83

Several respondents thought a gap between the end of the revocation period and completion might be necessary so that any last minute changes/problems could be addressed. They suggested that, for example, where the completion moneys were received by the Agent Bank by noon the day before completion, the revocation period could end at 5.30pm on that day, with completion occurring at 9.30am the following day (or such later time as the parties agreed). This would provide certainty for purchasers and allow them to arrange to move out at 9.30am on the day of completion. Also, if a revocation did occur before 5.30pm on the day before completion, the parties would have time to rectify the problem before completion at 9.30am the next day.

Many respondents said that there should be a strict protocol on the use of revocation to make sure it is applied to the right purposes. The general principles for revocation should be set out in the protocol. There should be penalties for inappropriate revocation which should



be proportionate to the problems to, and damage caused in, the chain.

Liability is an issue for many respondents. One said that Land Registry must have regard to the contingent liabilities of the members of the chain if they decide to permit a revocation. Overseas transfers were not covered and it seemed that Land Registry was working on the basis of net transfers and leaving solicitors to transfer independently the balance of funds not required to complete where for example, a consumer was moving down market. If the funds did not arrive and the transaction was completed, what indemnity would be available to the customer?

Several respondents asked what would happen in the event of a failure to vacate and suggested that the proposed service lacked the flexibility of the current system. One respondent queried how the central service would know whether conditions precedent had been met.

It was widely thought that, in the event of a revocation, there must be an accepted mechanism for notifying all the parties in the chain. Several respondents asked what this would be.

One respondent raised the possibility of industrial action by staff at Land Registry or the Agent Bank, or of IT problems similar to those experienced by the Child Support Agency, and asked what the consequences would be.

All respondents agreed that the circumstances under which revocation would be permissible needed to be clearly understood. One respondent pointed out that a solicitor could not refuse to comply with a client's instructions for example, by telling him that he had to complete even if he did not wish to do so.

Question 29

Does the suggested approach of a mechanism to inject funds appear workable?

Total number of responses – 170. 80 offered comments.

The following paragraphs summarise the main points raised in responses.

Responses here largely echoed those to questions 7 and 8. Many respondents felt that mixed chains either would not work at all, or that they would work after a fashion, but would not be an improvement on (and might even be worse than) the current system. Of those who thought mixed chains were feasible almost all thought that non-users should open accounts at the Agent Bank: without



book transfers, the EFT service would be equally subject to delays and late payments as the present system.

Some respondents suggested that user firms might impose contract conditions requiring the payment of completion moneys by EFT. Such a requirement might necessitate an amendment to the Standard Conditions of Contract.

Liability was again an issue. One respondent foresaw a risk that payments would not be correctly linked, for example, because a reference had been entered wrongly and asked whether the Central Service would be liable when the whole chain could not complete as a result.

Practitioners who lacked electronic capability and DIY conveyancers were both seen as potential problems which might be more acute in mixed chains than in totally EFT-enabled transactions.

Question 30

In particular, should buyers who are not using EFT maintain an account with the Agent Bank, thereby permitting book transfers to be made?

Total number of responses – 169. 70 offered comments.

Again, comments confirmed views that respondents had already expressed in reply to earlier questions. Issues raised included compulsion, which most favoured but a substantial minority strongly opposed. Problems over cost and enforceability were adduced as reasons against compulsion. Some respondents also saw compulsion as fundamentally unfair. They asked why firms should be forced to use EFT or open accounts at the Agent Bank, thus incurring extra administrative work and expense.

Most respondents felt that the ideal would be for all parties to use EFT. Some said that the public would rather employ conveyancers who used EFT than risk instructing non-users. They suggested that non-users should be compelled to maintain accounts with the Agent Bank in order to avoid delays on completion.

Others said that the account with the Agent Bank could be maintained by a solicitor as part of its client account, or as an individual account organised by the solicitor on the buyer's behalf. Those who were not using the full EFT service might still wish to use it insofar as it calculates the net payment in any case, even if it lacked the electronic trigger mechanisms. Thus a buyer could maintain an account with the Agent Bank, but would not be forced to.



