

A PRACTICAL APPROACH TO
CONVEYANCING

SEVENTEENTH EDITION

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A AN INTRODUCTION TO CONVEYANCING

OUR APPROACH IN THIS BOOK

Introduction

This book has been written by two legal academics and solicitors who between them have over 64 years' experience of conveyancing practice. Consequently we believe we have written a book which truly highlights a practical approach to the process of conveyancing. But it is not a book which just looks backwards. We believe that the future for conveyancing practitioners lies in greater efficiency and in a deeper understanding of the conveyancing process including the system of land registration. With these aims in mind we have produced a book which we believe addresses these objectives as well as offering an understanding to practitioners and law students of the process as a whole. **1.01**

Property law and practice

Conveyancing is not a frozen topic. It is presently a fast-moving and fast-changing area of law and practice. Statute, information technology (IT), case law, and market forces all represent current factors pressing change upon conveyancing practitioners. Indeed, the title 'conveyancing' itself is turning into 'property law and practice'. As a result, practitioners have an even greater need for signposts through this maze of changing paths. Therefore, we have adopted the signpost heading method for all the chapters. You, the reader, will find at the start of each chapter a list of contents for that particular chapter and the topics within it. This method has been adopted to help the busy practitioner (or student) find the relevant **1.02**

area of interest as quickly as possible. We appreciate from our own experience of practice that there is nothing worse than wasting hours fruitlessly searching through untitled sub-chapter sections trying to locate the desired subject. Each paragraph is separately numbered so that you can navigate quickly throughout the text.

Key point summaries and checklists

- 1.03** Within each chapter there are also two further elements designed to assist the busy reader. First, where appropriate, we have included key points, summaries highlighting important elements within a particular topic. These are provided as reminders of important points that should never be overlooked even in the hurly-burly of the busy modern legal office. Secondly, we have included, at the end of most chapters, checklists for the busy practitioner who may be seeking a quick overview of the important elements or the procedures in any particular topic. Our overall aim is to provide a clear, useful, and, in particular, practical approach to conveyancing which will help all those who use the book. In this way we hope to assist in the pursuit of an understanding of how conveyancing can be a stimulating and, at times, even an exciting legal skill.

AN INTRODUCTION TO CONVEYANCING

- 1.04** Conveyancing is the process by which legal title to property is transferred. As a consequence, over time, a conveyance has become the description for the document making such a transfer. In many ways conveyancing is like Shakespeare's character Autolycus in *The Winter's Tale*, a 'snapper-up of unconsidered trities'. Like this amiable rogue, conveyancing takes from here, there and everywhere, from within the full range of the law. Conveyancing rests and has been built upon the three foundations of land law, contract law, and equity and trusts. Because of this, a confident appreciation of land law is crucial for success in conveyancing. Land law sets out the estates and interests that will form the subject matter of all conveyancing transactions, and without an understanding of these details no practitioner will cope. You will also need to have a prior knowledge and understanding of the details concerning the formation of contracts, the formalities of written contracts, misrepresentation, and remedies for breach of contract. When you consider that conveyancing is about the transfer of title, and that these transfers are in the main made by contract, you will readily appreciate why contract law plays such an important part. Each conveyance on sale will involve preparing a written agreement. Moreover, your land law will tell you that without a written contract containing all the terms of the agreement there is no deal (see the Law of Property (Miscellaneous Provisions) Act 1989).

The influence of equity

- 1.05** A detailed understanding of the influence of equity as well as trust law will always be a prerequisite for a successful conveyancer. This important foundation to conveyancing is not so obviously relevant as land law and contract law, but it is nevertheless a pervasive element in conveyancing. You need to know, for example, all about third-party rights and co-ownership. You will need to understand the differences between tenants in common and joint tenants and their relevance to joint ownership in conveyancing. You will need to be absolutely clear on the law relating to trusts. You will need to remind yourself about the equitable remedies that are available. It is one thing to understand their availability in theory but it is another to apply them to a practical situation (see Chapter 9).

So, the key to understanding the nature of conveyancing is to appreciate how it calls upon various disparate areas of the law. It means that you must abandon a discrete approach to applying the separate elements of the law. Conveyancing requires you to blend your knowledge. Conveyancing does not relate just to the transfer of ownership of residential properties. It covers the transfer of title to both houses as well as flats, new and second-hand properties, and commercial property of all kinds. (We look at leaseholds, which will include flats, in Chapter 10, new properties in Chapter 11, and the basics of commercial property in Chapter 12.) **1.06**

Registered and unregistered conveyancing

History has dictated two parallel conveyancing systems. The system of unregistered conveyancing has for centuries been the method by which the transfer of title has been made. It worked satisfactorily when land ownership was limited to a privileged few, but with the growth of home ownership (along with the population) in the nineteenth century it started to exhibit major pitfalls. Moves to reform the system grew in the direction of the registration of land. Accordingly, the traditional system is considered first, but in outline only, and a more detailed consideration of the reforming land registration system follows. **1.07**

On 26 February 2002, the Land Registration Act 2002 received the Royal Assent and came into force on 13 October 2003. This Act made detailed changes to the present-day system of registered land conveyancing, and indeed to registered land law. This is discussed in Section B and below. The Act and subsequent rules make extensive changes to the way registered land is conveyed. How practitioners cope with these changes will demonstrate their ability to handle these alterations to the way they work. We hope this book will assist you in coping with this ongoing revolution in property law and practice. **1.08**

A CONVEYANCING TIMELINE

We set out in Figure 1.1 a timeline of a typical conveyancing transaction. This shows the various stages in such a transaction and is placed at this early point in the book so that you can familiarize yourself with these stages as you read through the text. You can then look back at the timeline to contextualize what you are reading in relation to the transaction as a whole. **1.09**

CONVEYANCING OF UNREGISTERED LAND

Introduction

The traditional system of conveyancing, of unregistered land, has been in existence for centuries, although it was overhauled by the Law of Property Act 1925. (This was accompanied initially by the Land Registration Act 1925, which fully put in place the reforming system of land registration. This is continued by the Land Registration Act 2002.) The whole unregistered system relies on the existence of written documents, or deeds, to show to a buyer a period of unchallenged ownership which will substantiate the seller's ownership. At present, statute stipulates a minimum period of unchallenged ownership of 15 years (Law of Property Act 1969, s 23). This will be considered in detail in Chapter 5. It is mentioned here to highlight the different approach taken in registered land. The major problem of the unregistered system is that there is an almost total reliance on the integrity of the title deeds. If they are, either in part or in whole, lost, damaged, or forged, severe problems will inevitably arise for the owner seeking to prove title. (It was reported in the **1.10**

Figure 1.1 A conveyancing timeline

Pre-exchange					Exchange & pre-completion				Completion & post-completion		
Stage 1	Stage 2	Stage 3	Stage 4	Stage 5	Stage 6	Stage 7	Stage 8	Stage 9	Stage 10	Stage 11	Stage 12
Taking instructions & advising client	Draft contract	Pre-contract searches, enquiries & planning	Title	Mortgage (applies throughout process)	Exchange of contracts	Purchase deed	Pre-completion searches and requisitions	Financial statements	Completion	SDLT & registration	Delays and remedies

Note: Refer to the interactive timelines on the Online Resource Centre for details of the issues to be considered at each stage of the process.

Observer (10 January 1999), that deeds to the homes of 60,000 customers of the then Bradford & Bingley Building Society, nearly 15 per cent of their borrowers, were burnt to ashes by a fire in a storage depot. It is just this kind of incident which highlights a major weakness in the system of unregistered conveyancing.) Furthermore, the mere existence of deeds does not guarantee any title, though buyers may take comfort from the existence of deeds stretching back over time along with the actual occupation of the property by the seller. However, these mounting difficulties added momentum to the nineteenth-century calls for reform.

Many of the different elements of the traditional system are considered at several relevant points throughout the book. In particular, readers are referred to Chapter 3 concerning the draft contract, and Chapter 5 regarding deducing and investigating title. **1.11**

B CONVEYANCING OF REGISTERED LAND

CONVEYANCING OF REGISTERED LAND

The preamble to the Land Registry Act 1862 states that 'it is expedient to give certainty to the title to real estates and to facilitate the proof thereof and also to render the dealing with land more simple and economical'. It remains true, 146 years later, that the aims of the system for the conveyancing of registered land should be reliability and simplicity, and that the process be economic. These are the objectives that underpin the drive for the complete registration of land throughout England and Wales. However, above all else the major difference between the traditional system and registered land is that registered land is accompanied by a State guarantee of title that is guaranteed by and through Land Registry. **1.12**

As was noted in 1.08, the Land Registration Act 2002 received the Royal Assent on 26 February 2002. This came into force on 13 October 2003, and introduced wholesale changes to the conveyancing of registered land. See 1.14 and 1.184 for further details. The Land Register comprises just under 24 million titles, and more than 12.9 million hectares, or almost 85 per cent of the land in England and Wales, is now registered (see the Land Registry Annual Report and Accounts 2013/14). **1.13**

First registration

The Land Registration Act 2002 (s 4) contains an extended list of activities which will induce first registration. These are listed at 1.15. Part 2 of the Land Registration Act 2002 ('the 2002 Act') covers first registration of title. Part 2, Chapter 1 is entitled 'First Registration' and deals with voluntary registration (s 3) as well as compulsory registration (ss 4–8). One of the main aims of the 2002 Act is to make the register of title as comprehensive as possible. The 2002 Act builds on the foundations laid by the Land Registration Act 1997 by extending the triggers for compulsory registration of unregistered land. **1.14**

Compulsory first registration

Section 4(1) of the 2002 Act lists the events that trigger compulsory registration. These largely replicate the old law as laid down in the Land Registration Act 1925, and the Land Registration Act 1997. In line with the old law, mines and minerals held apart from the surface are excluded from registration (s 4(9)). **1.15**

- 1.16** The events which induce compulsory first registration under the 2002 Act are as follows. (All of these requirements came into force on 13 October 2003.)

Transfers of a qualifying estate

- 1.17** A 'qualifying estate' is either a legal freehold estate in land, or an existing legal lease that has more than seven years to run. Registration is compulsory if the transfer is made:
- (a) for valuable or other consideration;
 - (b) by way of gift;
 - (c) in pursuance of an order of any court; or
 - (d) by means of an assent (including a vesting assent).
- 1.18** For the avoidance of doubt, s 4 also makes it clear that the following events will *not* induce compulsory registration:

- (a) transfer by operation of law, e.g. where a deceased's property vests in his personal representatives (s 4(3));
- (b) assignment of a mortgage term, i.e. where the mortgage is by demise or sub-demise (these are very rare and the 2002 Act prohibits any more being created that affect registered property) (s 4(4)(a));
- (c) lease merger, i.e. assignment or surrender of a lease to the immediate reversion where the term is to merge in that reversion (s 4(4)(b)).

- 1.19** Practitioners should also be aware that leases for the grant of a mortgage term, i.e. a mortgage by demise or sub-demise, are not compulsorily registrable (s 4(5)). Accordingly, only charges by way of legal mortgage can be used for mortgages of registered land. In effect, mortgages by demise for registered land only are abolished.

Reversionary leases

- 1.20** A new category of lease that is subject to compulsory registration is the reversionary lease. This is a right to possession under a lease that takes effect at a future date. A reversionary lease of any term granted to take effect in possession more than three months after the date of grant is required to be registered (s 4(1)(d)). Under the old law, a buyer of land affected by such a reversionary lease might not have discovered it because the tenant was not in possession. However, the buyer might still have been bound by it as an overriding interest under the Land Registration Act 1925, s 70(1)(k). The change in the law overcomes this conveyancing problem. It should be noted that reversionary leases taking effect within three months are not required to be registered.

