



**THE LAW SOCIETY
of SCOTLAND**
www.lawscot.org.uk

INVITATION TO TENDER FOR THE PROVISION OF A DIGITAL PROPERTY TRANSACTION PORTAL

April 2015

1. BACKGROUND – THE LAW SOCIETY OF SCOTLAND

The Law Society of Scotland was established in 1949 with the functions of regulating and representing practising solicitors in Scotland, and also safeguarding the public interest in relation to the practising of law in Scotland.

The Society promotes the interests of the solicitors' profession in Scotland and the interests of the public in relation to the profession. The Society is governed by a Council, which is made up of solicitors and lay members from outwith the legal profession and is supported by a Chief Executive and around 125 permanent staff.

On behalf of practitioners and the public, the Law Society engages in a number of initiatives designed to enhance the laws of Scotland, and the process of legal transactions, including the established Smartcard project, and has now developed a Digital Property initiative.

The Society's current strategy "Towards 2020" was created and published in 2010 and has provided the organisation with the necessary strategic direction to guide our annual plans and budgets for the last three years. More background information on the Society, the strategy and our current annual plan can be accessed here <http://www.lawscot.org.uk/about-us>

Our annual report is prepared following our 31 October financial year-end, contain details of our performance against those plans and our annual financial statements contain our performance against those budgets. The most recent can be accessed here <http://www.lawscot.org.uk/about-us/reports--meetings/annual-reports>

The annual report also contains details about the size and break-down of our solicitor membership.

The Society is a values-based organisation and is committed to equality and diversity.

2. BACKGROUND – DIGITAL PROPERTY PORTAL

The Society's Future of Conveyancing Working Party (FOCWP) has been discussing and delivering a number of improvements to the conveyancing process. The FOCWP now wishes to consider the introduction of a digital portal.

The aim of this project is to reduce cost, speed up transactions, and take advantage of the possibilities created by the ability to conclude contracts digitally. This would allow firms to conclude missives, and revise and exchange other documentation and include a range of other functions such as open architecture to enable interaction with other stakeholders such as searching agencies, Registers of Scotland and lenders.

This complements one of the Society's strategic objectives to create products which members use every day. The Society is seeking to introduce a world-class product to deliver this portal.

An independent report was commissioned to identify the type of functionality required and carry out some initial market research. The key findings of that report, together with detailed background information, are contained in the appendix.

The Society requires a model to deliver its objectives in relation to digital property transfers. The FOCWP recognises the work is time-critical in order to capitalise on the new Land Registration Act, enabled by the Society's Smartcard. The Executive see commercial opportunity in the project, and the chance to deliver a product our members use and value in their daily work.

The Society's cloud computing standard for a web interface should be adhered to – refer to: <https://www.lawscot.org.uk/rules-and-guidance/section-e-general-guidance/division-b-the-management-of-files,-papers-and-information/advice-and-information/cloud-computing-advice-for-the-profession>

The Society also has a policy that any online product should be at a minimum compliant with the WAI AA standard of W3C due to accessibility requirements.

3. OUR SERVICE REQUIREMENTS – TO BE SPECIFICALLY ADDRESSED IN THE SUBMISSION

Tenderers are asked to provide a submission which addresses each of the issues specified below. The submission should be restricted to no more than 10 pages of A4, with any additional necessary information contained within appendices.

3.1 Functionality

It may be appropriate to deliver an initial service with a reduced set of functionality, then enhancing the service over time. Ultimately the Portal will need to deliver the following range of functionality:

- delivery of a secure document exchange and messaging system
- uploading and downloading documents
- encryption of documents
- the ability for a document version to be 'locked' which can require one or more people to authorise for editing and/or deletion
- external access to specific documents (for clients, for example)
- the ability for users to export all transaction documentation for archival purposes to their own systems; either in hard copy or electronic copy or both
- automated assembly of appropriate documents by merging client/property and other transaction data with standard forms
- on-line form filling of other documents that cannot be assembled automatically
- messaging between all users, which can be applied to specific documents
- definition of workflow/milestones in the conveyancing process; incorporating any relevant Law Society Guidance (e.g., Rules and Guidance, Section F, Division C)
- a mechanism for promoting speedy workflow by generating documents and forms automatically where possible, and reminding users when actions are required
- reporting to all users of progress against the milestones – including clients – including 'push' notifications (by text message, email etc.) as required; ideally with a simple graphical representation of progress
- transfer of funds
- acknowledgement of settlement items and agreement to hold transaction as concluded
- the provision of a fully documented open API that will facilitate integration between third party software (such as law firm's internal conveyancing case management systems) and the Portal
- the ability to import data from Solicitors Property Centre estate agency systems to avoid rekeying
- full activity audit trail available to all users
- integration with the Law Society of Scotland's Smartcard for solicitor authentication
- two factor authentication access for non-Law Society Smartcard holders
- integration with ARTL2 for automated searches and title transfer where possible (ideally, also Companies House integration with ARTL2 so that a security on behalf of a company can be registered)
- integration with HMRC (or Revenue Scotland when appropriate) for automated SDLT (or LBTT) payment
- access for Lenders, or integration with relevant Lenders' systems, whether Lender Exchange or some other system; further discussions with lenders need to take place in relation to incorporation of elements of the Landers Handbook into the workflows to facilitate compliance with integrated automated funds transfer as required
- different tiers of access for different grades of staff will be desirable

3.2 Initial costs

Please provide an estimate of the costs of delivering a product to the Society offering each of the above, and what you would envisage the Society's contribution towards this might be (bearing in mind the future revenue model).

3.3 Revenue model

Options for charging for the service could be based on a combination of one or more of the following:

- a registration fee for law firm's joining the service; this could be based on the size of the firm
- an annual subscription fee for the law firms; this may also be based on the size of the firm
- a monthly or annual usage fee for law firms based on the volume of messages, number of documents stored and/or file storage volume
- a transaction fee for each property transfer – this would be chargeable to both the buyer's and the seller's solicitor on each transaction, and would be a disbursement passed on to the client in each case.

In terms of the solution and revenue model, please indicate how you would foresee the business model operating and what share could be retained by the Society in return for the its endorsement and promotion.

3.4 Other considerations

- The process is confidential. Tenderers must agree in writing to such confidentiality at the start of the process. Equally no information submitted by the tenderers will be shared by the Society with other tenderers.
- Any costs incurred by the tenderers in the process must be borne by the tenderers and not the Society
- The decision of the Society in selecting the successful tenderer will be final and entirely a matter for the Society, and not open to challenge
- If a tenderer asks additional questions in relation to the information provided in any specific tender – that question and the Society's answers will be shared with all the other bidders in the tender process. If a face to face meeting is granted to a specific tenderer then the offer will be given to all other tenderers
- Tenderers are expected to identify any known or potential conflicts of interest at the outset and explain how such conflicts are to be dealt with
- Tenderers are asked to assume an initial length of contract of five years which will feature formal review periods
- Explain the circumstances in which an early exit should be permitted
- Arrangements for indemnity insurance if the system were to fail, affecting transactions.

4. THE MARKET

The size of the property transaction market in Scotland is described in the appendix. There are around 1,200 legal practices in Scotland, the majority of which do not have a dedicated in-house IT resource. The Society is currently investigating possible means of providing commercial IT services to those firms.

Staff are currently undertaking some additional market research during the tender period. This will ensure a representative range of 'rank and file' practitioners have given their views on areas such as the product concept, functionality, and pricing. We will share that information with all tenderers when it is available.

It is envisaged that a secure portal, initially focussed on conveyancing, could eventually be developed into other areas.

5. SELECTION PROCESS/ TIMETABLE

The Society is mindful of the need to demonstrate value for money from this service to its members. A selection panel comprising members of the Society's Council, executive team and committees, together with an independent expert, will review the returned submissions and carry out interviews. This panel will provide a report to the Society's Board, who will make the final decision based on their recommendation. A price/quality mechanism will be applied and the following criteria will be used in the selection process:

From the tender submission:

- *Relevant experience of the organisation in delivering similar innovative projects*
- *The approach to collaborative working, specifically with reference to added value - we are seeking pro-active advice on how best to deliver this platform*
- *Proposed costs/revenue share*

As well as:

- *Subsequent presentation/ interview*
- *Satisfactory references from two recent relevant referees*

The Society will not be obliged to accept the lowest or indeed any tender submitted. Any proposed variation in the work plan and fees will require to be agreed by both parties in advance of such work being carried out.