Question 31

Is the approach re target completion times reasonable?

Total number of responses – 170. 71 offered comments.

66 per cent of respondents thought the approach reasonable. 15 per cent did not while the remainder offered no opinion.

The following are the main issues raised by dissident respondents.

Inflexibility

Several respondents thought that the system pre-supposed a utopian ideal where all parties acted efficiently, rationally, morally, and in accordance with generally accepted conventions: it failed to take account of the human factor that is, the essential unpredictability of human behaviour, and would be too inflexible to cope with problems which routinely arise, for example, revocations, especially those which occur at the last minute; issues arising on KYC checks; simultaneous exchange and completion; non-vacant possession; situations where clients or practitioners need to be contacted but are uncontactable; or simply mistakes.

Popular completion times

The overwhelming majority of home buyers want to move early on a Friday afternoon, according to many respondents, because this allows them time to pack their belongings and clean the house for the incoming purchasers, while still having enough time to complete their own move. How will the Agent Bank (or the Central Service) cope with the volumes of transactions at peak times? Moreover, in a long chain, will it be possible to get all parties to agree on a completion time?

Mixed chains

Even if EFT works where all parties are using e-conveyancing and pre-funding, it is not clear how it will work in a mixed chain, given the delays inherent in manual book transfers.

Surplus funds

Some respondents felt that surplus funds had not been properly accounted for and asked whether such funds would have to be transferred between practitioners outside the EFT system.

Pilot

One respondent asked whether the system would be piloted and, if so, when. He also enquired how participants would be chosen and advised that all types of firm should be included.

Liability

One respondent asked who would be liable in cases where the Agent Bank or Central Service had in some way prevented completion from taking place at the appointed time. In particular, who would



compensate parties for losses they had incurred as a result of delays?

Question 32

Is it feasible to use EFT only where the whole chain agrees?

Total number of responses – 172. 65 offered comments.

68 per cent of respondents answered 'yes', 17 per cent 'no' , while the remainder offered no opinion.

Respondents were divided almost equally between those who thought that EFT should be made compulsory and those who thought it should be optional. However, many of the latter felt that, while adoption should be optional as a matter of principle, the system would not work unless all parties in a chain were using the EFT service.

Surprisingly, even some of the respondents who favoured compulsion expected the system to prove cumbersome and inefficient.

A few respondents thought that non-users of e-conveyancing should be allowed to inject funds in an e-enabled chain by opening accounts at the agent Bank. However, they recognised that this would be a poor substitute for full participation in EFT. They also recognized that, while a high adoption rate was desirable, allowing non-users to participate in EFT might militate against such a rate by (a) permitting them to realize the benefits of EFT without full adoption and/or (b) diminishing the effectiveness, and hence the attraction, of the service.

Several respondents said that the EFT service would have to be able to accommodate non-users: at least in the early stages, non-users would be a fact of life, however inconvenient, and could not simply be ignored.

Question 33

Would it be desirable to make EFT compulsory in residential chains?

Total number of responses – 171. 86 offered comments.

To some extent, the responses to this question may be inferred from those to Question 32. 53per cent of respondents thought that EFT should be made compulsory in residential chains, 37per cent disagreed, and the remainder expressed no opinion.

This is clearly a subject on which feelings run high and strong views are held, especially by those who oppose compulsion in principle, viewing it as an infringement of civil liberty. Others adduced more



practical reasons for their opposition, for example, that compulsion would discriminate against the DIY conveyancer; that alternatives would be needed in the event of system failure; that EFT might prove more expensive for buyers and sellers; and that it would be unwise to introduce compulsion before the system had been tested in practice and found to be effective and reliable.

Respondents who favoured compulsion were divided into two camps. The first, and more numerous, saw compulsion as unwelcome but inevitable, and adopted a tone of resignation. The second saw compulsion as essential to the success of EFT and regarded that success as highly desirable. Few, if any, respondents were neutral.