Grant of a 'right to buy' lease under Part V of the Housing Act 1985

- 1.21** Section 4(1)(e) replicates the old law found in the Housing Act 1985, s 154. The grant of a 'right to buy' lease under the Housing Act 1985 is subject to compulsory registration, regardless of whether the lease would otherwise be registrable because of its length.

Protected first legal mortgages of a qualifying estate

- 1.22** The Land Registration Act 1997 introduced first mortgages of unregistered land as an additional trigger for compulsory registration. This is confirmed in s 4(1)(g) of the 2002 Act, which refers to 'the creation of a protected first legal mortgage of a qualifying estate'.

Crown land

- 1.23** Special provision is made for compulsory registration after the Crown has made a grant of a freehold estate out of demesne land (s 80). Demesne land is land which the Crown holds as feudal lord paramount and in which it has no estate.

Transfers to which s 171A of the Housing Act 1985 applies

A transfer falls within s 171A where a person ceases to be a secure tenant of a dwelling house because his landlord disposes of an interest in that house to a private sector landlord. In such circumstances, the tenant's right to buy under Part 5 of the Housing Act 1985 is preserved. Such a transfer is subject to compulsory registration even if it would not otherwise be (see s 4(1)(b)). **1.24**

Leases granted for a term of more than seven years from the date of grant

The reduction in the length of leases subject to compulsory registration is an important change in the law, especially as it will bring many business leases onto the register and thus enable third parties to inspect the lease and its title, and allow parties to discover rental values. Section 4(1)(c) provides that registration is compulsory if a lease is granted out of a qualifying estate of an estate in land: **1.25**

- (a) for a term of more than seven years from the date of grant; and
- (b) for valuable or other consideration, by way of gift, or in pursuance of an order of any court.

Two additional first registration triggers

Two additional triggers for first registration came into effect on 6 April 2009 as a result of the Land Registration Act 2002 (Amendment Order) 2008. They are: **1.26**

1. The appointment of a new trustee of unregistered land held in trust where the land vests in the new trustee by deed. This will include a memorandum executed as a deed to which s 83 of the Charities Act 1993 applies, or by a vesting order under s 44 of the Trustee Act 1925.
2. The partitioning of unregistered land held in trust among the beneficiaries of that trust.

The consequence of this Order is that if unregistered land is owned by a trust (be it charitable or otherwise) and then it vests in a new trustee by virtue of a deed in the manner set out above, the trustees must apply for first registration of that land.

Accordingly, and in summary form, first registration will normally arise where an unregistered title has been: **1.27**

- purchased (either as a freehold or as a lease with more than seven years left to run);
- received in exchange for other land or property;
- newly leased for a term of more than seven years;
- passed over in the form of a gift;
- transferred to your client to hold as trustee on the creation of a trust;
- transferred to your client under a court order;
- received by assent from executors or administrators;
- mortgaged.

Compulsory registration does not apply to most leases granted for seven years or less. The exceptions are:

- when the lease is granted to take effect in possession more than three months after the date of the grant, unless the landlords themselves only own a lease that has less than seven years to run;
- when the lease has been granted under the right to buy provisions of Part V of the Housing Act 1985;
- when the lease is subject to a preserved right to buy under the provisions of s 171A of the Housing Act 1985.

Reforms made by the 2002 Act

- 1.28** Although the changes made by the 2002 Act relating to first registration are not as extensive as those made by the 1997 Act, five additional reforms are worth highlighting.

Leases

- 1.29** The length of leases which are subject to compulsory registration is reduced from more than 21 years to more than seven years (s 4(1)(c)). Similarly, the assignment of an unregistered lease which has more than seven years unexpired at the time of the assignment will have to be registered (s 4(1)(a) and (2)(b)). Most business leases are granted for less than 21 years and therefore many will now become compulsorily registrable. The intention in the future is to reduce the seven-year period to three.

Profits à prendre in gross and franchises

- 1.30** *Profits à prendre* in gross (e.g. fishing or shooting rights) and franchises (e.g. the right to hold a market) may now be voluntarily registered with their own titles. They must, however, be held for an interest equivalent to a freehold or under a lease of which there are still seven years to run (s 3). Fishing rights, in particular, can be very valuable and so these may now be traded in registered titles. Previously these rights could only be noted on the register.

Crown land

- 1.31** The Crown may for the first time register land held in demesne, i.e. held in its capacity as ultimate feudal overlord. The 2002 Act enables the Crown to grant itself a freehold estate so that it can register it (s 79).

Submarine land

- 1.32** The territorial extent of land which can be registered is increased so that some submarine land will become registrable. As before, the 2002 Act applies to land covered by internal waters of the UK that are within England and Wales (s 127(a)). Additionally, however, s 127(b) includes land covered by internal waters *adjacent* to England and Wales which are specified for the purposes by order made by the Lord Chancellor.

'Events' not 'dispositions'

- 1.33** Whereas the Land Registration Act 1925 listed 'dispositions' which triggered compulsory first registration, the 2002 Act refers to 'events'. This is wider in its ambit and will permit greater flexibility in the future (see s 5 which permits new events to be added afterwards). Recently Land Registry has introduced two new triggers for first registration and these are considered at 1.26.

Time limit for first registration

- 1.34** Since 1 December 1990, all of England and Wales is an area of compulsory registration, so that if any of the registrable events mentioned above takes place, the title concerned must be submitted for compulsory first registration within the statutory two-month period (s 6(4) of the 2002 Act). It is possible to apply for voluntary first registration; and there is now an incentive for voluntary registration in that the Land Registration Fees Order 1998, which came into force on 1 April 1999, brought in a 25 per cent reduction for fees payable on voluntary first registration. This has continued into the current Fee Order, the Land Registration Fee Order 2013 (SI 2013/3174).
- 1.35** Section 6(5) also gives to the Chief Land Registrar power to extend the two-month period for first registration. This will assist late applicants who will, however, be required to furnish

the Registrar with an explanation of the reasons for the delayed application. If a late application is accepted (and such applications normally are), title vests in the new proprietor, but only from the date of registration. If a late application has to be made, Land Registry will require up-to-date search results along with those made at the time of completion.

The effect of non-registration

Unless the Registrar extends the two-month period, failure to register within the statutory time limit will result in the transfer becoming void. In this event, the transferor will hold the legal estate on a bare trust for the transferee (s 7(2)(a)). Similarly, any grant of a lease or creation of a protected mortgage will become void and take effect instead as a contract for valuable consideration to grant or create the lease or mortgage concerned (s 7(2)(b)). If it becomes necessary to repeat the transfer, lease, or mortgage (because the previous one was void), the transferee, grantee, or mortgagor is liable to the transferor, grantor, or mortgagee for the proper costs involved (s 8(a)). They must also indemnify them for any other liability reasonably incurred as a result of the failure to register (s 8(b)). Of course the seller will also hold the title as a bare trustee in trust for the buyer, pending completion of the application for first registration (see *Pinekerry Ltd v Kenneth Needs (Contractors) Ltd* (1992) 64 P & CR 245). The deed is not void for all purposes. Enforcement of covenants contained within it will be possible even though registration has not taken place or been applied for. Furthermore, failure to submit an application on behalf of a client is a clear-cut case of professional negligence, and if your client suffers loss, you will have to look to your professional indemnity insurance policy. Finally, there remains the danger that later registration could mean that the subject property is eventually registered subject to interests that might not have affected the property had the registration taken place in the correct period: see *Sainsbury's Supermarkets Limited v Olympia Homes Limited* [2005] EWHC 1235 (Ch). (In this dispute Mr Justice Mann had to consider how to square the interests of a party that had purchased land in good faith and another party who had been granted an option by a former owner who had failed to register their property in time.)

Classes of registered title

On receipt of an application for first registration the Land Registrar will investigate the title, and in the light of that investigation will allocate to the property one of the following classes of title: **1.37**

- (a) freehold absolute title (see 1.39);
- (b) freehold possessory title (see 1.42);
- (c) freehold qualified title (see 1.43);
- (d) leasehold absolute title (see 1.44);
- (e) leasehold possessory title (see 1.47);
- (f) leasehold qualified title (see 1.48);
- (g) good leasehold title (see 1.49).

The 2002 Act maintains all the above classes, and does not change the substance of what amounts to these different classes of title. **1.38**

Freehold absolute title

An absolute title is the best class of title available, be it freehold or leasehold. So far as the freehold estate is concerned, it is the registered equivalent of the classic fee simple absolute in possession. Almost all freehold titles are registered with absolute title. Section 9(2) of the 2002 Act provides that a person may be registered with absolute freehold title if the Registrar considers that the title is such as a willing buyer could properly be advised by a **1.39**

competent professional adviser to accept. Even if the title is defective, the Registrar may still grant absolute title if he considers that the defect will not cause the holding under the title to be disturbed (s 9(3)).

- 1.40** The effect of registration with an absolute title is somewhat different from the earlier registered land law. As far as benefits are concerned, the legal estate is vested in the proprietor together with all the interests subsisting for the benefit of the estate, e.g. easements (s 11(3)). As far as burdens are concerned, the proprietor takes subject only to the interests set out in s 11(4) affecting the estate at the time of first registration.

These are:

- (a) interests which are the subject of an entry in the register in relation to the estate (these can be registered charges, notices, and restrictions, and pre-13 October 2003 cautions and inhibitions);
 - (b) unregistered interests which fall within any of the paragraphs of Schedule 1 (i.e. interests which override first registration);
 - (c) interests acquired under the Limitation Act 1980 of which the proprietor has notice.
- 1.41** In determining whether the proprietor has ‘notice’ under s 11(4)(c), the word will have its usual meaning of actual, constructive, or imputed notice. This will cover matters which ought to have been discoverable from reasonable inspections and enquiries.

Freehold possessory title

- 1.42** In practice, a possessory title will be given either where the applicant’s title is based on adverse possession, or where title cannot be proven because the title deeds have been lost or destroyed. The 2002 Act provides that possessory title will be appropriate where the applicant is either in actual possession, or in receipt of rents and profits, and there is no other class of title with which he may be registered (s 9(5)). Registration with a possessory freehold title has the same effect as registration with an absolute title, except that it does not affect the enforcement of any estate, right, or interest adverse to, or in derogation of, the proprietor’s title subsisting at the time of registration or then capable of arising (s 11(7)).

Freehold qualified title

- 1.43** A qualified title is very rare—indeed, the authors cannot recall having seen more than one such title during all their many years of conveyancing practice. It will be given where the Registrar considers that the applicant’s title can only be established for a limited period, or subject to certain reservations that are such that the title is not a good holding title (s 9(4)). An example of this might be where the transfer to the applicant was made in breach of trust. Registration with a qualified freehold title has the same effect as registration with an absolute title except that it does not affect the enforcement of any estate, right, or interest which appears from the register to be excepted from the effect of registration (s 11(6)).

Leasehold absolute title

- 1.44** In practice, an absolute leasehold title will be given only if the superior title is either registered with absolute title or, if unregistered, has been deduced to the Registrar’s satisfaction. The 2002 Act provides that an absolute leasehold title will be given if the Registrar considers that the title is one that a willing buyer could properly be advised by a competent professional adviser to accept, and the Registrar also approves the lessor’s title to grant the

lease (s 10(2)). As with absolute freehold, even if the leasehold title is defective, the Registrar may still grant absolute title if he considers that the defect will not cause the holding under the title to be disturbed (s 10(4)).

