



**NOMINET**

## Summary of feedback on the proposed draft Registrant T&Cs

Comments received between 25 November 2015 and 23 December 2015

We published a proposed revision to our standard Terms and Conditions of Domain Name Registration (Registrant T&Cs) on 25 November 2015, and invited comments from stakeholders.

We are grateful to all those who took the time to engage in this process and provide feedback on the principal areas of change, including those who provided detailed comments on the drafting and some good suggestions for greater clarity.

A total of 36 responses were received during the comment period, the majority (58%) coming from Nominet registrars (21) and the remainder coming from individuals who are registrants of .UK domain names (11), businesses (3) and academia (1). 19 respondents gave permission for us to publish their comments, and for reference these are available [here](#).

While we have introduced some changes to the Registrant T&Cs in recent years, these have been minimal in scope, and each revision made was to address a specific change in .UK policy. Examples include the introduction of multi-year registrations, or restricting the registration of terms promoting serious sexual offences. The Registrant T&Cs themselves have not been subject to a general ‘good housekeeping’ review for many years.

In the main the proposed revision was welcomed. There was broad agreement that the significant reduction in the length of the overall text, greater clarity and consistency in terminology, and the removal of obsolete provisions such as the requirement to provide a fax number, were improvements.

Typical comments included:

*“I welcome the removal of unnecessary blurb and I welcome changes made which aim to simplify, clarify and ensure consistency”* (name withheld)

*“Firstly although the reduction in the overall content of the document looks brutal, if its purpose is to make it easier to read and understand by the registrant then the move should be applauded as it is client focused.”* (Stephen Wilde)

*“It’s mostly sensible stuff, like dropping the need for a fax number.”* (James Read, quoting from Frank Leonhardt’s blog post)

*“All looks much more sensible and readable, so gets my approval!”* (Richard Hillsdon)

*“Most of these changes seem reasonable or even in the case of no longer collecting fax numbers, overdue.”* (name withheld)

There were however four areas in which concerns were raised, and we will address each of these in detail below.

## 1. Cost recovery fees provision

Whilst the majority of respondents did not specifically comment on the removal of condition 6.1 (setting fees on a cost-recovery basis), those that did were strongly opposed to this change.

*"I don't think removing the reference to fees on a cost recovery basis is acceptable without a full consultation."* (name withheld)

*"We strongly disagree with the change that removes the "reference to the setting of fees on a cost-recovery basis" as this leaves it open for Nominet to charge whatever it likes, or even under-cut it's members."* (name withheld)

*"I would disagree with this as it appears likely that this will start the process of making large profits at the expense of the domain registrants."* (Joe Telford, AES Digital Solutions)

*"I feel that if Nominet is a not-for-profit acting in the best interests of its members and the United Kingdom, then it should only be setting fees on a cost-recovery basis. It already makes a profit and should not be increasing this."* (Milo Noblet)

*"Nominet's fees and income are already too high, and constraints such as the "cost-recovery basis" should not be removed."* (Ganesh Sittampalam)

*"Operation on a cost-recovery basis ensures reasonable costs to registrants"* (Max Harmony)

*"Undesirable, unnecessary, not wanted by this member or the community as a whole. This indicated a loss of direction and failure to recognise the purpose of the organisation."* (Christopher Sharp)

*"Why removal of reference to the setting of fees on a cost-recovery basis? As a not for profit company that is the most appropriate way to determine prices."* (name withheld)

*"Nominet is not a commercial entity, it's sole purpose is to run the .uk namespace for the benefit of all stakeholders, making excessive profits (which you already do and have to give away) is not in the interests of any .uk stakeholders."* (Karl Austin)

One respondent however was supportive of the change:

*"As registrants rarely pay the wholesale rate this is helpful in making it simpler to understand for registrants. This point is made distinctly and without any comment on whether a cost recovery model should be followed or not."* (name withheld)

### Nominet response

Some of the comments made were generally critical of the level of Nominet's fees and operating surplus, and stated that Nominet should not operate as a commercial entity. It is therefore worth clarifying at the outset that any changes to the Registrant T&Cs are entirely separate from Nominet's constitutional status. As set out in our Memorandum and Articles of Association, we operate on a commercial basis, but have public benefit objects and are constitutionally unable to return to our members a share of any of the profits that we might make. This is what makes us what is more informally referred to as a "not for profit" company. Since our foundation in 1996 we have consistently generated a trading surplus in each financial year, and we have no plans to change this.

However, we do not believe that the Registrant T&Cs are any longer an appropriate place for any statement regarding pricing policy.