Our proposed timescales for the tender process are detailed below:

- Deadline for receipt of tender submissions – 5th May 2015
- Presentation of tenders (1/2 hour presentation followed by questions from panel) – by invitation, 18th May 2015

Confirmation of decision & any appointment will follow the Society's Board meeting on 8th June.

Please submit the proposal **in pdf file format by email** to Ken Tudhope, Director of Finance kentudhope@lawscot.org.uk by **2pm Tuesday 5th May 2015**. If clarification or further information is required then please do not hesitate to contact Ken Tudhope on the above email address or 0131 226 7411.

FURTHER BACKGROUND INFORMATION

Future of Conveyancing Working Party

The Law Society of Scotland set up the Future of Conveyancing Working Party in 2013 to consider the future of the residential conveyancing market in Scotland. The Working Party determined in 2014 that it should consider the establishment of an electronic conveyancing Portal service to facilitate the processing of Scottish residential conveyancing.

The purpose of this project is to provide a platform of electronic information exchange to facilitate conveyancing in Scotland. The possible variations in scope for such a project is considerable; ranging from a simple electronic 'deal room' for conveyancing transactions on the one hand (a kind of 'secure Dropbox') through to something much more complicated and integrated more akin to a shared automated end-to-end case-management system.

The Current Commercial and Technological Landscape

Despite the gradual computerisation of law firms, and the Registers of Scotland, over the last 20 years or so, the actual process of conveyancing property in Scotland has not fundamentally changed over that period. The current legal process of conveyancing for a first registration transaction is set out in Appendix 2.

Conveyancing is still largely a manual process, and it is said that there are particular stages where the procedure has inefficiencies and bottlenecks – especially at the point of concluding missives, and in dealing with the lenders. The Working Party has another current initiative aimed at standardising the format and content of missives which should assist in streamlining the process, but there are still significant opportunities for further elements of automation, standardisation and improved communications which lie at the heart of the Digital Property Portal project.

These opportunities should benefit all the participants in the conveyancing process such as the buyer, seller, solicitor, lenders and the Registers of Scotland.

The solicitor plays a more prominent role in selling homes in Scotland than solicitors generally do in the rest of the UK. Firstly many Scottish solicitors are also estate agents and as such will act in the marketing process as well as in the legal work. Most conveyancers who are also estate agents are members of Solicitors' Property Centres. The centres have property showrooms and publications in which all the members and properties for sale are displayed or advertised.

Other types of estate agents have a lesser share of the market than solicitors. Typically in Scotland the solicitor will be the first point of contact for someone planning to sell a property. As stated, the Scottish contracts system is quite different from that in England and early conclusion of the contract is generally expected.

Transactions Volume

Most people employ a solicitor when buying a property, because of the amount of money being spent and the complexity of contracts entered into. Although solicitors in Scotland are central to much of the property transaction, because they often market the property on behalf of the seller, their key task is in negotiating and checking the contracts and handling the transfer of the title and monies. In terms of market share, Scottish Solicitors' Property Centres command some 60% of the Scottish estate agency market, this has held pretty steady over the years. There is considerable benefit in the legal profession being able to provide a demonstrably superior conveyancing service, as this will then serve to protect both the solicitor-based estate agency and property transfer businesses.

The conveyancing market has been substantially depressed by the recent economic downturn. Whilst there is good reason to believe that - over time – the market will recover to its previous peak of 150,000 transactions per year, it is currently languishing at just under 100,000 per year.

Law Firms / Property Centres

Solicitors' firms have the majority share of all residential conveyancing in Scotland, and it was reported that they have held on to a greater share of the market than English solicitors, at least partly due to the combination of services from law firms and related Property Centres.

