

Annexe G

National Land Information Service

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1 NATIONAL LAND INFORMATION SERVICE

Background

- 1.1 The National Land Information Service (NLIS) was set up to support local authorities (LAs) and other property information holders in England and Wales in their move from manual to electronic provision of property information services. Through NLIS, conveyancers can obtain property searches from LAs and a number of other information holders in an electronic format from competing points of contact.
- 1.2 Currently, the NLIS system allows conveyancers in England and Wales to obtain all the property searches that are likely to be included in the Home Information Pack (HIP), and more.
- 1.3 Within NLIS, information holders are divided into three groups:
 - **Core data providers** include the English and Welsh LAs and HM Land Registry (Land Registry). NLIS channels must source information from these providers through the NLIS hub
 - **Associated data providers.** NLIS channels must get information from some of these providers through the NLIS hub, such as the Coal Authority and Water Companies. Others may provide NLIS channels with data without going through the NLIS hub, such as the Environment Agency and Ordnance Survey, and
 - **Additional data providers** originally intended to include private sector sources such as water companies and some public sector sources of data, such as the Public Records Office, Network Rail and the British Waterways Board, where the method of access has not yet been decided.

- 1.4 The process of setting up NLIS started in 1992¹ when the Citizens' Charter Unit white paper set out the government's commitment to explore establishing a '...national land information system...to allow the citizen faster and easier access to an authoritative, accurate and comprehensive public record of all land and property.'² A successful pilot for NLIS was launched in Bristol in April 1998. In December 1998, the project coordinator Land Registry was awarded £2.3 million by HM Treasury to launch a 12 month procurement process to set up a national version of the Bristol pilot in the form of a public-private partnership.
- 1.5 Further momentum was provided by the 'Modernising Government' white paper (1999)³ which restated the Prime Minister's 1997 announcement that: '...by 2002, 25 per cent of dealings with Government should be capable of being done by the public electronically' and also set new targets beyond 2002: '...we propose that 50 per cent of dealings should be capable of electronic delivery by 2005 and 100 per cent by 2008'. In 2000 the 'e-government' strategic framework noted⁴ the Prime Minister's March 2000 announcement that this date should be brought forward to 100 per cent by 2005.
- 1.6 The Local Government Information House (LGIH), a wholly owned subsidiary of the Improvement and Development Agency (IDeA) was created to act as the public partner and contracting authority for the private sector NLIS licences. IDeA is owned by the Local Government Association, a body representing LAs in England and Wales. An NLIS invitation to tender was issued to interested parties in October 1999. Four licensees, one hub and three channels, were in operation by April 2001, although it took a further six months for any significant volumes to be achieved via NLIS.

¹ The genesis of NLIS can however be traced back to the late 1980s and the Royal Institute of Chartered Surveyors' Domesday 2000 Initiative, available at www.rics.org

² *The Citizens' Charter First Report*, Citizens' Charter Unit 1992, Cm 2101, page 29.

³ *Modernising Government*, Cabinet Office 1999, Cm 43/10.

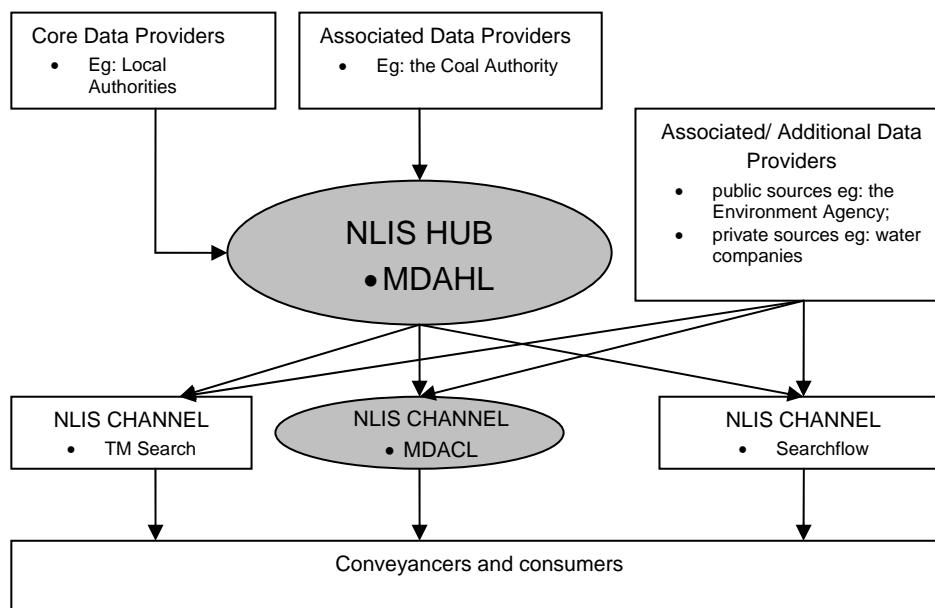
⁴ *E-government: A strategic framework for public services in the Information Age*, Cabinet Office 2000, ISBN 0 7115 0394.