Registration with an absolute leasehold title has the same effect as registration with an absolute freehold title, except that the estate is vested in the leaseholder subject to implied and express covenants, obligations, and liabilities incident to the estate (s 12(3), (4)). These will be apparent from an inspection of the lease (e.g. lessee's covenants). Generally, a lease that is granted or assigned with seven years or less to run is not registrable, and will be an unregistered interest which overrides registered dispositions (Schedule 1, para 1 and Schedule 3, para 1). **1.45**

When the Registrar issues an absolute leasehold title the State is thereby guaranteeing not just that there is a legal leasehold, but also that the lease has been validly granted out of the reversionary title. Clearly the Registrar can do this only if the reversionary title has been disclosed to the Registry to confirm that the lessor has the power to grant the lease. Where the superior title, usually the freehold, is already registered with an absolute class of title, this is sufficient to confer the same class of title on the leasehold. The position where the superior title is not seen is dealt with at 1.49 in relation to good leasehold titles. **1.46**

Leasehold possessory title

In practice, a possessory title will be given either where the applicant's title is based on adverse possession, or where title cannot be proven because the title deeds have been lost or destroyed. The 2002 Act provides that possessory title will be appropriate where the applicant is either in actual possession, or in receipt of rents and profits and there is no other class of title with which he may be registered (s 10(6)). Registration with possessory leasehold title has the same effect as registration with absolute title, but subject to the exceptions and qualifications explained at 1.42 in relation to possessory freehold titles (s 12(8)). **1.47**

Leasehold qualified title

Like a qualified freehold title, a qualified leasehold title is very rare. It will be given where the Registrar considers that the applicant's title (or the lessor's title) can be established only for a limited period, or subject to certain reservations that are such that the title is not a good holding title (s 10(5)). An example of this might be where the grant to the applicant was made in breach of trust. Registration with qualified leasehold title has the same effect as registration with absolute title, but subject to the exceptions and qualifications explained at 1.43 in relation to qualified freehold titles (s 12(7)). **1.48**

Good leasehold title

A proprietor of this class of title is in the same position as a proprietor of an absolute leasehold title, save as to one major factor. The registration is such that there is no guarantee that the lease has been validly granted. The Registry will issue this class of title when the superior title, the reversionary title, has not been seen and approved by the Registrar. If the lessor was not entitled to grant the lease in the first place then clearly the Registry would not have all the details to enable it to guarantee the validity of the lease. Consequently, a good leasehold title will be issued in place of the more desirable absolute leasehold title. Some mortgagees will not accept a good leasehold title as a security, and the lender's requirements should always be considered and dealt with if a good leasehold title is offered for sale to a person who requires a loan for the purchase. The problem for the lender is, of **1.49**

course, that if the lease is held to be invalid, the lender will lose its security. (See Chapter 7 and especially 7.88 in relation to the requirements of a lender.)

- 1.50** This class of title is therefore appropriate where the superior title is neither registered, nor deduced, to the Registrar's satisfaction. The 2002 Act provides that a good leasehold title may be given if the Registrar considers that the title is such as a willing buyer could properly be advised by a competent professional adviser to accept (s 10(3)). A good leasehold title may be given even if the title is open to objection, provided the Registrar considers that the defect will not cause the holding under it to be challenged (s 10(4)). Registration with good leasehold title has the same effect as registration with absolute title, except that it does not affect the enforcement of any estate, right, or interest affecting, or in derogation of, the title of the lessor to grant the lease (s 12(6)).

Title upgrade (conversion)

- 1.51** The different grades of registered title found under the old law are preserved in the 2002 Act. Section 11 of the Land Registration Act 1986 amended and simplified the original conversion of title provisions of s 77 of the Land Registration Act 1925. Section 62 of the 2002 Act replicates the previous law with some amendments. First, there is new vocabulary. The 2002 Act refers to 'quality of title', and titles are not converted to a different grade, they are subject to an 'upgrade'. It effectively empowers the Registrar to upgrade a class of title if certain conditions are met, and these are now considered:

- (a) A freehold possessory title may be upgraded to an absolute title in two situations:
 - (i) if the Registrar is satisfied as to the title to the estate (s 62(1)). This might occur where a person was initially registered with possessory title because his or her title deeds were missing. If, subsequently, those deeds come to light, the Registrar can upgrade the title to absolute if he is otherwise satisfied with them;
 - (ii) if the title has been registered with possessory title for 12 years and the proprietor is still in possession, the Registrar can upgrade the title to absolute (s 2(4)).
 - (b) A qualified title can be upgraded to absolute if the Registrar is satisfied as to the title to the estate (s 62(1)), e.g. where the cause of the Registrar's original objections is subsequently no longer shown to threaten the holding under that title.
 - (c) There is provision for upgrading qualified leasehold titles as well (s 62(3)).
 - (d) A good leasehold title can be upgraded to an absolute title if the Registrar is satisfied as to the superior title (s 62(2)), e.g. where the superior title is itself registered for the first time.
 - (e) A possessory leasehold title can be upgraded to good leasehold if the Registrar is satisfied as to the title to the estate (s 62(3)(a)), or if the title has been registered as possessory for 12 years and the proprietor is in possession (s 62(5)).
 - (f) A possessory leasehold title can be upgraded to absolute if the Registrar is satisfied both as to the title to the estate and as to the superior title (s 62(3)(b)).
- 1.52** Section 62(7) of the 2002 Act lists the following persons who may apply to upgrade a title:
- (a) the proprietor of the estate to which the application relates;
 - (b) a person entitled to be registered as the proprietor of that estate (e.g. an executor in respect of the testator's land prior to sale);
 - (c) the proprietor of a registered charge affecting that estate (i.e. prior to exercising its power of sale); and
 - (d) a person interested in a registered estate which derives from that estate (e.g. a sub-tenant).
- 1.53** The effect of upgrading a title is set out in s 63 of the 2002 Act. Where a freehold or leasehold title is upgraded to absolute, the proprietor ceases to hold the estate subject to

any estate, right, or interest the enforceability of which is preserved by virtue of the previous entry about the class of title (s 63(1)). This principle also applies where leasehold is upgraded from possessory or qualified title to good leasehold. However, the upgrade does not affect or prejudice the enforcement of any estate, right, or interest affecting, or in derogation of, the lessor's title to grant the lease (s 63(2)).

The title certificate and the three registers

The title certificate is an assembly of three separate registers, but each title will have a unique title number. This is the reference number that practitioners must always quote to Land Registry in all dealings with the title. The three registers are the property, proprietorship, and charges registers. The title is completed by the addition of a site plan called the title plan. An example of a complete register with a title plan is set out in Appendix 15 and is shown with the kind permission of Land Registry. **1.54**

Register details

The register comprises:

1.55

- (a) The property register provides a description of the property including a statement of estate, i.e. whether it is a freehold or leasehold property. If leasehold, the statement of estate will also include the date of the registered lease, its term, parties, and start date. Rights of way and all other easements for the benefit of the property can also be detailed in this register. For all properties reference will also be made in this first register to the title plan of the registered property. The title plan shows the location of the property together with adjoining property. All registered titles will have a title plan.
- (b) The proprietorship register includes the class of title followed by the name and address of the registered proprietor. Restrictions and notices will appear within this register (see 1.91–1.97).
- (c) The charges register lists the registered charges affecting the property and these are listed in order of priority. The charges register also includes adverse interests, such as restrictive covenants, to which the property may be subject. Furthermore, leases that do not comprise overriding interests will also be noted within the charges register of the superior title.

Land registration and deeds

In the Land Registration Act 1925 registered land deeds were called land or charge certificates. However, the 2002 Act abolished charge and land certificates. The Registry will issue a Title Information Document only (now usually official copies of the registers) after registering a dealing. It may not be proof of title if it is not expressed to be an official copy but merely serves to confirm completion of that application for registration. Title can only be proved by official copies of the registers issued by Land Registry. **1.56**

Overriding interests

Overriding interests are one of a number of interests in land which bind a proprietor of registered land, but they differ in a substantial way from the other categories of interests in that they bind the owner of the legal estate regardless of whether they are entered on the register. It is for this reason that they have caused uncertainty. **1.57**

The 2002 Act and interests which override

This Act has reduced the circumstances in which overriding interests can exist. The policy behind the 2002 Act is that interests should have overriding status only where protection against buyers is needed, but where it is neither reasonable to expect nor sensible to require **1.58**

any entry on the register. The 2002 Act also contains provisions which are designed to ensure that when overriding interests come to light, they are protected on the register.

- 1.59** The 2002 Act adopts four ways of dealing with the problems associated with overriding interests. In brief they are:
- (a) the abolition of certain rights which can exist as overriding interests—these include the rights acquired by squatters under adverse possession;
 - (b) the phasing out after ten years of several existing categories of overriding interest, including the ancient rights of franchises, manorial rights, Crown rents, rights concerning embankments and sea walls, and corn rents, and the liability to repair the chancel of a church;
 - (c) the narrowing and clarification of the scope of some previous categories which remain as overriding interests—the most important of these are easements and profits under the old s 70(1)(a) of the Land Registration Act 1925, and the rights of persons in actual occupation or in receipt of rents and profits under the old s 70(1)(g) of the 1925 Act;
 - (d) a requirement that when overriding interests come to light they are, as far as possible, entered on the register.
- 1.60** In addition, a new requirement exists in which a person applying for registration must disclose any overriding interests known to him or her.
- 1.61** The 2002 Act provides for the continued existence of 14 categories of overriding interest and creates one new category, the Public Private Partnership (PPP) Lease that relates to London Underground transport arrangements. Five of the 14 categories were time limited and disappeared after ten years, i.e. after 13 October 2013. For three categories (legal easements and profits, the rights of persons in actual occupation, and short leases, i.e. for seven years or less) the substantive requirements for what amounts to an overriding interest will be different depending on whether it is a first registration or a subsequent registrable disposition for valuable consideration. The 2002 Act recognizes this distinction by listing those interests which override first registration in Schedule 1, and those interests which override registered dispositions in Schedule 3.

Unregistered interests which override first registration

- 1.62** These are set out in Schedule 1 to the 2002 Act. When a person becomes the first registered proprietor of land on first registration, he or she takes the estate subject to certain interests, including ‘interests the burden of which is entered on the register’ (s 11(4)(a)) and ‘interests the burden of which is not so entered but which fall within any of the paragraphs of Schedule 1’ (i.e. overriding interests) (s 11(4)(b)). The 14 interests in Schedule 1 are listed below. There is also a fifteenth interest provided for in s 90. This is the PPP Lease that takes effect as if it were included in Schedule 1.

Short leases

- 1.63** Subject to limited exceptions, most leasehold estates granted for a term not exceeding seven years from the date of the grant override first registration (Schedule 1, para 1). This replicates the position under s 70(1)(k) of the Land Registration Act 1925, save for the reduction in the duration of short leases from 21 years to seven. In future it is likely that the Lord Chancellor will reduce the period still further to three years. A notice of the short lease should be entered on the register of the title out of which it has been granted.

Interests of persons in actual occupation

- 1.64** This section of the book deals with the overriding status of occupiers’ rights on *first registration*. In relation to unregistered interests which override first registration, Schedule 1, para 2 defines the interests of persons in actual occupation as: ‘An interest belonging to a

person in actual occupation, so far as relating to land of which he is in actual occupation, except for an interest under a settlement under the Settled Land Act 1925.’

