



**CLC's Response  
The Law Commission  
Updating the Land Registration Act 2002:  
A Consultation Paper  
June 2016**

The CLC welcomes the opportunity to respond to the Law Commission's consultation paper 'Updating the Land Registration Act 2002'. This response touches on two issues: the Land Registry indemnity and electronic conveyancing.

**About the CLC**

As an Approved Regulator and Licensing Authority under the Legal Services Act 2007, the CLC is authorised to license and regulate individuals (licensed conveyancers and probate practitioners) and CLC practices, including ABS, in the provision of conveyancing and probate services, as well as other non-reserved legal activities. It currently licenses 1,300 individuals and 230 practices (45 of which are ABS). It estimates that CLC practices account for 10-15% fee income generated in the provision of conveyancing services in England and Wales.

**Response to the Consultation Paper**

Indemnity

The CLC notes and agrees the Law Commission's analysis that '...the register operates as a guarantee of title, but the guarantee is not absolute. The register can be changed, for example, when it is found to contain a mistake. The twin ideas that a registered title is guaranteed, but the register can be changed, are reconciled through an entitlement to an indemnity...described by Theodore Ruoff as the "insurance principle"' [14.1].

The CLC further agrees that the indemnity should not be capped [14.59]. If a cap were to be imposed (even where the Land Registry has not been a fault), there would need to be circumstances in which the cap could be set aside. The risk is that the circumstances are defined in such a way that compensation is not awarded for deserving cases resulting in unnecessary distress and hardship. We agree that the amount of the indemnity should be reduced where there is 'contributory negligence' on the part of the claimant (or those acting as the claimant's agents).

In relation to the question at 14.72, conveyancers already have considerable reporting and declaration obligations. Any proposal to impose an additional duty on conveyancers, namely to be required to declare that they have taken sufficient steps to satisfy themselves that documents relating to the application are genuine, should be viewed in the context of risk and regulatory burden. We therefore

believe that the implications of such a duty should be considered further in the context of wider use of verification declarations.

We agree that the Land Registry should have a direct right of action against a person who acts in breach of a statutory duty to take reasonable care in respect of the granting of deeds intended to be registered and applications made to the Land Registry which has resulted in the payment of compensation subject to mitigation and remoteness (on the model now in force in Scotland) (14.77). We do not believe that the statutory duty should be restricted to a duty of care in relation to identity (on the basis that this would be included within the wider statutory duty).

We agree that the entitlement of mortgagees to an indemnity should be subject to a statutory duty to verify the identity of the mortgagor (14.123). This is an important part of the overall transaction and should not be delegated

### Electronic Conveyancing

We broadly agree that the 2002 Act should be amended to increase flexibility around the timing of the introduction of electronic conveyancing and ending paper based conveyancing on the basis that when the changes are introduced conveyancing practices will be supported, and the manner in which the change are introduced will be flexible and facilitative.

A move to electronic conveyancing may also provide opportunities to mitigate risks that exist in the current system by joining processes together more closely and eliminating gaps that assist fraudsters. The current programme of development being undertaken jointly by VOA, Land Registry and HMRC, for example, envisages making registration of title at Land Registry contingent upon payment of Stamp Duty Land Tax to HMRC. This we believe to be a key weakness in the current system that needs to be remedied. We very much hope that work will not be delayed by the possible privatisation of the Land Registry. Other such opportunities may arise to, for example, make client funds safer with more secure communications throughout the conveyancing process.

The CLC considers that full risk assessments will need to be carried out as part of the stakeholder consultation process before the Secretary of State and the Chief Land Registrar exercise their respective powers, including in respect of transitional arrangements.