1.7 This annexe is organised as follows. We first discuss the structure of NLIS, with a particular focus on a set of protective contractual provisions. We then examine the original rationale for this structure before discussing the regulatory framework for NLIS.

The structure of NLIS

1.8 NLIS is currently composed of one central hub and three channels (see Figure 1.1 below). The hub and one of the channel licences were awarded to MacDonald Dettwiler Limited (MDL), now MacDonald Dettwiler and Associated Limited (MDA). To placate potential complaints from the competing channels, MDA agreed to establish a separate financial reporting system using a common template, and set up separate management structures and locations. Both the hub (MacDonald Dettwiler (Hub) Limited, now MDA Hub Limited, MDAHL) and its downstream channel (MacDonald Dettwiler (Channel) Limited, now MDA Channel Limited, MDACL) are wholly owned subsidiaries of MDA (the shaded areas in the diagram below). The other two channel licensees are Searchflow and TM Property Search.

Figure 1.1: Structure of NLIS



Source: OFT analysis

- 1.9 As mentioned in the previous paragraph, the current NLIS structure has a single hub. We were told by LGIH that open internet based access to information holders was not technically feasible at the time of the NLIS procurement process and the initial investment cost associated with multiple hubs was prohibitive.⁵ Multiple integrated hub/channels ('hubbles') were originally envisaged by IDeA, as in the Bristol pilot, or several hubs and multiple channels,⁶ but such a structure was considered financially unfeasible and was not part of the initial NLIS request for proposals.
- 1.10 LGIH also told us that the potential licensees preferred a single hub and multiple channel structure in view of the expected high investment costs in what was still a new and uncertain market. The total actual set up costs of the hub and channels were estimated by LGIH to be of the order of £20 million.⁷ A proportion of this total cost went on the construction of electronic links between the hub and all the different information holders, including writing the software for the technical interface and protocols. Additional hub licences would have meant duplicating these costs.
- 1.11 The channels act as the client interface. They receive requests from conveyancers, deliver the completed LA (and other information holder) searches and arrange the payments, all online. They compete with each other not just on the price of the searches they sell, but also on the provision of additional information services. Although a fourth channel licence was awarded to Hewlett Packard it was not taken up. This fourth licence has not

⁵ Meeting with LGIH, 24 February 2005.

⁶ 'To sustain the viability of the hub business propositions and to achieve rapid growth, there are likely to be a limited number of hub service providers licensed to deliver services through many channels', *NLIS Prospectus*, paragraph 2.4.3.

⁷ Meeting with LGIH, 24 February 2005.

been re-tendered despite demand⁸ owing to some issues about the legality of such a process.⁹

- 1.12 The hub provides a centralised point of connection between the channels, the LAs and a number of other providers. It has a system of e-connections to all these providers and to the three channels through which it receives search requests and returns completed property searches. The hub also processes and guarantees the payments from the channels to the providers and runs the main NLIS data provider helpline, which is available via email, fax and post as well as telephone. Each of the channels also runs its own customer helpline. The agreement with LGIH gives the hub rights to use the NLIS brand when supplying data to the channels and to contract with the channels.
- 1.13 It should be noted that the hub acts as a 'post box' for LAs. It does not interrogate an LA's own IT systems to compile the search report but merely requests the report and then transmits the electronic format created by the LA's own system back to the channel. It currently has no access to LAs' unrefined property information.
- 1.14 The hub charges channels the price levied by the information provider for the property search required, plus a mark up for its services called the Service Provider Charge (SPC). The channels then charge clients their retail price, composed of the information provider fee, the SPC and their own mark up.¹⁰ The hub's SPC is regulated by LGIH (see paragraph 1.35 below), whilst the channels' mark ups are constrained by competition with other retailers (other NLIS channels, traditional postal LA requests and PSC searches).
- 1.15 LGIH told us that, in order to stimulate the take up of NLIS amongst consumers and their conveyancers, they encourage LAs to offer discounts to

⁸ MDHL submission, 15 April 05; meeting with LGIH, 24 February 2005; Searchflow submission, May 2005.