Unlike the old law, it should be noted that the 2002 Act does not give overriding status to persons who are merely in receipt of rents and profits, i.e. not in actual occupation. This is a change from the old s 70(1)(g). It is often very difficult for a buyer to discover the existence of an intermediate landlord from an inspection of the property. **1.65**

Another point to note concerning the new law is the wording in Schedule 1, para 2 ‘so far as relating to land of which he is in actual occupation’. Again this is new. It means that where someone is in actual occupation of part of the land but has rights over the whole of the land purchased, his rights protected by actual occupation are confined to the part that he occupies. **1.66**

A further change in the law, in relation to an occupier’s rights on first registration, is the absence of the qualification in the old law contained in s 70(1)(g) which says, ‘save where enquiry is made of such person and the rights are not disclosed’. These words are excluded because they can have no relevance to overriding interests on first registration. Whether a purchaser has made enquiries of a person in actual occupation is irrelevant on first registration, because the question of whether or not the first registered proprietor is bound by the rights of an occupier will have been decided at an earlier stage under the unregistered conveyancing rules. That is to say, on completion, when the legal title became vested in the purchaser. **1.67**

Legal easements and profits à prendre

Here there is an important change. Under the previous law, *equitable* easements that were openly exercised and enjoyed by the dominant owner as appurtenant to his land could take effect, on first registration, as overriding interests (see Land Registration Act 1925, s 70(1)(a); *Celsteel Ltd v Alton House Holdings Ltd* [1985] 1 WLR 204, 219–21; *Thatcher v Douglas* (1996) 146 NLJ 282). Under the new law, only *legal* easements and *profits à prendre* can do so (Schedule 1, para 3). Thus, in preventing unregistered equitable easements from acquiring overriding status, the decision in *Celsteel* is reversed. This is in line with the general principle underlying the 2002 Act that rights which are expressly created over land should be completed by registration. It also reflects the established view in unregistered land that equitable easements should bind a purchaser only if they are registered as Class D(iii) land charges under the Land Charges Act 1972. **1.68**

Customary and public rights

Both customary and public rights remain as overriding interests under the 2002 Act (Schedule 1, paras 4 and 5; previously Land Registration Act 1925, s 70(1)(a)). Public rights are those which are exercisable by anyone, whether they own land or not, by virtue of the general law. Customary rights, on the other hand, are those which were enjoyed by inhabitants of a particular locality, many of which still survive. Examples of customary rights being upheld include holding a fair or wake on wasteland in *Wraysbury (Wyld v Silver* [1963] Ch 243) and grazing beasts on common land in *Huntingdon (Peggs v Lamb* [1994] Ch 172). **1.69**

Local land charges

There is no change for this category of overriding interest. Local land charges are governed by the Local Land Charges Act 1975 and are being computerized together with other local searches as part of the National Land Information Service (NLIS). **1.70**

Mines and minerals

There is no change to these categories of overriding interest. The overriding status of certain mining and mineral rights previously found in s 70(1)(l) and (m) of the Land Registration Act 1925 is preserved in Schedule 1, paras 7–9 to the 2002 Act. **1.71**

Miscellaneous interests

- 1.72** Lastly, five categories of overriding interest are grouped together under a miscellaneous heading (Schedule 1, paras 10–14). Often onerous, they are rare, of ancient origin, and sometimes very difficult to discover. They all had overriding status under the Land Registration Act 1925 and are:
- (a) a franchise;
 - (b) a manorial right;
 - (c) a right to rent which was reserved to the Crown on the granting of any freehold estate (whether or not the right is still vested in the Crown) ('Crown rents');
 - (d) a non-statutory right in respect of an embankment, or sea or river wall; and
 - (e) a right to payment in lieu of tithe ('corn rents').

Unregistered interests which override registered dispositions

- 1.73** These are set out in Schedule 3 to the 2002 Act and are in effect overriding interests which affect titles which are already registered. Of these 15 interests, 12 are identical to those that override first registration and have been considered at 1.62. The three categories of overriding interest that differ from those that apply on first registration are short leases, interests of persons in actual occupation, and easements and profits.

Short leases

- 1.74** Most leasehold estates granted for a term not exceeding seven years from the date of the grant override first registration (Schedule 3, para 1). This replicates the position under s 70(1)(k) of the Land Registration Act 1925, save for the reduction in the duration of short leases from 21 to seven years. In future it is likely that the Lord Chancellor will reduce the period still further to three years. A notice of the short lease should be entered on the register of the title out of which it has been granted. For leases of this type that were in existence at 13 October 2003, Schedule 12, para 12 provides, in effect, that leases that were previously granted for a term of more than seven but not more than 21 years would remain as overriding interests after that date. However, any assignment of such leases will trigger compulsory registration if the term has more than seven years to run at the time of the assignment (s 4(1)(a), (2)(b)).

Interests of persons in actual occupation

- 1.75** Schedule 3, para 2 provides that an interest belonging at the time of a registered disposition to a person in actual occupation is an overriding interest, so far as it relates to land of which he or she is in actual occupation. So actual occupation protects a person's occupation only so far as it relates to land of which he or she is in actual occupation. Any rights that person has over *other* registered land must be protected by an appropriate entry in the register for that title. This reverses the Court of Appeal decision in *Ferrishurst Ltd v Wallcite Ltd* [1999] Ch 355, in which an overriding interest was held to extend to the whole of a registered title, not merely the part in occupation.
- 1.76** An exception to this rule is an interest of a person of whom enquiry was made before the disposition and who failed to disclose the right when he or she could reasonably have been expected to do so. This is very similar to the wording of s 70(1)(g) of the Land Registration Act 1925 ('save where enquiry is made of such person and the rights are not disclosed'). The exception operates as a form of estoppel.
- 1.77** Another exception will be the rights of persons whose occupation is not apparent. An interest will not be protected as an overriding interest if:

- (a) it belongs to a person whose occupation would not have been obvious on a reasonably careful inspection of the land at the time of the disposition; and
- (b) the person to whom the disposition is made does not have actual knowledge at that time.

Practitioners should note that it is the occupier's occupation that must be apparent, not the occupier's interest. The test is not one of constructive notice of the occupation. It is the less exacting one applicable to an intending purchaser, namely, that it should be obvious on a reasonably careful inspection of the land; and even if the person's occupation is not apparent, the exception does not apply where a purchaser has actual knowledge of the occupation. **1.78**

If the occupant is in occupation at the time of completion, the buyer will take subject to the rights of that occupant. However, *City of London Building Society v Flegg* [1988] AC 54 makes it clear that the rights of persons in actual occupation can be overreached. If there are two trustees of the legal estate and if the consideration is properly payable to them, the interest of a beneficiary under a trust is overreached on sale (see 5.91 for a more detailed discussion of overreaching). **1.79**

Practitioners should always be on their guard against the danger of an undisclosed occupier. When acting for a buyer, enquiries should always be made of the seller about who is in actual occupation and what, if any, their interest might be in the property. In particular, if only one spouse is selling, enquiries should be made about the whereabouts of the other spouse and the existence of any family disputes. The property should be physically inspected and enquiries made about occupiers. This is really a matter of common sense. If the property is meant to be empty but there are signs of occupation, then further enquiries must be made of the seller. Similarly, if the seller is meant to be single but again there are signs of another person living at the property, further enquiries must be directed to the seller. **1.80**

Legal easements and profits à prendre

A purchaser of registered land may find it very difficult to discover easements and profits which are not otherwise noted on the register. This is compounded by the fact that non-user of an easement or profit, even for many years, will fail to raise any presumption of abandonment (*Benn v Hardinge* (1992) 66 P & CR 246). The 2002 Act effectively provides that no easements or profits expressly granted or reserved out of registered land after the 2002 Act comes into force can take effect as overriding interests (although there are some transitional arrangements—see 1.86). This is because such rights will not take effect at law until they are registered, i.e. they are registrable dispositions (s 27(1)). This is in line with a principal aim of the 2002 Act, which is to ensure that it is possible to investigate title to land almost entirely online with the minimum of additional enquiries. In addition, no equitable easements or profits, however created, are capable of overriding a registered disposition (reversing the decision in *Celsteel Ltd v Alton House Holdings Ltd* [1985] 1 WLR 204). **1.81**

It follows that only a *legal* easement or profit can be overriding in relation to a registered disposition (Schedule 3, para 3(1)). Moreover, the only legal easements and profits that will be capable of being overriding interests are: **1.82**

- (a) those already in existence when the 2002 Act came into force (that have not been registered);
- (b) those arising by prescription (which is not reformed by the 2002 Act); and
- (c) those arising by implied grant or reservation, e.g. under s 62 of the Law of Property Act 1925.

Moreover, to circumvent the non-abandonment presumption, under Schedule 3, para 3(1), certain categories of legal easement and profit are excluded from overriding status altogether. These cannot be overriding interests unless they either have been registered **1.83**

under the Commons Registration Act 1965, or have been exercised within one year prior to the registered disposition in question. They are:

- (a) those that are not within the actual knowledge of the person to whom the disposition was made; and
- (b) those that would not have been obvious on a reasonably careful inspection of the land over which the easement or profit is exercisable.

1.84 Importantly, it therefore follows that a buyer of registered land for valuable consideration will be bound by an easement or profit that is an overriding interest only if:

- (a) it is registered under the Commons Registration Act 1965/Commons Act 2006; or
- (b) the buyer actually knows about it; or
- (c) it is patent, i.e. obvious, from a reasonable inspection of the land over which the easement or profit is exercisable, so that no seller would be obliged to disclose it; or
- (d) it has been exercised within one year before the date of purchase.

Overriding interests and pre-contract enquiries

1.85 As a result of the above, buyers' pre-contract enquiries should request sellers to disclose (a) any unregistered easements and profits affecting the land of which they are aware, and (b) any easements or profits that have been exercised in the previous 12 months. This makes good practical sense for all conveyancers. There will be those with the benefit of unregistered easements and profits that have not been exercised for more than a year. These persons should immediately protect their rights either by lodging a caution against first registration if the servient land is unregistered, or by registering them if the servient land is registered. These are important practical steps of which conveyancers should be aware.

1.86 The 2002 Act contains a transitional provision to allow existing easements or profits which were overriding interests at the time the 2002 Act came into force but which would not qualify under the new provisions to retain their overriding status (Schedule 12, para 9). This is something that buyers should be made aware of, and appropriate enquiry made of the seller at the pre-contract stage.

1.87 There is also a further temporary arrangement limited in time for the protection of easements. A further transitional provision effectively stated that for three years after the 2002 Act came into force any legal easement or profit that was not registered would be an overriding interest (Schedule 12, para 10). This meant that until 13 October 2006 the conditions referred to above, e.g. requiring an easement to be either within the knowledge of the buyer, or obvious on a reasonably careful inspection, or exercised within the previous year, did not apply. However, the transitional period having expired, these provisions now apply without regard to these limited transitional arrangements. This three-year period allowed time for persons with the benefit of easements to register them.

1.88 As has been stated previously, some overriding interests lost their overriding status at midnight on 12 October 2013. The interests concerned were:

- a franchise;
- a manorial right;
- a right to rent that was reserved to the Crown on the granting of any freehold estate (whether or not the right is still vested in the Crown);
- a non-statutory right in respect of an embankment or sea or river wall;
- a right to payment in lieu of tithe;
- a right in respect of the repair of a church chancel. (This is considered in Chapter 4 regarding pre-contract searches.)