Question 34

What are your specific responses to the proposals re commercial conveyancing requirements?

Total number of responses – 103

Most respondents thought that EFT would be inappropriate to commercial transactions on the grounds that such transactions do not involve chains, but often do involve complex arrangements, the complexity being reflected in the payments. Moreover, as acknowledged in the document, commercial transactions might introduce a number of requirements, such as availability outside normal working hours, or the capacity to settle in different currencies, which, if adopted, would add significantly to the demands on the Central Service and the Agent Bank; and many respondents felt that this fact alone constituted a sufficient reason for not – or, at least, not immediately – extending EFT to commercial transactions.

Question 35

Are there any additional requirements for extended working hours?

Total number of responses – 103

Respondents were almost unanimous in rejecting any proposal that entailed an extension of practitioners' working hours, especially if weekend working was in question. Some considered that fee income would not support the additional cost. Others said that the proposal would give an unfair advantage to large conveyancing firms and accelerate the demise of smaller ones or sole practitioners.

Some respondents suggested that commercial transactions would require 24/7 working arrangements, a possible further reason for exempting them from EFT.

Many respondents said that it would be impracticable to extend the hours when the EFT service was available without also extending the



working hours of practitioners – how could clients revoke payments at the last minute, for example, if their conveyancers were not available?

The implications of the working time directive need to be considered, as does the question, whether banking transactions outside normal banking hours would facilitate fraud by allowing the crime to go undetected for longer, thus giving the perpetrators a chance to disappear.

Question 36

Is the account structure presented in Chapter 7 reasonable?

Total number of responses – 165. 73 offered comments.

62 per cent replied 'yes' and 11 per cent 'no', the remainder having no opinion.

Despite the large majority who thought the account structure reasonable, many expressed reservations, some amounting to substantial caveats. Indeed, only one of the 73 respondents who commented on the proposal gave it an unqualified endorsement. The main issues were as follows.

Single or multiple accounts

Most favoured a single account but others said that the account structure must comply with the Law Society rules, and pointed to the difficulty of tracing the source of funds in such an arrangement.

Complexity

Many were concerned at the apparent complexity of the proposal and considered that this would militate against its chances of success by increasing the scope for errors. They asked how audit trails would be provided, how funds could be returned to the right parties in the event of a revocation, and how unique chain references would work, especially where long, complicated chains split or joined together.

Reliance on external institutions

Some respondents felt that the proposal presupposed that financial institutions function efficiently, whereas inaccuracies in statements, shortfalls in redemption moneys, and general tardiness were the rule rather than the exception. They questioned whether the Agent Bank could cope with the volume of payments at peak times, and whether the Central Service could cope with the management of chains and the calculation of small amounts of interest due to various parties. Several respondents also warned that the service should not depend on the timely acceptance of SDLT payments by HMRC.



Question 37

Are there transactions, or classes of transactions, that the proposed EFT function might be unable to accommodate? If so, please give examples.

Total number of responses – 162. 72 offered comments.

Respondents were evenly divided on this question. Those who thought that certain transactions would, or should, lie outside the scope of EFT, displayed great ingenuity in thinking of examples including:

- offset mortgages with daily interest rates as redemption figures and accurate completion statements the day before including providing funds
- divorce settlements, where unequal payments are due to the parties and parties change their minds, especially where one feels aggrieved by a divorce court order and decides not to pay a particular sum
- non-chain transactions, because sellers want to collect their money on the day of completion and will complain if their share is delayed
- 'right to buy' transactions where the seller is the Housing Council or State
- mixed residential and commercial transactions which are linked in a single chain (for example, a resident shop owner selling and buying a house)
- 'not on sale' transactions
- transactions where a mortgage is being raised on one property to effect a purchase of another
- commercial conveyancing, re-mortgages, equity releases and auction sales
- last-minute, or simultaneous completions and transactions where funds are held to order or where final inspections need to be made on the day of completion
- residential leaseholds where ground rent and maintenance charge apportionments have to be taken into account – the figures for rent and maintenance charge apportionments change day by day, which could be problematic especially if the completion date changes
- overseas funds
- solicitors who do little conveyancing
- single transactions, exchanges, transfers of equity – where EFT is not so much impracticable as unnecessary
- part exchange and 'back to back' transactions, for example, sub-sales where part of the funds is paid to intermediate parties
- DIY buyers and sellers
- buyers (or their solicitor) who are buying unregistered property and wish to see or collect the deeds with payment in the traditional way
- unregistered land