⁹ MDHL submission, 15 April 2005; meeting with LGIH, 24 February 2005; Searchflow submission, May 2005.

¹⁰ It should be noted that VAT must be paid on both the SPC and channel mark up.

the hub so that NLIS channels are better able to compete on price with other retailers. Fifty-one per cent of LAs offer the hub discounts on the usual over the counter fee, with the average discount offered being 18 per cent.¹¹

- 1.16 The majority of the estimated £20 million investment to set up NLIS was provided by the hub and channel licensees.¹² Land Registry contributed £2.3 million, awarded in 1999 as part of the 'Invest to Save' e-government programme, but this funding was used primarily to run the NLIS procurement process and to design the contracts.
- 1.17 LGIH acts as the licensing entity and holds contracts with the hub, channels, LAs and other information holders. It also owns the hub's hardware and licenses off-the-shelf non-proprietary software, and has the unrestricted right for the term of the hub contract to use the application software written and owned by the hub licensee. The hub service has an obligation to transfer the technical infrastructure and license the software to LGIH at the end of the contract, under reasonable commercial terms.
- 1.18 The hub and channel licences will expire in 2008 and 2009, but LGIH can opt to extend the licences for up to one period of three years for the hub, and three periods of one year for the channels. Until they expire, these licences can only be altered by written agreement between the relevant parties.

Exclusivity provisions

- 1.19 The contracts and various ancillary agreements that govern the relations between the information holders, the NLIS channels and the NLIS hub stipulate that:
- additional channel licences (beyond the four licences originally proposed: see paragraph 1.11 above) cannot be awarded before October 2004 without the written consent of the existing channel licensees. However, LGIH can award more than four licences at any time

¹¹ Based on data provided by MDA TransAction Online, relating to the price of LA compiled local property searches for residential properties.

¹² LGIH, 24 February 2005.

if certain circumstances occur: LGIH must consider there to be a market for a channel service that has not been satisfied by the existing channels, and the existing channels must have decided not to exploit that market despite having been given a reasonable opportunity to do so. Alternatively, additional licences may be awarded as part of a re-tendering in anticipation of all existing channel licences being terminated

- the channels may obtain certain property searches and other reports solely through the hub. These comprise searches from LAs, HM Land Registry, the Coal Authority and water companies, and¹³
- subject to limited exceptions,¹⁴ under its contract with the hub licensee, LGIH cannot award any additional hub licences without the consent of the hub licensee until it is re-tendering in anticipation of the expiry or termination of the existing hub's licence.

1.20 These contractual provisions, however, are not binding on the information holders themselves and they remain free to set up direct electronic connections with third parties. A minority of LAs (currently 28 per cent¹⁵) have signed a licence agreement with LGIH under which they have given LGIH an exclusive licence to grant sublicences to use electronic search responses for the purpose of providing property information via the hub and channels. Effectively, therefore these LAs are obliged to use only the

¹³ In practice, LGIH has not yet signed any agreements with water companies for the supply of drainage and water searches. The channels are currently getting these directly from the water companies, bypassing the hub.

¹⁴ The hub licensee's exclusivity in relation to core data from Land Registry, by contract, initially only lasted until 2 February 2004. This exclusivity meant that LGIH would not engage any third parties in the dissemination of Land Registry data, but it did not bind HM Land Registry. There were provisions to extend it, but this did not happen. For other core data providers, the exclusivity technically lasts for a period of five years after 70 per cent of the LAs in England and Wales enter into a direct agreement with LGIH. However, as only 28 per cent (115) of LAs presently have a direct agreement with LGIH, in practice the exclusivity is likely to last until the agreement with LGIH expires. In addition, LGIH may appoint another hub licensee if the hub fails to satisfy government 'Best Value' tests, or the hub is not satisfying the demand for hub services, or, in certain cases, not meeting agreed service levels.

¹⁵ LGIH, 21 June 2005.

existing NLIS hub to disseminate electronic searches (although any non-NLIS electronic connections existing before the LA signed the agreement are exempt). LGIH have however clarified that they will not enforce these exclusivity provisions. LGIH will send written confirmation of this issue to each of the LAs.