Third-party protection: notices and restrictions, the new regime

The 2002 Act decreases from four to two the entries that can be made for the protection of third-party interests over registered land. They are notices and restrictions, with cautions and inhibitions being abolished. The Law Commission was critical of the old law because it felt it was unduly complicated. The Law Commission said: 'there are four different methods of protecting minor interests. These overlap with each other and it is often possible to protect a right by more than one means.' The 2002 Act therefore abolished inhibitions and cautions (although there are transitional provisions in Schedule 12 relating to inhibitions and cautions against dealings, e.g. existing cautions will remain on the register pursuant to paras 1 and 2(3) of Schedule 12). Notices and restrictions remain but in a different format. Notices will be used to protect incumbrances on land that are intended to bind third parties. Typical incumbrances that will be protected by notices are easements or restrictive covenants. Restrictions regulate the circumstances in which a disposition of a registered estate or charge may be the subject of an entry in the register. **1.89**

The major change in the law introduced by the 2002 Act is that either notices or restrictions can be applied for without the permission of the registered proprietor. However, the registered proprietor must be informed of the application and will be at liberty to seek the cancellation of the notice, or to object to an application for a restriction. Interests that are to be protected by an entry in the register have the mouthful of a title 'interests protected by an entry on the register'. Finally it is worth repeating that cautions registered before 13 October 2003 will remain on the register and will continue to have effect. **1.90**

Notices

Sections 32–39 of the 2002 Act cover notices that can be one of two types: agreed or unilateral. Section 33 of the 2002 Act lists interests that cannot be protected by a notice. They are called excluded interests. The most important of these are: **1.91**

- (a) a trust of land;
- (b) a settlement under the Settled Land Act 1925;
- (c) a lease for a term of three years or less from the date of the grant and which is not required to be registered;
- (d) a restrictive covenant made between a lessor and lessee so far as it relates to the property leased;
- (e) an interest which may be registered under the Commons Registration Act 1965.

The first two excluded interests are included to prevent notices being used to protect beneficial interests behind a trust. They are better suited to the protection of a restriction. **1.92**

If the application is to proceed on the basis of an agreed notice then it must fall within one or more of the three types listed in s 34(3)(a)–(c). They are where: **1.93**

- (a) the applicant is either the registered proprietor, or the person entitled to be registered as proprietor of the estate or charge that is burdened by the interest to be noted;
- (b) either the registered proprietor, or the person entitled to be registered as proprietor of the estate or charge consents to the entry of the notice; and
- (c) the Registrar is satisfied as to the validity of the applicant's claim.

If the notice is by way of a unilateral notice, then ss 35 and 36 specifically apply. This form of notice will take over where the abolished cautions left off. Because all notices, whether consensual or unilateral, will protect the priority of an interest, if valid, as against **1.94**

a subsequent registered disposition, this gives more protection to an applicant than was the case with cautions which gave no priority at all. If the Registrar enters a unilateral notice in the register, notice of the entry must be given to the proprietor of the registered title or charge to which the entry relates.

Restrictions

- 1.95** Section 40(1) of the 2002 Act provides that '[a] restriction is an entry in the register regulating the circumstances in which a disposition of a registered estate or charge may be the subject of an entry in the register'. A restriction can be used for many purposes, for example to ensure that where consent is required for a particular transaction it is obtained. The most frequently encountered example of this kind of restriction will occur when there is a management company, and there is a restriction in the register indicating that no registration of a transfer may be made without the consent of an officer of the management company. This is entered in the register to make sure that other arrangements are completed with the transferee, such as a deed of covenant to pay management charges, and to comply with repairing obligations, before the transfer of ownership can be concluded, i.e. by registration.
- 1.96** The 2002 Act makes it possible to either enter a notice or apply for a restriction without the consent of the registered proprietor. However, in such a situation, the proprietor will be notified of the application, to which the proprietor may then object. Section 77 of the 2002 Act imposes a duty of reasonableness. A person must not exercise the right to apply for the entry of a restriction without reasonable cause. The duty is owed to any person who suffers damage should there be a breach of this duty to act reasonably. There are new standard forms of restriction set out in Schedule 4 to the Land Registration Rules 2003. A non-standard restriction will only be approved if it appears reasonable and not onerous to the Registrar.
- 1.97** The Land Registration (Amendment) Rules 2005 came into force on 24 October 2005 and introduced four new standard forms of restriction, one of which (Form II) is of particular importance. This restriction was introduced to address concerns that another standard restriction, a Form A restriction, does not provide sufficient protection for a beneficiary's interest. Accordingly, a person who has a claim regarding a registered property out of a trust of land may apply for a restriction in Form II. The Land Registration (Amendment) Rules 2008 revised the wording of most standard restrictions and introduced four new additional restrictions. Land Registry revised the wording, punctuation, and layout of existing forms of restriction and standardized the use of italics and brackets in the hope that this improved clarity for applicants. Of the four new restrictions three relate to dispositions where consent or a certificate is required to that disposition (restrictions NN, OO, and PP). Land Registry has issued Practice Guide 19 to assist practitioners with notices, restrictions, and the protection of third-party interests on the register. (All the available Land Registry Practice Guides can be found at <https://www.gov.uk/government/collections/land-registry-practice-guides>.)

Cautions against first registration

- 1.98** Sections 15–22 of the 2002 Act deal with cautions against first registration. A caution against first registration is different from the former type of mainstream cautions in that it exists only in relation to unregistered titles. A party who wishes to advance a claim against an unregistered title may wish to object to that title being submitted for first registration, as registration could adversely affect that party's interest in the land in question. An example

would be someone claiming an interest under an implied trust, which cannot be protected by the registration of a land charge. Section 15 deals with the right to lodge these cautions.

Cautions against first registration have of course been with us for a long time, but some innovations are made under the 2002 Act. The principal changes are as follows: **1.99**

- (a) **Cautions register** In addition to cautions being recorded in the index map, the 2002 Act creates a new cautions register (s 19(1)).
- (b) **One cannot register a caution against one's own land** Persons are prevented from lodging a caution against first registration of their own estate. (Developers sometimes do this as a precaution against incursions from neighbouring landowners.) This should act as an inducement for voluntary registration. Therefore, a caution cannot be used as a substitute for first registration; instead, a person should register his or her estate.

The effect of a caution

This is contained in s 16 and the effect is that:

1.100

- (a) the Registrar must give notice to the cautioner of any subsequent application for first registration and the cautioner's right to object to it (s 16(1));
- (b) the Registrar must not deal with the first registration application until the end of that notice period, unless the cautioner has previously objected or advised the Registrar that he will not object (s 16(2)). If the cautioner objects, the Registrar must refer the matter to the adjudicator, unless the objection is groundless or agreement can be reached (s 73(6), (7));
- (c) the caution has no effect on the validity or priority of any interest that the cautioner may have in the legal estate to which the caution relates (s 16(3)).

The Land Registry Property Alert system

In 2014 the Land Registry launched Property Alert, a free service to allow home owners who might be concerned about fraud to be notified of significant changes to their registered title such as the third-party registrations mentioned above. (See <https://propertyalert.landregistry.gov.uk/>) Once a person has signed up to the service, they will receive email alerts when activity occurs on monitored properties. This should allow participants to take action, if necessary, to protect their property interests. **1.101**

Rectification and indemnity

If a person is registered as proprietor of a registered title, then the State guarantees that the legal estate is indeed vested in the registered proprietor. Moreover, if that is proved to be wrong, i.e. that the registers are wrong, any innocent party suffering loss will be compensated for the loss of any estate or interest in a registered title. As a consequence Land Registry is most careful in vetting titles submitted for first registration. Rectification can occur and would involve an amendment to the registers or filed plan to put right a substantive error or any claim that has been given legal recognition. The 2002 Act now covers indemnity by s 103, which states that Schedule 8 to the 2002 Act has effect and makes provision for the payment of indemnities by the Registrar. **1.102**

Whereas the Land Registration Act 1925 talks about 'rectification' of the register, the 2002 Act provides for 'alteration', both of the register of title (s 65, Schedule 4) and (this is new) of the register of cautions (ss 20–21). Under the 2002 Act, rectification is just one kind of alteration, and is defined as one which involves the correction of a mistake *and* which prejudicially affects the title of a registered proprietor (Schedule 4, para 1). As a result of the latter, a right to indemnity will naturally flow from rectification. **1.103**

- 1.104** The 2002 Act sets out eight circumstances in which a person who suffers loss is entitled to be indemnified (Schedule 8, para 1(1)). A claimant can recover any loss which flows from the particular ground, whether that loss is direct or consequential.
- 1.105** The eight circumstances for indemnity are loss by reason of:
- (1) rectification of the register;
 - (2) a mistake whose correction would involve rectification of the register;
 - (3) a mistake in an official search;
 - (4) a mistake in an official copy (formerly 'office copy');
 - (5) a mistake in a document kept by the Registrar which is not an original and is referred to in the register;
 - (6) the loss or destruction of a document lodged at the Registry for inspection or safe custody;
 - (7) a mistake in the cautions register; or
 - (8) failure by the Registrar to perform his duty under s 50. This is a new duty—when the Registrar registers a statutory charge which has priority over a prior charge on the register, he has a duty to notify the prior charge of that statutory charge.
- 1.106** No indemnity is payable on account of any mines or minerals, or the existence of any right to work or get mines or minerals unless (rarely) it is noted on the register of title that the title includes the mines or minerals (Schedule 8, para 2).

Indemnity payments

- 1.107** An indemnity will now be paid to a claimant who has suffered loss as a result of an error or omission in the register whether or not the register is in fact rectified. This is of course subject to the proper care provisions, etc. mentioned at 1.109. No indemnity will be paid for costs and expenses without the Registrar's prior approval. This will be available if there is loss suffered as a result of rectification, or indeed non-rectification. An indemnity payment may also be available as a result of an error made by the Registry, e.g. in an official search result or as a result of the Registry losing a deed or document.
- 1.108** The indemnity will be available only if the claimant has suffered actual loss. For example, if rectification is ordered so that an overriding interest can be recognized, the court has held that there is no loss for indemnity purposes: see *Re Chowood's Registered Land* [1933] Ch 574. (This example should now fall within the indemnity provisions set out in Schedule 8.)
- 1.109** There is one particularly important exclusion affecting the right to indemnity. Schedule 8, para 5 stipulates that no indemnity is available where the applicant has caused, or substantially contributed to, the loss by fraud or lack of proper care. This will also be true if the applicant derives title through a person who contributed to the loss by fraud or lack of proper care, unless the applicant was entitled by reason of a disposition for valuable consideration that has been registered or is protected by an entry within the registers.

Indemnity amounts

- 1.110** The amount of the indemnity will depend on the nature of the case and will fit one of two templates. First, if rectification is not ordered, the amount of the indemnity will not exceed the value of the claimed estate, charge or interest at the time of making the error or omission. Secondly, if rectification is ordered, the amount of the indemnity will not exceed the value of the claimed estate, charge, or interest at the time just before rectification took place.
- 1.111** Schedule 8, para 10 allows the Registrar to seek recovery of all or part of any indemnity paid out from any person who caused or substantially contributed to the loss by his or her

fraud. The Registrar can also assume any right of action the claimant would have been entitled to had the indemnity not been paid. Furthermore, where the register has been rectified, the Registrar may enforce any right of action that the persons in whose favour the register was rectified would have been entitled to enforce if the register had not been rectified.