- any transaction where the completion statement cannot be built well in advance of completion
- transactions which require flexibility or involve payments with which Land Registry or SDLT are not concerned
- high volume transactions (how can the Agent Bank guarantee 'same day' processing for unlimited volumes?)
- transactions involving housing associations, which sometimes refuse to complete till an inspection has been made
- sales by receivers, approval for which may be delayed
- conditional contracts
- cases where an early redemption penalty is due to a mortgage lender, unless a new mortgage is taken out within a set period (because of difficulties in obtaining redemption figures without the penalty showing, these can currently be dealt with by paying the redemption moneys without the penalty - and sending written confirmation of the new mortgage. Two separate departments in the lenders deal with such matters – that is, redemptions and completions)
- cases where lenders have not provided redemption statements;
- cross-border Scotland/England chains
- anything abnormal, or which has not been previously tried. It is not possible to think of all possibilities before the event, but the following are examples. (1) The sellers say they will leave certain fittings – for example, fitted wardrobes, garden summer house, fuel supply – but, when the buyer arrives, these items have gone and he wants the value regained from the purchase price until this has been resolved. (2) The buyer finds the house and garage are full of rubbish and wants to deduct the cost of clearance from the price. (3) The buyer finds squatters have moved in and will not leave. (4) The seller owns an adjacent property, falls out with the buyer, and refuses to complete. (5) When the seller's solicitor gets a final redemption statement, the mortgage has consolidated other lending on it so that the seller has insufficient equity to proceed with a related purchase. (6) The property has burned down overnight so one or both parties to the transaction decide not to proceed. The Agent Bank might not allocate the money in accordance with complex contractual provisions regarding loss or damage prior to sale and the various insurance policies concerned. (7) Other variations – the property floods, is blown up by terrorists, falls over a cliff etc. (8) A houseboat sinks. These occurrences, though unusual, are not unheard of.

Questions to lenders

Question 38

What is your reaction to the pre-funding requirement in a residential chain, especially where a new lender is involved?

Total number of responses – 21



Respondents – by no means all of them lenders – were sharply divided on this issue, some being strongly against it, while others regarded it as essential.

Two respondents asked whether practitioners would keep the interest gained from their client accounts, pointing out that this was an established and essential income stream to their business. They claimed that, if this was removed, either the cost would be passed on to the public by all conveyancers, or many jobs would be lost and standards would suffer (see also Question 6). The crediting of interest by Land Registry may also complicate lenders' processes and does not reflect their current practice.

Some respondents foresaw difficulty in assigning funds to a particular chain or buyer. Others, for this or other reasons, considered that EFT should be tested in the present system before being incorporated in e-conveyancing (although this suggestion seems to rest on the misapprehension that EFT is separable from the chain matrix).

One respondent said that the fundamental causes of chain delays were client/lawyer problems, with money clearance/transfer from sources sometimes outside the UK. He doubted whether the proposed service would alleviate these.

Another respondent said that release of funds by a lender depended on receipt of a Certificate of Title (that is, an assurance that title to the property is good and marketable and may be accepted as security for the mortgage advance) from the lender's instructed legal advisor. There will almost certainly be occasions when the Certificate of Title will not be received until the day of completion and it will therefore be impossible to pre-position funds. There are various other reasons why funds may not be released until completion day and it is hard to see how a system which relies on pre-funding will accommodate such cases.