- 1.21 LGIH cannot, under the terms of the NLIS contracts, require the removal of any direct electronic connections already in place prior to the agreement. LGIH also could not prevent direct electronic connections being set up between the 72 per cent of LAs that have not signed a direct agreement with LGIH and non-NLIS third parties. A similar restriction on Land Registry expired in February 2004. Subsequently Land Registry has announced that it will set up direct electronic links with retailers other than NLIS.
- 1.22 Most LAs possess the freedom to set up a non-NLIS alternative, and some have told us that they would like to be able to offer direct electronic access to consumers and conveyancers. We are however aware of only one LA that provides its electronic local property searches directly. One explanation may be the perception amongst some LAs that they are legally bound to provide electronic searches only to the NLIS hub (a finding from our discussions with a sample of LAs); or perhaps a reluctance to set up electronic links with a third party such as a PSC. Another concern, expressed by LGIH¹⁶ and some LAs, is the security of connections with non-NLIS retailers.
- 1.23 In practice, therefore, the hub currently is the sole conduit for electronic format LA compiled local property searches, and appears likely to be so until alternative connections are made to the LAs. We now review the original rationale for this structure.

Reasons for this structure

- 1.24 Within NLIS the hub was originally granted a time limited exclusive licence to better manage the risks involved in investing in a new and uncertain market and to ensure that the benefits of the network would be realised. One of the objectives of NLIS was to facilitate the modernisation of LA property

¹⁶ Meeting with LGIH, 24 February 2005.

information systems and set up a facility for electronic provision of property searches.

- 1.25 There are three levels of connectivity to NLIS:
- level three: can receive requests and provide responses electronically through a database-to-database connection between computer systems at the LA and those at the NLIS hub
 - level two: can receive requests and provide responses for searches electronically through the action of a LA clerk who accesses a secure, dedicated web site provided by the NLIS hub – this clerk downloads search requests and uploads responses so that they are available to the NLIS hub electronically, and
 - level one: receives search requests by post from the hub and responds to the original requestor on paper only.
- 1.26 A target of converting all LAs in England and Wales to level three status by the end of 2005 was agreed as part of the national strategy for local e-government (see paragraph 1.5 above) subject to LGIH signing up all of the LAs as contemplated by the agreements.
- 1.27 Although the Implementing Electronic Government (IEG) programme (that provides capital to achieve the aims of the modernisation agenda) has provided payments to LAs to help them to modernise, these payments are not linked specifically to property search services but spread across the whole range of LA services. LGIH assumed primary responsibility for signing up LAs to NLIS and driving forward the modernisation of property information services. LGIH was therefore looking for a hub licensee able to provide support in this role.
- 1.28 Impediments to the modernisation of property data systems included LAs' concerns about security and the costs of converting LA data into electronic format, estimated to be of the order of £0.2m to £1.5m per LA.¹⁷ Government

¹⁷ TM Property Search meeting, 14 March 2005; CMR meeting, 17 March 2005; MDHL submission, 15 April 2005.

accreditation was seen as a crucial element in encouraging LAs to sign up to NLIS and speed up their modernisation. The NLIS logo was promoted as the symbol of a government endorsed system; in effect, an 'extension' of the LA postal search service, rather than a competing retailer. NLIS is now a widely recognised and trusted 'brand' amongst LAs.¹⁸

1.29 The decision to adopt a single point of contact between LAs and the NLIS channels was considered a necessary part of this overall strategy to overcome the concerns of many LAs, and to modernise and link them to NLIS as quickly as possible. The chosen licensee's parent company, MDA, offered various initiatives to help in the sign up process, such as the Local Authority Modernisation Programme (LAMP), providing a managed service to LAs including consultancy advice, financing, system procurement, data capture/conversion, and system integration support and maintenance advice.¹⁹

1.30 Another reason for awarding a single hub licence was to ensure a reasonably protected market that would permit the hub to recover the costs of supporting the modernisation process.

1.31 In addition, a single hub was seen as necessary:

- to ensure that common standards were adopted by all LAs
- to have a simple and efficient payment system

¹⁸ Searchflow sees brand recognition as a potential barrier to entry facing new channels (meeting, 21 March 2005). LGIH has taken steps to protect the value of the NLIS brand: for example, preventing NLIS channels offering PSC-type services. LGIH also indicated that if a third-party set up a direct connection with an information provider, they would not be permitted to use the NLIS brand (meeting, 24 February 2005).