There are time limits for indemnity claims. For the purposes of the Limitation Act 1980, a liability to pay an indemnity under this schedule is a simple contract debt. The claim will therefore be barred six years after the cause of action arose. During 2013–2014 1,034 claims were recognized and £11,204,925 paid including costs (compared to £11,895,796 paid in the previous year: Land Registry Annual Report 2012/13). (The 2013/14 Report also mentions that £2,155,632 was recovered under Land Registry's statutory right of recourse, compared to £1,204,208 in the previous year.) Land Registry saw a continuing high number of claims arising out of fraud, with 45 claims in total (such as fraudulent transfers or charges), paying out over £6.44 million for claims of this kind. **1.112**

The future for conveyancing of registered land: the Land Registration Act 2002

The shape of conveyancing is changing, and the pace of change is certain to quicken. The Law Commission, Land Registry, and the present Government all support this process, which really got going back in 1998 with a Law Commission Report. The 2002 Act came into force on 13 October 2003. We have incorporated details of, and commentary on, the reforms introduced by the 2002 Act throughout the text. However, to assist practitioners, we set out in this section a summary of the main changes and reforms. **1.113**

Land Registration Act 2002

Of the 2002 Act at the time of its Royal Assent, Michael Wills, Parliamentary Secretary at the Lord Chancellor's Department, said: **1.114**

This piece of legislation marks an important step towards the fulfilment of the Government's commitment to develop a modern basis for land registration to make conveyancing faster and cheaper. Most importantly, it will make possible the development of an electronic conveyancing system, so that land and property transactions can be completed electronically. The Act will bring more information about rights over property onto the register. This will make the property transaction process more open, improving the efficiency of the property market.

By providing additional benefits for registered landowners, such as greater protection against squatters, the Act will encourage unregistered landowners to register the land, bringing more information about land into the public domain and increasing the transparency of the property market. I am pleased to say that there has been broad cross-party support for the Act in both Houses of Parliament. Credit for this is in large measure due to the excellent drafting and preparatory work of the Law Commission and Land Registry, who undertook an immense project to deliver this reform. This was the single largest law reform project undertaken in the Law Commission since its foundation in 1965.

Over 80 per cent of titles are now registered, and the vast majority of the three million property dealings each year relate to registered property. (Indeed, Land Registry, in its 2012/13 Annual Report, indicated that the Land Register comprises some 23.5 million titles, and more than 12.6 million hectares, or 82 per cent of the land in England and Wales, is now registered.) However, the previous legislation governing registration of title was said to be complex, confusing, and badly out of date. The Land Registration Act 1925 was considered to be largely based on an earlier Act of 1875, and also drafted on the basis that conveyances of land would be paper based. **1.115**

- 1.116** To correct these perceived faults, the 2002 Act:
- (a) allows for the process of dealing with registered land to move from a paper-based system to an all-electronic system within a few years;
 - (b) completely replaces the existing legislation to allow land registration to be faster and simpler;
 - (c) establishes a register which will give buyers more certainty by giving fuller information about the rights and responsibilities which the registered proprietor has;
 - (d) improves the security of property rights in and over registered land by providing better means of protecting them;
 - (e) provides better protection for the owners of registered land against claims of adverse possession.
- 1.117** By paving the way for e-conveyancing, it was hoped that the 2002 Act would bring greater transparency to chains of transactions. While the new system will take some time to introduce fully, it should lead to quicker ways of buying and selling land, as well as providing greater security of title.

Main provisions of the 2002 Act

- 1.118** There are helpful explanatory notes available at <http://www.legislation.gov.uk/ukpga/2002/9/contents>, and the following details and account rely heavily on these notes prepared by the Lord Chancellor's Department.
- 1.119 Objective of the 2002 Act** The fundamental objective of the 2002 Act is that, under the system of electronic dealing with land that it seeks to create, the register should be a complete and accurate reflection of the state of the title of the land at any given time, so that it is possible to investigate title to land online, with the absolute minimum additional enquiries and inspections. More details about e-conveyancing are given at 1.181.
- 1.120 Registration triggers** The intention of the 2002 Act is to extend the registration of land to as many legal estates as is possible. The effect of this is to allow and extend voluntary first registration, as well as to extend compulsory first registration triggers to include leases with more than seven years to run. (Indeed, the clear intention is to reduce this period down to leases with more than three years to run, and the 2002 Act contains a power to give effect to this intention.) Section 4 of the 2002 Act sets out the triggers to first registration and consolidates the position under the Land Registration Act 1997: see 1.17 for details. Section 5 enables the Lord Chancellor to add new compulsory first registration trigger events by way of statutory instrument. Section 6 imposes a requirement on the estate owner to register within two months of the date of the conveyance or transfer to the new estate owner. Should an estate owner fail to comply with s 6, s 7 provides that a transfer will become void. Should this occur then the transferor would hold the legal estate on a bare trust on behalf of the transferee. If failure to register arises from the grant of a lease or mortgage, they too will be void. They will, however, take effect as an agreement to grant the lease or mortgage.
- 1.121** The one major area of concern for practitioners must relate to the reduction in the length of leases inducing first registration. This is because, until now, commercial leases in particular have been granted for terms lasting between five and 21 years, but typically ten to 15 years. They have not required registration but have operated as overriding interests. The 2002 Act changes the position by requiring all leases of more than seven years in duration to be subject to compulsory first registration.
- 1.122 Overriding interests** These are discussed at 1.57. Under the Land Registration Act 1925, these interests included all the incumbrances, interests, rights, and powers which were not entered on the register but which overrode registered dispositions under the Act. Such

interests create a number of problems, since it is possible for a buyer to purchase a registered estate that is subject to adverse interests that are not apparent from the registers. In the 2002 Act, the categories of interests that are not registrable and which exist as overriding interests appear in two distinct lists. The first is relevant to first registration of title; the second to dealings with registered land. It is clear that the legislators want to limit the scope and effect of overriding interests. Consequently, in both lists the types of overriding interest are reduced in scope. The range of particular categories is lessened, with some categories being abolished altogether, while others were phased out after ten years. The guiding principle for the provisions in the 2002 Act reforming the law relating to overriding interests is that interests should be overriding only where it is unreasonable to expect them to be protected in the register.

In its Report of 2001, the Law Commission summarized the extent of overriding interests that would be binding on a registered disponee of registered land after the 2002 Act came into force. They mostly comprise: **1.123**

- most leases granted for three years or less (although currently the limit is at seven years but can be reduced to three);
- the interests of persons in actual occupation where (a) that actual occupation is apparent; and (b) the interest (i) is a beneficial interest under a trust; or (ii) arose informally (such as an equity arising by estoppel);
- legal easements and *profits à prendre* that have arisen by implied grant or reservation or by prescription;
- customary and public rights;
- local land charges; and
- certain mineral rights.

This is a much-reduced list of interests from that covered by s 70 of the 1925 Act, and clearly there is an intention to ensure that the registers accurately portray the position that may exist for any particular property with little or no regard for overriding interests. **1.124**

Third-party rights: protective entries These are discussed at 1.89. The 2002 Act reduces to two the methods of protecting the interests of third parties over registered land. Cautions and inhibitions are abolished, *but not retrospectively*, while notices and restrictions are retained. Notices may be used to protect incumbrances affecting land that are intended to bind third parties. A typical example of the kind of incumbrance that could be protected by a notice would be a restrictive covenant. Restrictions regulate the circumstances in which a transaction affecting a registered estate may be the subject of an entry in the register. For example, a restriction might be used where any consents are required to a disposition. The restriction will give notice of the requirement that they be obtained. This will typically arise where a management company is involved, and requires a new estate owner to enter into covenants with it before the transfer of the legal estate can be registered, with the prior approval of the company. **1.125**

Either form of protective entry can be sought without the consent of the registered proprietor, who nevertheless must be notified and who will be able to apply for cancellation of the notice, or object to an application for a restriction. If a person or company applies for either form of protective entry, they are required by the 2002 Act to act reasonably when exercising rights granted by the statute. There is, therefore, a duty of reasonableness that is owed to any person who suffers damage as a consequence of a breach. No doubt damages will be awarded where an applicant has not acted reasonably. **1.126**

Adverse possession The stated aim of the 2002 Act is to ensure that registration *and nothing else* should guarantee title and ownership as well as all the details of matters affecting **1.127**

the title. The logical extension of this aim is the limitation of title claims by adverse possession. The Act reforms the law of adverse possession so far as it relates to registered land. In effect there are now two methods by which a party can claim adverse possession. Which method will apply to what property will depend on whether or not the property is registered. The old law (the 12-year rule) will remain in place for all unregistered titles. For registered land, the 2002 Act introduces a new scheme for protecting the interests of registered proprietors against the acquisition of title by persons in adverse possession. A person claiming adverse possession of registered land will be able to apply to be registered as proprietor after ten years' adverse possession. This, on the face of it, seems a liberalization of the previous position. Nothing could be further from the reality of the reforms. This is because the registered proprietor will be notified of that application and will, in most cases, be able to object to it. Where the proprietor does object, the application will be rejected unless the 'squatter' can meet one of three limited exceptions. The whole basis of many successful claims for adverse possession rests on the lack of any need to notify the paper title owner of the squatter's occupation. The new law for registered land changes all of that and will thereby dramatically reduce the number of successful claims.

- 1.128** The proprietor will have to take steps to evict the squatter, or otherwise regularize the position within two years. Should the registered proprietor fail to do so and the squatter remains in adverse possession, after two more years (making 12 years in total) the squatter will be entitled to be registered as proprietor.
- 1.129** It should be noted that the new law places the onus on the squatter to take the initiative. If he or she wants to acquire the land, he or she must apply to be made the registered proprietor of the subject property. This is because the registered proprietor's title will not be barred by mere lapse of time; the ownership must be ousted by an act of registration.
- 1.130** **E-conveyancing** This topic is treated in depth in 1.181. Suffice it to say that one of the main purposes of the 2002 Act was to guide in e-conveyancing within the two to four years after the passing of the Act. Needless to say this was not achieved and may not be fully achieved for some time. The new legislation aims to create the necessary legal framework that will allow registered land conveyancing to be conducted electronically. It is, therefore, worth repeating that the main aim of the 2002 Act is that, under the system of electronic dealing with land that it seeks to create, the register should be a complete and accurate reflection of the state of the title of the land at any given time, so that it is possible to investigate title to land online, with the absolute minimum of additional enquiries and inspections.
- 1.131** This is all predicated on a system of electronic dealings making possible online title investigation. However, practitioners need to note that:
- (a) e-conveyancing is to be introduced in stages, with the simplest transaction first. As a result, the 2002 Act authorizes the Lord Chancellor to regulate by rules transactions that can be effected electronically;
 - (b) the 2002 Act also gives the Lord Chancellor power to make e-conveyancing compulsory. While the 2002 Act contemplates a transitional period where paper-based conveyancing will co-exist alongside e-conveyancing, there is a clear intention to terminate paper-based conveyancing sooner rather than later;
 - (c) Land Registry will control permitted access to the e-conveyancing network. This means that conveyancers will in practice need the continued approval of the Registry to be able to effect e-conveyances. Let us hope that the Registrar exercises this control on a practical and reasonable basis, having regard to the demands of the modern, cost-effective conveyancing practice;

- (d) Land Registry will be required to make the necessary arrangements to allow parties to carry out their own conveyancing, i.e. there will still be a place for the 'do-it-yourself' conveyancer. In principle this seems sensible, but quite how it will be carried out in practice is unclear;
- (e) at present the e-conveyancing proposals fail to accommodate auction contracts. Changes will be needed to cover conveyancing that involves auction sales;
- (f) Land Registry has now for the first time registered a mortgage to be signed electronically. The mortgage, or e-charge, in favour of Coventry Building Society was signed electronically by the borrower and registered at 11.20 a.m. on 24 March 2009;
- (g) Land Registry has now introduced e-DRS, an electronic document registration service. With e-DRS, you can send and receive applications to change the register electronically, attaching scanned copies of supporting documents. Details of this facility can be found in Chapter 9.