Many law firms already have sophisticated case management systems that they use for a wide variety of the higher volume/lower value work they undertake - including residential conveyancing. They have often expended a great deal of time and money in procuring, implementing and developing these solutions and research indicates that they would be loathe, if not downright resentful, to have to forego these established systems and migrate to another system.

The implications of this are:

1. that any Law Society Digital Property scheme would have to be voluntary, and not compulsory and
2. that it would need to integrate with (and not seek to replace) existing law firm case management systems.

However, as discussions with a variety of practitioners confirmed, if these concerns are addressed then there is a significant appetite for the institution of such a Law Society initiative on the grounds of efficiency, client service (and transparency) and cost management.

The preferred model appears to be a system, along the above lines, which is payable by way of a unit charge for each transaction that can be readily identified and passed on to the client.

Other features that appear to be generally required by practitioners are:

- integration with Law Society's Smartcard digital signature function for validation of identity
- a full audit trail
- integration with ARTL2
- integration with HMRC (Revenue Scotland)
- a published API to facilitate further integration, including with in-house conveyancing case management systems
- secure document storage and exchange
- client access for information about transaction progress, together with a simple representation of future steps and likely future progress.

Whilst not wishing to have a system that purports to attempt to complete the conveyancing process without human intervention, those practitioners interviewed were of the opinion that it should help to 'move things along' expeditiously with appropriate reminders

Lenders

Communicating with lenders, and ensuring the flow of funds relating to the conveyancing process, is cited as one of the bottlenecks and areas of inefficiency in the Scottish conveyancing process. Although the lenders are large financial institutions, they are not always highly modernised in terms of their use of technology. There is, therefore, an opportunity to persuade lenders that they will share in the benefits from improvements in efficiencies resulting from a Digital Property Portal. An initiative by which the Council of Mortgage Lenders in dealing with law firms is the Lender Exchange, a new residential conveyancing lender panel law firm management solution. The stated aim of the scheme is to help lenders streamline the panel management application process "for the benefit of both solicitors and lenders".

Registers of Scotland

Registers of Scotland is the Government Department responsible for compiling and maintaining registers relating to land and property and other legal documents in Scotland. Since 2008 the Registers have been able to offer a system of electronic registration of applications for registration of property in the Land Register through its ARTL (Automated Registration of Title to Land) system. ARTL is available via the Internet, and is already used by solicitors either directly, or via integration with their conveyancing case management systems.

An initiative is currently ongoing for the development of a much improved system, to be known as ARTL 2, which is projected to come on stream in 2015. For any Digital Property Portal to work effectively it would ideally integrate with any current ARTL system.

HMRC/Revenue Scotland

Another agency that any Digital Property Portal would have to link with is HMRC in relation to the collection of Stamp Duty Land Tax (SDLT). HMRC already has provision for electronic filing of SDLT using either HMRC's Stamp Taxes Online service or by means of a law firm case management system which has been integrated with the online service. ARTL also includes a direct online SDLC filing facility.

Revenue Scotland is due to take over tax collection responsibilities from HMRC in Scotland, and SDLT will be replaced with Land and Buildings Transaction Tax (LBTT) – but the same principle will apply.

Relevant Suppliers and Services

Currently in Scotland there is no existing service along the lines of the proposed Digital Property. There are vendors who do provide elements of Cloud-based property sales software, and range of others who provide in-house conveyancing case management functionality for law firms.

Other Jurisdictions

One of the most advanced systems is the Australian PEXA system. PEXA provides both electronic lodgement and electronic financial settlement for property conveyancing transactions. A conveyancing transaction in PEXA includes electronic lodgement of the relevant set of Land Registry documents for the transaction, for example a Discharge, a Transfer and a Mortgage. A conveyancing transaction in PEXA may also include electronic financial settlement, for example a re-finance transaction or it may not include electronic financial settlement, for example lodgement of a standalone Caveat. PEXA is currently live in Victoria, New South Wales, Queensland and Western Australia.

Other jurisdictions with electronic conveyancing systems include Netherlands, Estonia and Bavaria. Progress towards electronic conveyancing is being made in some other countries that have established land registration systems, such as Ontario, Denmark and New Zealand, but not amounting to a complete conveyancing environment.