Firstly, the fees for .UK registrations made via a registrar (which applies to 99.99% of our registrations) are paid by the registrar to Nominet under the terms of the Registrar Agreement. This is a separate commercial arrangement which Nominet has with each registrar, and is distinct from the Registrant T&Cs which cover the general rights and obligations of registrants. The decisions made by the Nominet board in setting the level of wholesale registration fees for registrars are entirely separate from the Registrant T&Cs.

It is possible for registrants to register directly with Nominet without use of a registrar. The fee for direct registration has been set at £80 for many years now, and was originally assessed by reference to the cost to Nominet of providing this service. However with the relative low cost of registration via a registrar who is also a Nominet member, we now have very few direct registrations. In the past 12 months we have only had 5 new direct registrations, and we have fewer than 900 in total. We have not recalculated the cost to Nominet of providing direct registrations for at least a decade. The registration process for direct registration is a manual one involving staff time and checking at the point of registration and every renewal. To seek to determine a robust and accurate cost basis for 0.01% of our overall registrations would not be readily supportable given the separate highly manual and variable processes involved for such a small number of registrations. For this reason, we are no longer comfortable stating that the £80 direct registration fee is set on a cost-recovery basis. In fact during the course of 2016 we are reviewing whether to continue to accept direct registrations at all.

There are also fees for some miscellaneous services that Nominet provides to domain registrants directly. Services such as the registrant transfer (first introduced in 2003 at £30 plus VAT, later reduced to £10 plus VAT) were historically assessed on the basis of time and motion studies which estimated the cost to Nominet of undertaking these processes. However now that the registry systems are more automated, this type of calculation becomes more difficult because some elements of the whole registry software development need to be allocated across a relatively small number of transactions. Again, we are no longer comfortable with a contractual statement that we believe these fees can be said to have been set at a 'not-for-profit cost-recovery level only'. We intend to review our fees such as the £10 transfer and tag change fees during 2016, with a view to considering whether we should levy any charge at all in relation to these services which are now largely automated.

Other services, such as mediation in our Dispute Resolution Service, or resetting of passwords in online services, have always been provided free of charge.

In summary, we therefore think that the wording currently set out in condition 6 is outdated, as well as being potentially misleading. For the reasons set out above we will therefore implement the proposed revision to the Registrant T&Cs.

## **2. Consultation over future changes**

There was almost unanimous agreement from the respondents that we should consult in relation to any future changes made to the Registrant T&Cs. Typical comments included:

*"Truly trivial changes should not require consultation. Substantive changes should be consulted on because Nominet gains it's authority as the UK registry from the UK internet community, ICANN and UK Government recognising it as such. In the same sense that substantive terms and conditions applying to ICANN regulated domains are publicly consulted on Nominet should consult as a matter of course ... It would therefore be prudent to consult on substantive changes and will continue to show Nominet's support for the community it serves." (name withheld)*

*"I strongly disagree with the "Removal of the obligation that we will always publicly consult on changes to the Registrant T&Cs" – this yet again leaves Nominet open to*

*do whatever it pleases, which was never intended when Nominet was created as the guardian of .uk namespace.” (name withheld)*

*“Public consultation on T+C changes should continue, in the interests of transparency and fairness.” (Frank Leonhardt)*

*“I would disagree with this as it appears likely that this will permit Nominet to work outside members interests.” (Joe Telford, AES Digital Solutions)*

*“Nominet, being a pseudo-public body, should be publicly consulting on changes to the T&Cs. Again, this is only fair and proper.” (Milo Noblet)*

*“While it may be standard for a business to unilaterally change its terms and conditions, as a member organisation, I do expect Nominet to ensure that any change to its relationship with members, not clients, will be supported by a vote from its membership.” (Thomas Mangin)*

*“Disagree, you should be purely member focussed.” (name withheld)*

*“I strongly disagree with this. This goes against the internet at large and Nominet’s original ‘community driven’ ethos. Those concerned with the future of the UK domain infrastructure should always be allowed a voice.” (name withheld)*

*“Nominet should continue to consult on T&C changes.” (name withheld)*

#### Nominet response

The feedback highlighted reservations about removal of the consultation requirement. The reasons given varied depending on the perspective of the contributor. Some felt that this would lead to less transparency, and others felt that Nominet should not be making unilateral changes to its contractual provisions. Contributions also appeared to assume that Nominet would no longer consult on questions of policy change or membership issues.

As stated when we asked for feedback on the proposed revision to the Registrant T&Cs, we are not suggesting that our commitment to consultation on .UK policy matters is being reduced or removed by this change. This obligation is set out in our Article 43 of our Articles of Association and remains unchanged. The intention of the amendment of the wording in condition 34 was to avoid the need for any change to the Registrant T&Cs – however minor – to go through public consultation.