Other matters The 2002 Act makes other important changes. Land and charge certificates are abolished. Mortgages by demise are also abolished. The 2002 Act made an important management change applicable to land registration. It created a new office, that of Adjudicator to Land Registry. The Adjudicator was appointed by the Lord Chancellor and was independent of Land Registry. The Adjudicator's duty was to determine objections that are made to any application to the Registrar that cannot be determined by agreement. This responsibility has since 1 July 2013 passed to the First-tier Tribunal Property Chamber (Land Registration Division) where such disputes will now be heard by Tribunal Judges. **1.132**

Section 64 of the 2002 Act contains important new requirements to record on the register certain defects in title where such defects would not previously have been recorded. It provides that if the Registrar becomes aware that the right to determine (i.e. end) a registered estate has become exercisable, he may enter the fact on the register. The most obvious example of this would be in a leasehold context where the lessee has breached a lease covenant and the lessor has become entitled to forfeit the lease. Another example would be where a rent charge is unpaid in respect of a freehold estate and the rent charge owner is able to exercise a right of re-entry. If the Registrar notes the defect on the register, a prospective buyer will be alerted to the problem at a much earlier stage of his or her investigations, instead of finding out from replies to enquiries. **1.133**

Section 112 of the Land Registration Act 1925 (as substituted by the Land Registration Act 1988) opened up the register to the public for the first time. This meant that it was no longer necessary for a registered landowner to give consent before his or her title could be inspected. Building on this, s 66 of the 2002 Act extends the scope of the open register. A person may inspect and make copies of, or of any part of, the following: **1.134**

- (a) the register of title;
- (b) any document kept by the Registrar which is referred to in the register of title;
- (c) any other document kept by the Registrar which relates to an application to him; or
- (d) the register of cautions against first registration.

Rules restrict access to documents of a commercially sensitive nature to those who have a good reason to see them. Protection of private information follows the scheme laid down in the Freedom of Information Act 2000. Documents can be exempt and thus kept private: see Chapter 12 for further details of Exempt Information Documents. Lastly, the term 'office copies', familiar to conveyancers for decades, is replaced by the term 'official copy'. Section 67(1) provides that an official copy of the items listed above ((a)–(d)) is admissible in evidence to the same extent as the original. **1.135**

- 1.136** The 2002 Act is considered in depth in *Blackstone's Guide to the Land Registration Act 2002* (OUP, August 2002) which we wrote to introduce the detailed provisions of the statute to both practitioners and students of conveyancing.

KEY POINTS SUMMARY

REGISTERED LAND CONVEYANCING PROCEDURES

- 1.137** All of England and Wales is now an area of compulsory registration. Consequently, all purchases of unregistered land will be potentially subject to first registration, but not new leases of seven years or less, or longer existing unregistered leases where the remaining term is seven years or less. The Land Registration Act 2002 includes assents, gifts, and mortgages (including remortgages) as events that give rise to registration.
- An application for first registration must be lodged within two months of completion, failing which the legal title will revert back to the previous owner who will in effect hold the property on a bare trust. The transfer will be void.
 - The following title conversions are available to proprietors of registered property: qualified to absolute; qualified to good leasehold; possessory to absolute; possessory to good leasehold; good leasehold to absolute leasehold. The last is perhaps the most important title conversion and probably the most frequently sought. A good leasehold title can be upgraded to absolute so long as an applicant is able to produce to the Registrar the freehold title.
 - Always remain vigilant about the major effects of a person in actual occupation pursuant to the provisions of Schedules 1 and 3 to the Land Registration Act 2002. Make full enquiries and searches.
 - If you have an interest that requires a protective entry on the title, use a notice or restriction if the owner cooperates or a unilateral notice or restriction if the proprietor's assistance is not forthcoming.
 - The State guarantees registered titles and that the legal estate is vested in the registered proprietor. If that is proved to be wrong, then any innocent party suffering loss will be compensated for the loss of any estate or interest in a registered title. An indemnity will now be paid to a claimant who has suffered loss whether or not the register is in fact rectified. This is subject to the proper care provisions mentioned in 1.108.
 - Land and charge certificates are abolished. The Registry will not require old certificates to be returned to it.
 - Advise your clients of the existence of Property Alert, a free service to allow home owners who might be concerned about fraud to be notified of significant changes to their registered title, such as the third-party registrations.

C DEFENSIVE LAWYERING IN CONVEYANCING

DEFENSIVE LAWYERING AND THE CONVEYANCING PROCESS

- 1.138** In March 1997 the managing director of the Solicitors' Indemnity Fund wrote that conveyancing 'accounts for over half of all claims against the fund over all years, by both number and value'. Clearly this is a reflection of both the pressure on practitioners to expedite transactions at all costs as well as inappropriate working practices that provoke negligence claims. It is our view that conveyancers, like medical professionals, must practise defensively. By this we mean that in our daily conveyancing routine we must build in working

practices that protect us from negligence claims as well as looking after the best interests of the client. If doctors can practise in this way, so can conveyancers.

At the same time as the managing director wrote the above, the Risk Improvement Unit of the Solicitors' Indemnity Fund issued a fact sheet entitled *Claims Prevention for Conveyancers*. It is an excellent basis for all practitioners to develop a defensive lawyering methodology. We believe this is such an important area of concern to all conveyancing practitioners that we are considering it here. We hope you will bear in mind this crucial section when working through the subsequent elements of the book. Indeed some ingredients of this section may initially be unclear without the information that follows in the rest of the book. Even then, we hope you will turn back to this section to underpin your knowledge of the conveyancing process with a defensive lawyering methodology, once you have read through the following parts of the book. Much of what we set out below rests heavily on the claims prevention fact sheet issued by the Indemnity Fund, and we acknowledge the benefits of this document. **1.139**

The problems linger, even after the land registration reforms mentioned above. It was stated in the *Law Society Gazette* that 34 per cent of all claims against indemnity insurers Zurich Professional in 2003 concerned conveyancing. Practitioners must remain vigilant, and we therefore hope that the following will assist (see LSG 101/12, 25 March 2004, p 3). The trend continues. On 4 August 2005, it was reported (LSG 102/31) that residential conveyancing continues to give rise to the highest number of negligence claims among two to ten partner firms. This was highlighted in research carried out by the broker Aon. Almost half (43 per cent) of all claims notifications by such firms has been related to conveyancing, more than double those for personal injury claims (14 per cent). The article ended: 'Most residential negligence claims—both by number and value—stem from procedural issues such as a failure to undertake sufficient property searches or a failure to advise the client on points of law.' Indeed it was reported in the *Solicitors Journal* (see Legal News 15, April 2013) that '[a] quarter of conveyancing firms have been hit by negligence claims in the past two years' according to Solicitors Regulation Authority researchers. The researchers were quoted as saying: 'These figures suggest service levels could be improved and lessons learnt. Two thirds of firms stated that they pass on lessons learned from complaints and negligence claims to the rest of the firm. Ideally this should be standard practice across all firms.' **1.140**

Your duties as a conveyancing practitioner and your client

Fraud

The worst mistake a practitioner can make is to fail to spot something fraudulent. You should be fully aware of the pitfalls in practice when fraud occurs. As a form of basic guidance, you should read through the Law Society's Practice Note on Mortgage Fraud issued on their website and dated 31 July 2014, at <http://www.lawsociety.org.uk/support-services/advice/practice-notes/mortgage-fraud/>. This practice note highlights the warning signs of mortgage fraud. It highlights the latest criminal methodologies and outlines how conveyancing practitioners can protect themselves and their firm from being used to commit mortgage fraud. Practitioners need to be aware that individual purchasers can commit mortgage fraud by obtaining a higher mortgage than they are entitled to by providing untrue or misleading information or failing to disclose required information. This may include providing incorrect information about any of the following elements: identity, income, employment, the sources of funds other than the mortgage for the purchase, and the value of the property. If you become aware of any such circumstances, you need to investigate them and if necessary take further steps if you think a fraud has been perpetrated. One point that can be overlooked is the need to verify if the practitioner on the other side is real. It has been known recently for fictitious firms to appear and disappear **1.141**

with money to which they were not entitled. If in doubt, telephone the Law Society Records Centre or the Council for Licensed Conveyancers to make sure the firm you are dealing with is listed on either of their records. Online checks can also be made at <http://www.lawsociety.org.uk/choosingandusing/findasolicitor.law>.

- 1.142** If you become aware of a change in the price or of other information that a lender might reasonably consider would affect the terms of the loan, then you should advise the lender. You act for the lender and there is, as a consequence, a clear obligation on your part to so inform the lender. If you knew something material, but did nothing to advise the lender, this could involve you in a civil claim in negligence. See also the *Council of Mortgage Lenders' Handbook* on what other information a lender might be entitled to receive. Of course practitioners do have a duty of confidentiality to their private clients, but this cannot be invoked to the detriment of another client. There is an obligation to act in the best interests of each client. The lender should be told about the variation in the price, but if the client will not agree to this step, then there is a conflict and you should cease to act (see also 2.93).

Cases

- 1.143** There have been several cases in the courts which impact heavily on working practices in the modern law office. You need to be aware of them and to change how you conduct transactions to meet the new standards required. To assist, we set out in this section some of the more important decisions that need to be considered by any conveyancing practitioner.
- (a) If you know that your client is in arrears with a current mortgage but has instructed you to act on a remortgage, you may be under an obligation to report the arrears to the potential new lender before completing the new mortgage (see *National Home Loans Corporation plc v Giffen Couch and Archer* (1996) *The Times*, 31 December 1996 and *Birmingham Midshires Mortgage Services Ltd v David Parry and Co.* [1996] PNLR 494). The *National Home Loans* case was appealed and on 18 June 1997 the Court of Appeal reversed the decision, finding in favour of the firm of solicitors. However, what is clear is that each case is decided on the facts and it may well be that the extent of the duty of a solicitor will depend on the instructions and the extent to which the client appears to require advice. If you know of arrears, this should be reported to your client lender or you should decline to act for the mortgagee.
- (b) You must not release the mortgage advance on completion until you have in your possession a properly completed, i.e. executed, mortgage deed. If you do, you risk being in breach of trust (see *Target Holdings Ltd v Redferns* [1996] AC 421). If there is a breach of trust, the liability to the client could be substantial.
- (c) In *Royal Bank of Scotland v Etridge (No 2)* [2001] 4 All ER 449, the House of Lords laid down guidelines for solicitors advising a spouse being asked to agree to a husband's (or wife's) business debts being secured on the matrimonial home. These guidelines also apply to cases where anyone in a non-commercial relationship has offered to guarantee the debts of another, e.g. a parent and child. The House of Lords adopted a somewhat commercially realistic approach. Detailed guidance on the correct approach is to be found in 7.105; it should be adhered to in circumstances that are the same as, or similar to, the facts set out above.