Question 39

In your view, is there a role for EFT in processing re-mortgages?

Total number of responses – 123. 11 offered comments.

One respondent, a conveyancer, said that the retention of interest earned from client account moneys was critical here. If conveyancers could not use that interest to remain competitive, lenders would increasingly employ workers in countries such as India and Malaysia, and conveyancers in England and Wales would lose their livelihood. Bank interest was critical to making the work economically viable for large and small conveyancers alike.



Another respondent, without excluding the possibility of a role for EFT, said that lenders would have to consider whether to interact directly with the Central Service or continue to send the funds to their legal representative, who would then use EFT (this applies to both re-mortgage and purchase). If this were to remain the case, EFT would have little impact on re-mortgage business.

A third respondent suggested that, where a borrower was paying off a mortgage on one property and simultaneously taking out a new mortgage with the same lender on another, only the net differential/balance should be pre-positioned. He added that re-mortgages seldom involved chains.

One respondent doubted whether EFT could be used in cases where transfers in matrimonial transactions under a consent order were linked to the re-mortgage.

Some respondents could see no benefit in using EFT for re-mortgages.

One lender said that, while e-conveyancing would abolish the gap between completion and registration, the service would probably increase costs and it was unclear how re-mortgages would fit into a system geared to chains. Re-mortgages made up a substantial part of mortgage lenders' business, and few lenders would care to operate dual processes to deal with re-mortgages and purchases.

Question 40

Would you be interested in exploring a similar approach to the PPS if it would allow you to fund within EFT on completion day, rather than the day before?

Total number of responses – 123. 6 offered comments.

Four respondents said that they needed more details in order to form an opinion but indicated that they might be interested in principle, as there were cases where exchange of contracts was impracticable prior to completion.

One respondent thought that, in view of the fallibility of banks and the high cost of re-scheduling a move, pre-funding was worthwhile.

Another respondent observed that the procedure was complex and expensive and a lender could not be its own PPS bank. Lenders charged interest from the date that funds were released so one of the advantages of funding the same day as completion would not apply.



Question 41

Would you need your own interface with e-conveyancing, for example, to place funds at the Agent Bank via EFT, or to view account details?

Total number of responses – 123. 9 offered comments.

Most respondents considered that an interface of some kind would probably be required but, for lenders, the answer depended on other considerations, such as whether or not they would continue to release funds to their legal representatives or what other elements were linked to the transfer of funds, for example, PISCES, electronic discharges.

One respondent said that lenders would have to develop systems to send moneys to the EFT system and would also need to view account details. Systems necessary to support EFT from the lenders' end would be highly complex and would involve extensive changes to their IT infrastructure. Such changes would need to be supported by a robust business case, including a cost/benefit analysis. Almost certainly some of the costs would have to be passed on to the customer.

Question 42

Would you need your own sub-accounts at the Agent Bank?

Total number of responses – 123. 7 offered comments.

Respondents were divided on this question, with some thinking that sub-accounts would be required for different clients; others, that sub-accounts would probably not be required; and the remainder keeping an open mind.

Some respondents pointed out that the implications of the solicitors' accounts rules would need to be considered.

One practitioner suggested that maintaining sub-accounts would increase overheads and said that, as most solicitors spent much time and money running clients' deposit accounts at their own banks due to the solicitors' accounting rules relating to the ownership of interest on client money, they would not be eager to take on an extra burden.

Another practitioner said that further details were needed on how the proposed procedures would work in practice. Until they were forthcoming, accounts should be opened in the name of the conveyancer instructed to act for the lender.



Question 43

Would you need the ability to revoke a transaction – and potentially a whole chain?

Total number of responses – 123. 11 offered comments.

Responses showed a surprising diversity of opinion, with some considering that the risk should be accepted at exchange, while others said that the ability to revoke a transaction, even at a very late stage, was indispensable, for reasons such as:
documents not correctly executed, vacant possession not given, or other conditions not fulfilled
client dies or suffers serious accident hours before completion – if a mortgage was involved, the purchase could not proceed
home found to be wrecked or occupied by squatters on day of completion and client wants to stop transfer of fund
fraud or money laundering was suspected.