We still believe that legal contract changes per se should not be subject to prior consultation and will therefore proceed with the proposed change to the Registrant T&Cs.

### **3. Refunds in the event of a future change in the Registrant T&Cs**

Whilst the majority of respondents providing feedback did not specifically mention it, the removal of the provision stating that upon a change to the Registrant T&Cs a registrant could notify us that they did not agree to the change and request a refund also caused some concern. Comments included the following:

*“This is only fair; people registering direct with Nominet could be paying hundreds of pounds in advance and you can’t change the rules of the game once it’s started without consequences. The plan is to drop this provision, with the apparent justification that they can’t remember anyone ever invoking it. Lack of use doesn’t mean the provision is wrong; it simply means that they haven’t upset anyone with a change in T+C enough to make invoking it necessary. One likely reason for this is the requirement for a public consultation before changing T+C.” (James Read)*

*“The provision “for registrants to claim a refund in response to a change in the Registrant T&Cs” is theoretically important and needs reinforcing throughout the industry, not abandoning.” (Brendan Kelly)*

*“Registrants should be able to claim a refund if you change their T&Cs – same as changing a contract to the material detriment of one party could render it void.” (Milo Noblet)*

*“If Nominet is to have the power to change the terms at will without consultation with its members, then registrants should have the right to refund or exit the contract if you significantly change the terms of service.” (name withheld)*

#### Nominet response

In operating the .UK domain on a public benefit basis, Nominet takes registrant protections very seriously. However since 99.99% of our registrations are made via a registrar, the mechanics of processing refunds are not straightforward and would likely involve significant complexity for Nominet and our registrars to process. In all likelihood, the total costs to Nominet and its registrars of processing refunds (which would typically be a fraction of £5) could be more than the value of the refund itself. To us, that does not make any practical sense, even if in all likelihood the provision would never be invoked.

With the existing wording that any changes must be reasonable, together with our constitutional requirement to consult on policy changes which affect the .UK domain, we believe that it is still appropriate to remove the wording in the Registrant T&Cs which would allow registrants to claim a refund in the event that they did not agree with any change made to the Registrant T&Cs.

#### **4. Domain suspension criteria**

The final issue where concerns were raised was that of suspension of domain names where a domain has been used to harm other internet users. As with the more general issue of suspending domain names which are implicated in criminal use, this issue divided opinion.

*“Confirmation that our existing ability to suspend domain names that are used to damage the DNS has been extended to also include damage to other internet users. This is a useful clarification!” (name withheld)*

*“I would strongly agree with this” (Joe Telford, AES Digital Solutions)*

*“If we are talking about technical attacks etc, then yes I agree with this – but put it in the T&Cs that freedom of expression etc will be preserved.” (Milo Noblet)*

*““Damage to other internet users” is far too vague and open to misuse and “in our sole discretion” hands far too much interpretative power to Nominet.” (Ganesh Sittampalam)*

*“Seems quite reasonable” (Max Harmony)*

*“As far as I can see there is no set definition of what is to be construed as damage to DNS. If a domain is known to be a hotbed of botnet activity, a C&C server or a known continual source of attacks then of course immediate action should be taken to remove that threat ASAP, likewise anything that contravenes UK law. However there is no public mention of length of suspension (temporary/ permanent) arbitration for individuals and/or companies that are victims of an attack that sees their equipment, domain names, network etc used in something that could be construed as damaging to the DNS infrastructure.” (name withheld)*

*“This is not Nominet’s role” (name withheld)*

*“It is a shame that your terms of reference have been changed in this way. Please make it clear in the Ts & Cs that you will act in the interests of registrants first and foremost, and will require a court order or prima facie evidence of harm before suspending domain names.” (Dominic Sayers)*

#### Nominet response

We can sometimes see from anomalous DNS server traffic, or we are alerted by reliable and credible sources, that .UK domain names are being used to spread viruses and malware, or are used for phishing or to facilitate a distributed denial of service (DDOS) attack. We believe that the current wording, allowing us to take action where a domain name “is being used in a way that is likely to endanger any part of the domain name system” was intended to cover these sort of technical attacks, however we do not feel it specifically addresses the point. For example, a botnet does not technically endanger the DNS. We therefore propose to implement a slightly amended provision which states that we may take action where a domain name is being used in a way that is likely to endanger other internet users by distributing viruses and malware, or for phishing attacks or to facilitate a distributed denial of service attack. As with our processes for suspension of domain names which are implicated in criminal activity, apart from in exceptional circumstances domain registrants would be given advance notice of suspension, together with information about how to reverse a suspension.