¹⁹ According to MDHL (meeting, 7 March 2005), LAMP was designed for LAs that have the will but not the technical knowledge or resources to modernise their back-office IT systems. LAMP provides an off-balance sheet loan (the loan is treated as an operating cost rather than capital expenditure) and allows an LA to transfer the risk of software implementation, interface generation, data conversion/validation, end-to-end system operation, and financing onto MDHL. The LA only begins repaying the loan once the system is up and running. LAMP is available to all LAs but only ten LAMP contracts have actually been signed (and only six of these are for the fully managed LAMP service).

- to persuade all LAs to connect to NLIS²⁰
- to guarantee security by reducing the number of e-connections that would be necessary to link all the core providers to the channels, and
- to minimise the transaction costs for information holders (given the technology available at the time) by not having to interface with several competing hubs.

1.32 LGIH did not anticipate any problems with the joint vertical ownership of the hub and one of the channels. LGIH accepted the arguments that the hub required a 'guaranteed route to market' in the form of its own channel (to ensure that the hub can retail its product to consumers and conveyancers), given that it was to shoulder the bulk of the investment needed to set up NLIS.

1.33 In the next section we discuss the regulatory framework for NLIS.

Regulation

1.34 LGIH has sought to 'regulate' NLIS through the triangular contractual relationship between itself, the hub and the three channel operators. LGIH does not have statutory regulatory powers. The three contracts (licences) are between:

- the hub and LGIH (Hub Services Agreement)
- the hub and each channel operator (Hub/Channel Agreement), and
- LGIH and each channel operator (Channel Services Agreement).

1.35 The hub is subject to some constraints set out in the Hub Services Agreement, which relate to the rate of return on capital²¹ it can earn over the

²⁰ There was a fear that with multiple competing hubs, competition would lead them all to focus on the most profitable LAs, leaving the others unconnected.

licence period, and the price it can charge the channels for its services. The hub, at regular intervals, proposes fees based on an estimate of the number of future transactions it expects. LGIH accepts these proposals, in consultation with the channel licensees, once satisfied that the transaction forecasts are reasonable and the fees will not lead to returns on the hub's investment in excess of those set out in the hub's licence.

1.36 In 2003 disagreement over the level of fees led the hub controller to bring LGIH to court to enforce the Hub Services Agreement. The resulting settlement prescribed the level of hub fees up until the end of 2005. As of 2006 fees will once again be set according to the process set out in the licence agreement (as described above).

1.37 LGIH and its parent body IDeA are in the process of transferring their role to a new company, C-NLIS, which has been especially set up to:

- take over the contracts with information holders, channels and the hub currently held by LGIH
- license the NLIS software and brand to those who meet the appropriate standards after 2008
- broaden public interest and stakeholder involvement in the development and direction of an effective service
- accelerate the LA modernisation process, and
- act as a 'guardian' of NLIS standards (for example IT connection standards) and the intellectual property rights of information holders, and as a protector and promoter of the NLIS brand.

²¹ Return on equity is used for the purpose of benchmarking an overall return to the hub, calculated as the compounded rate of return on the cash flow generated by the hub over the term of the licence. Source: *Hub Services Agreement*, Schedule 7.

- 1.38 As with its predecessor, LGIH, C-NLIS will not have any statutory regulatory powers. C-NLIS is currently a limited company (prevented by its articles from distributing any profits), but will become a Community Interest Company (CIC) once approval from the CIC Regulator (CREG) is obtained.²² CICs are designed to have the flexibility and certainty of a company format, but with features to ensure they work for the benefit of the community. The novation of contracts²³ will happen as soon as C-NLIS obtains CIC legal status which they are hoping to achieve in late 2005.
- 1.39 LGIH have told us that it is likely that the board of C-NLIS will include representatives of most bodies that have an interest in the property information industry. Such bodies could include the Law Society of England and Wales, the Council of Mortgage Lenders, the Royal Institute of Chartered Surveyors, LAs, other publicly owned information holders such as Land Registry and the Environment Agency, and the companies that hold the NLIS licences. There currently is no representation from consumer bodies, but C-NLIS intends to open discussions with appropriate consumer organisations once CIC status has been attained.
- 1.40 C-NLIS is structured so that the NLIS licensees and any other commercial partners cannot assume majority control over the Board or shareholder meetings. They cannot, therefore, make decisions without the support of at least some of the other (non-commercial) board members.

²² CICs are a new form of company for those businesses that seek to establish 'social enterprises' through trading with a social purpose. DTI states that CICs are 'already in a wide range of areas, from childcare and social housing to renewable energy and fair trade' (*CIC Factsheet*, DTI December 2004).

²³ 'Novation' is the legal term for when one or more parties to a contract change.