One respondent pointed out that a late revocation might jeopardise an entire chain of transactions and, if a change of completion date was necessary, would require new mortgage redemption figures.

Question 44

Commercial transactions are often complex and this may be reflected in the payments. Do you see a role for EFT in facilitating such transactions? If so, what special requirements do you think this will impose?

Total number of responses – 123. 8 offered comments.

7per cent of respondents saw a possible role for EFT in facilitating commercial transactions. Nine per cent of respondents saw no such rôle and the remaining 84per cent were unwilling to hazard an opinion.

The suggestions for additional requirements included a rapid-response approach to accommodating new circumstances, and the ability to split payments and receipts accurately into categories, for example, retentions, escrow.

Question 45

Where the mortgage account is linked to the client's credit/debit card account, the amount needed to settle the account may not be foreknown because (a) the interest charged on the outstanding balance may need to be calculated; and (b) the client may have made further withdrawals. Do you think this will cause any problems? If so, how do you think they might be resolved?



Total number of responses – 123. 25 offered responses.

18per cent of respondents considered that offset mortgages would cause problems. Only two per cent thought they would not, and 80per cent expressed no opinion.

Several respondents thought that either the whole mortgage account or the variable part of the loan should be frozen at the date of exchange. Others suggested that lenders should commit to a redemption figure prior to completion, if necessary making any discrepancies a matter between them and the borrower, (that is, without affecting secured sums).

One respondent pointed out that this problem was not confined to offset mortgages: there were other contingencies in which the redemption payment or the amount of the loan might need to be re-calculated for various reasons.

Some respondents said that provision should be made for paying funds into, and transferring funds from, the user's account with the Agent Bank on the day of completion. However, this would run counter to the principle of pre-funding, which is an integral part of the EFT proposal.

One respondent suggested that a provisional redemption figure should be provided, stating the maximum amount the customer could borrow, regardless of what was actually owed. The customer would then have to suffer this larger payment until a refund could be authorised.

More radical proposals were:
that mortgages should be transferable from one property to another – thus, in the circumstances under present consideration, the offset mortgage, instead of being redeemed, would be transferred to the customer's new property, or
that lenders should establish a standard method of converting the account to a normal credit card set-up to allow for overspend.

Question 46

Please make any other comments that you may have in respect of the EFT service proposed in the discussion document.

Total number of responses – 46.

Many of the responses to this question were hostile and forcefully expressed. While this undoubtedly indicates strength of feeling, it also suggests that some respondents' reactions may have been instinctive rather than carefully reasoned. It does not, of course, follow that they should be discounted. The only inferences that may



reasonably be drawn are that the authors of such responses have found the case so far made for EFT unconvincing, and further empirical data will be required before they are persuaded that EFT represents a substantial improvement on the status quo.

It is also important to set responses to this question in context. In this connection, two points must be considered: first, 89per cent of all respondents thought the Agent Bank proposal viable (see Question 1); second, only 24per cent of respondents offered any comments in reply to this invitation and not all were critical.

The following issues were raised in response to this question.

Lack of specificity

Several respondents said that the proposals were short of detail in crucial respects. Cost/benefit analysis was notably absent, for example.

SDLT

Many respondents said that the EFT service had to be fully integrated with HMRC's SDLT system and were neither sanguine about the prospects of achieving this nor satisfied that it would prove compatible with the other aims of EFT.

Security

The service's susceptibility to crime of various kinds, especially malicious hacking and money laundering, for the latter of which there did not appear to be provision for adequate checks, was a major concern to several respondents. One pointed out that, despite huge investment in security solutions, financial institutions, and even the Pentagon, had been subject to viruses, worms etc, which had led to serious loss of use and fraud. The document did not explain how this risk would be managed. Many respondents also expressed concerns about the traceability, transparency and auditability of accounts.

Compulsion

Some respondents thought that the benefits of EFT to the conveyancer and the client were such that the early introduction of compulsion, at least in respect of residential chains, would be justified. It was also suggested that EFT could be used independently of other elements of e-conveyancing (though this fails to take account of EFT's dependence on the chain matrix). Conversely, others felt that e-conveyancing should be implemented without EFT and only after all the other elements had been thoroughly tested and validated should EFT be introduced.

Communication

Several respondents said that users would need immediate oral communication channels with the Central Service, as well as electronic means of communication for example, to reconcile completion statements on completion day, or to issue revocation



instructions, especially in the event of computer failure. They questioned whether the Central Service would have the capacity to provide this, particularly at peak completion times.

Flexibility

Two respondents said that the current system was flexible on completion day and able to accommodate last-minute alterations to completion statements for example, service charge apportionment, unexpected telegraphic transfer fees, whereas the proposed service, lacking the capacity to reconcile accounts at the last minute, could cause a whole chain to fail to complete because of one minor shortfall.

Liability

Some respondents asked who would be liable if funds were not allocated to the right transaction, or if the Central Service did not accept a revocation instruction on time. They feared being held responsible by their clients for errors that were not their fault.

Costs/income to conveyancers

There was widespread concern that conveyancers would incur set-up costs for example, for new software and, possibly, hardware, and transaction charges levied by Land Registry or the Bank, while at the same time forfeiting the interest on client account moneys. This could force small firms out of business, resulting in less choice for the public and a costlier conveyancing process, as conveyancing factories gradually come to dominate an uncompetitive market and pass the extra costs on to their clients. Moreover, if the system failed to work satisfactorily, the expense would have been wasted. Several respondents suggested that practice should be allowed to evolve at the same pace as technology, rather than proceeding at a forced pace with possibly disastrous effects on a sensitive market.

IT failures

The worst scenario, as several respondents pointed out, would be a failure of the Central Service computer on a Friday before a bank holiday weekend. This, however, though undoubtedly the worst contingency, was not the only one involving failure of IT systems. If users' systems crashed, some alternative means of communication with the Central Service would be required, for example, telephone or fax back-up systems. Moreover, such back-up systems would need to guarantee acceptable levels of performance – being placed on hold indefinitely would not be acceptable in the case of a conveyancer who wished to issue a revocation instruction.

Distrust of Government

Some respondents suspected empire-building or controlling tendencies, rather than a concern for the public good, to be the motive behind the e-conveyancing programme. Others said that the record of past public sector e-projects did not inspire confidence, and felt that the proposed system would leave Land Registry in too



powerful a position. Two respondents considered that it was fundamentally wrong that is, an infringement of civil liberties, for Land Registry to become involved in commercial contractual arrangements between parties. It was also suggested that the programme of change was too ambitious and that other aspects of e-conveyancing should be introduced and thoroughly tested before the advent of EFT.

Several respondents said that the onus on the Central Service and the Agent Bank was immense, and doubted that they would be able to bear it.

Pace of change

Some respondents pointed out that time would be needed for various activities to be undertaken before EFT was introduced, for example, procurement of software and hardware (including lead-in time), staff training, IT support. A hasty implementation would cause chaos.

Overkill

Some respondents said that the present system worked reasonably well and needed only minor adjustments, for example, a speeding up of CHAPS payments and advices, to meet all the market's needs. The questioned whether EFT was necessary or even desirable, given the extra complexity and expense it seemed likely to bring. They also suggested that the declared aims of EFT – to provide simultaneity, finality and certainty of payment in respect of all the transactions in a residential chain; to accelerate the process on moving day; and to make possible completion with registration – were not seen as important by anyone except the Government and Land Registry.

Calculation of interest

Two respondents said that interest allowed on funds held by the Agent Bank was likely to be trivial in each residential transaction and that the work of calculating and repaying that interest to the beneficiary would not be worth the trouble it would entail.

Capacity and capability of the Agent Bank

Several respondents said that banks struggle to meet the demands currently placed on them. Given the huge volume of extra work which would fall to the Agent Bank, and the fact that it would be obliged to staff and support two systems relating to property transfers, that is, EFT and CHAPS, it was unlikely that acceptable standards of service would be met.

Late redemption statements

One respondent said that lenders were often tardy in supplying accurate redemption statements and asked what would be the effect if a redemption figure was not forthcoming until late afternoon on completion day- a not uncommon occurrence.



Transparency

Two respondents asked how, if practitioners had only net balances, any discrepancies with the practitioner's estimate could be resolved – a point also made by one of the few lenders who responded, who added that it was unclear who would determine the net position and when. This could affect the traceability of funds.

Timing

Several respondents questioned the timing of EFT, given that: faster payments were likely to be introduced by the banks in two years, following a critical OFT report and much pressure from the EU lenders and banks cover all parts of the UK, not just England and Wales. This raises the possibility that lenders might have to operate a different system for each jurisdiction within the UK, which would be very expensive and undesirable.

People problems

Several respondents said that, although the proposal appears to assume that all the difficulties with the current process are systemic, in fact most of them have to do with human fallibility and the unpredictability of human behaviour. Instances of this included clients missing appointments, late payments from clients, time lapse on cheques, clearance from clients, obtaining fire insurance and proving cover to lenders, delays by lenders on release of funds or provision of redemption statements, delays by conveyancers, unforeseen deductions from loans, sellers not quitting the property on time, ensuring sellers have lodged the keys – and the list is far from exhaustive.

Part 3

Conclusions and next steps

We are grateful to all who took the time and trouble to respond to the EFT discussion document. Many of the responses were very detailed and a great deal of time and thought had evidently been expended on them. It is no criticism of any of them to say that some of the issues raised have been adequately covered in work we have undertaken since the discussion document was written, and others will be covered as we develop and refine our ideas. Nor does this imply that we had anticipated all the issues or solved all the problems. On the contrary, the responses were invaluable in bringing to our attention points that require clarification and areas where we need to do further research. In particular, possible tensions, which we need to resolve, have been disclosed between the requirements of different market segments, for example:

- the various accounts rules which apply to solicitors and conveyancers may conflict with banking protocols



- lenders' redemption processes need to be reconciled with pre-funding⁴
- the need for a controlled and orderly system must be balanced with the market's need for flexibility and the capacity to respond to last-minute changes.

It is clear that, while the principle of EFT commands general support among stakeholders, there are genuine concerns about the proposed practice. Some need to be addressed more fully than they have been hitherto. Others have already been addressed, but we may not have sufficiently publicised the steps we have taken.

In order to allow time to resolve the outstanding issues, we have decided to exclude EFT from the e-conveyancing pilot due to start in 2007. Instead, the service will be introduced when the points made by respondents and outlined in this document have been satisfactorily answered, and stakeholders are able to approve our proposals unreservedly.

To say this is not to minimise the steps we have already taken, or propose to take, which not all stakeholders will be aware of. Among these are:

- we have obtained the views of the Financial Services Authority, APACS, the Bank of England and the Office of Fair Trading on our proposal
- we have taken leading counsel's opinion on the question whether the single Agent Bank proposal was open to challenge under competition law
- we have held informal talks with representatives of several leading banks
- we have hired independent consultants to advise us on the technical banking aspects of EFT
- we have initiated a project under EU rules to procure the services of an Agent Bank.
- we shall engage in further discussions with stakeholders, including the banks, the Law Society and the Council of Licensed Conveyancers, with a view to resolving the tensions noted above, and identifying and promoting best practice
- We shall continue to monitor external environmental changes which may impinge on EFT, and appraise and take account of their effects, for example, the development of faster payments, changes in conveyancing practice.

⁴ This may be harder than it sounds. As far as lenders are concerned, redemptions are work without value and are therefore likely to be accorded a low priority.

Working