Your client

- 1.144** Always verify your client's identity for the purposes of the Money Laundering Regulations 2007. Practitioners should refer to the details in the anti-money laundering practice note issued by the Law Society on 22 October 2013 and which is available from the Law Society's website. (The Proceeds of Crime Act 2002 created a single set of money laundering

offences applicable throughout the UK to the proceeds of all crimes. It also created a disclosure regime, which makes it an offence not to disclose knowledge or suspicion of money laundering.) If you have not acted for the client before, you need to be sure that the client is not seeking to launder money through the conveyancing transaction in respect of which you have received instructions. The major concern in this area for a conveyancing practitioner is that any failure to report a client where there is a reasonable suspicion of money laundering can lead to the practitioner being prosecuted by the authorities for not informing them about the suspicious activities of the client. Because of this onerous obligation on practitioners, always be most careful in verifying the identity of any new client. Furthermore, if a client insists on paying large sums of cash in relation to a purchase this will amount to a suspicious act for money laundering purposes. The Money Laundering Regulations 2007 are detailed and require practitioners to put in place procedures to prevent money laundering and to provide staff training in respect of such procedures. If you do have any suspicion about money laundering involving your client, you should report your concern to the National Crime Agency, Units 1–6 Citadel Place, Tinworth Street, London SE11 5EF or online at <http://www.nationalcrimeagency.gov.uk>. As a form of basic guidance, you should read through the Law Society's anti-money laundering practice note, which issues guidance and warnings to assist solicitors.

Be sure there are no conflicts of interest, and also that you have proper instructions from all clients. In effect, despite whatever family relationship exists, you have to be aware of the interests of each individual client, be it a lender, spouse, or child. Always confirm your instructions in writing at each stage of the transaction and especially just before exchange. If you write to confirm instructions, then there can be no dispute at a later stage if the client becomes disillusioned with your assistance. Keep full and detailed attendance notes recording telephone conversations, as well as meetings in the office, with the client. Adopt checklists such as those that permeate this book. Make diary entries of important dates such as completion dates or search priority periods (see Chapter 8). **1.145**

Crucial time limits

Conveyancing practitioners are constantly up against crucial time limits. The problem is, in a busy modern legal office, these can easily get overlooked. Your professional negligence insurers will not look kindly on simple errors like overlooked time limits. The use of diaries—either written or electronic—is strongly recommended by us, and we set out below some of the more important time limits to look out for. However, in all cases, we suggest you use the early-warning date system. This puts in your diary a date warning at least a week before the actual deadline. In this way you will have a full five working days' early warning of the final deadline in which to make sure you take the necessary steps required in the particular transaction. You should always use the early warning date system in the cases outlined below. **1.146**

Land Registry search priority periods When buying a registered title, the pre-completion Land Registry search is of fundamental importance. First, it will highlight undisclosed incumbrances. Secondly, it will provide a priority period during which no other registration can obtain precedence over your client's application. It is therefore imperative that you submit your registration application at such time that the Registry receives it within the priority period. The dates and period are clearly stated on the search result and final deadlines for the application should be entered in your diary on receipt of the search result. Make no mistake, if you do not make the application within the priority period and a third party gets in an application for registration, to the detriment of your client, you will be held clearly responsible in negligence for any consequential loss your client suffers. (See Chapter 8 on pre-completion searches for further details of these important Land Registry searches.) **1.147**

- 1.148 Company mortgage registration period** If you act for a limited company client, any mortgage that it takes out, i.e. where the company is borrowing money, *must* be registered at Companies House within 21 days of the completion date. Remember, courts almost never extend the time limit. Failure to register within the 21-day period will inevitably mean that you will be held liable in negligence to your client for any loss it may suffer as a consequence of your inaction. To ensure that the application gets to the appropriate department within Companies House without delay, we recommend you mark the envelope 'for the attention of the Mortgage Section'; it should then go straight there. If there are any queries on the form submitted with the mortgage, you will have sufficient time to deal with the problem so as to allow the actual registration to take place within the 21-day period.
- 1.149 Stamping deadline** After completion of a purchase where the consideration exceeds currently £125,000 for most residential properties, Stamp Duty Land Tax (SDLT) of 1 per cent of the consideration must be paid to the Revenue & Customs within 30 days of completion. Since 4 December 2014, SDLT is charged at increasing rates for each part of the price. For residential properties the purchaser will pay nothing on the first £125,000, 2 per cent on the next £125,000, 5 per cent on the next 675,000, 10 per cent on the next £575,000, and 12 per cent on the rest (above £1.5 million). If you fail to pay within this 30-day period, late payment will be possible only on payment of a penalty fee. On the assumption that you were in funds to pay the tax, there can be no excuse for not paying on time and the penalty fee will almost certainly come out of your own funds as the amount will be insufficient to warrant a claim on your indemnity policy (see Chapter 9 regarding post-completion matters, including SDLT).
- 1.150 Landlord and Tenant Act 1954 deadlines** Part II of this Act covers the statutory renewal of business leases. This is a particularly fertile area for negligence claims as the statute can require strict time limits. Some conveyancers will say that this is an area best left to litigators. However, it is also the case that many conveyancers deal with commercial lease renewals, which necessitates a secure knowledge of the Act and the time limits concerned. (See Chapter 13 which deals with commercial lease renewals generally.)

Keep a claims record

- 1.151** Learn from your mistakes. Keep a record of all claims and complaints and see if any pattern is emerging. In this way you can quickly expose any weak links within your firm which require immediate attention. Keep your procedures under constant review and introduce change quickly whenever required. Keep all your staff fully trained and up to date in all aspects of the law, practice, and procedure.

Undertakings

- 1.152** Undertakings given by a conveyancing practitioner can lead to liability that was not contemplated when giving the business. To ensure that this does not happen to you, always carefully consider the wording and effect of an undertaking before you actually enter into the particular obligation. Furthermore, wherever practicable, instruct all members of staff that letters of undertaking must be seen and signed by the partner in charge of the department. This, it is hoped, will emphasize to all members of staff the crucial nature of a professional undertaking and that your firm will not issue an undertaking without critical appraisal of all its terms by a practitioner at partner level.

Rejection of applications for registration

- 1.153** Land Registry can reject applications for registration which are found to be substantially defective, e.g. where a transfer is drawn on an incorrect form. Land Registry has therefore drawn up a set of criteria for the early rejection of applications for registration that

came into operation on 22 April 2002. This is a policy called early completion. In this regard, early completion is a policy governing applications to discharge mortgages that Land Registry has applied since 3 August 2009. The policy applies to all situations where an application for a discharge of whole has been made with another application but proof of satisfaction (evidence of the discharge of the charge) has not been provided. In essence, if there is no DS1 or other satisfactory proof of the mortgage discharge, Land Registry will reject the application for discharge but complete any other accompanying applications where it is possible to do so, such as a transfer of title. See 9.47 for further details of Land Registry policy governing early completion.

When the Registry rejects an application, it returns to the sender all the papers and documents originally enclosed. It will also state in writing the reason for rejection, so that this can be resolved before the application is sent back to the Registry. *A rejected application loses its priority.* Any fee sent with the application will be returned, refunded, or credited to the application when it is relogged after the defect has been put right. Land Registry lists the kind of errors that will give rise to rejection in its leaflet Practice Guide 49, dated 1 October 2013. These include but are not limited to:

- (a) where an application form is required but none is used;
- (b) where a form prescribed by the Land Registration Rules 2003 has not been used;
- (c) if a mortgage discharge, the DS1, is not lodged, regardless of any undertaking of any copy DS1 lodged;
- (d) where a deed refers to a plan but no plan is lodged;
- (e) where proof of payment of SDLT is required but not lodged.

There are several other reasons for rejection, all of which can arise through administrative errors which may occur in a conveyancing practice. Accordingly, it is clear that this policy will lead to many applications being rejected and, as a result, priority for those applications being lost. The clear moral is to check all applications before they are sent to the Registry to make sure that they are correct and contain all the required information.

KEY POINTS SUMMARY

DEFENSIVE LAWYERING AND THE CONVEYANCING PROCESS

Always make detailed file notes of telephone conversations with your client and with the practitioner for the other party, and always confirm decisions and instructions in writing. **1.156**

- Be on your guard against fraud, particularly money laundering. Verify your client's identity.
- Ensure all date-sensitive cases are carefully diarized using early-warning date systems where you have a week's warning before the final deadline.
- Regularly review your working procedures. Issue internal guidelines to all conveyancing staff covering the areas that are particularly sensitive, e.g. when giving undertakings.
- Learn from your mistakes. Do not ignore previous claims. Keep a claims record and make sure you do not repeat history.

D CONVEYANCING AND INFORMATION TECHNOLOGY

In January 1993, Professor RW Staudt wrote that 'lawyers for the twenty-first century must learn to use electronic information tools to find the law, interact with governmental agencies, prepare their own work and communicate with courts, other lawyers and their **1.157**

clients' ('The Electronic Law School: A 1992 Snapshot of the Centre for Law and Computers at Chicago-Kent College of Law', *Comp & Law*, 3(6) (1993), 33). We believe that Staudt neatly sums up the demands that will be made of conveyancing practitioners in the twenty-first century, and he also sets out several critical areas where IT must develop in the future.

- 1.158** The pressure for innovation and change is already upon us. In the context of conveyancing, the section in this chapter concerned with the future of this legal specialty shows how, if conveyancers are to survive, they will need to adapt and change to meet the needs and demands of society. IT must help in this respect. As far as conveyancing and the storage of legal data on computer are concerned, the core elements of conveyancing will soon be computerized, with Land Registry aiming to hold computer records for all titles recorded at the Registry.
- 1.159** What this means is that the involvement of IT in the legal workplace is now irreversible. It also indicates that there is a stark need to involve trainee lawyers, and indeed all new conveyancing practitioners, at the earliest opportunity if conveyancing is to survive as a profitable source of income. This will be possible only if those who are to be the future lawyers of this country are trained to expect IT in the office (and the courts) as an integral part of the conveyancing process, rather than being surprised by its presence. With e-conveyancing on the near horizon, this need is all the more pressing (see 1.181 for details). It is our view that modern legal conveyancing practice can only survive and develop with the support of IT.

The Land Registry Portal

- 1.160** One of these developments is now well established within the conveyancing industry. This is the immediate availability of the Land Registry Portal, an online service which provides instant access to the land register and, in particular, to the more than 22 million computerized registers of title. This is a secure website platform from which to launch all existing and future electronic services. The Land Registry Portal is an electronic gateway that will enable all Registry customers to access systems from a single central point. The Portal can be adjusted to the needs of an individual customer. Registered organizations can control their own access permission. These permissions are administered and maintained by a designated person called an administrator. It is therefore a web browser-enabled Portal which provides Land Registry services to users electronically, including the online viewing of title plans and title registers.
- 1.161** The attractions of the system are immediate for conveyancing practitioners and include:
- online official searches of complete titles with immediate priority;
 - online land charges searches;
 - online official title copy applications;
 - immediate access to computerized registers with the ability to print working copies of on-screen information;
 - online Homes Rights searches; and
 - the facility to apply for a search of the index map.
- 1.162** In this way the conveyancing process is more streamlined and thereby ready to meet the challenges of the twenty-first century. To do this the Land Registry Portal came on-stream at the start of 2010. The Registry has said on its website that:

Land Registry services will be delivered through a variety of channels, one being the new Land Registry Portal (which acts as a gateway to our electronic services, including e-conveyancing). This access channel will be segmented as follows:

Customer type	Customer categories
Licensed conveyancers/Solicitors	Legal services
Banks	Lenders
Building societies	
Government departments	Government services
Estate agents	Property investors/Services
Property professionals	
Local authorities	Other customers
Building companies/developers	
Finance houses/credit services	
Insolvency services	
Insurance companies	
Privatized utilities	
Chartered surveyors	
Communications and media	
Others	
Registered citizen	General public
Unregistered citizen	

Customer categories are defined according to the roles they perform, so a lender or utility company undertaking conveyancing activities would fit into the legal services row as a conveyancer. Different segments have different access permissions within the portal and therefore access to different services.

The Law Society Veyo System

The Law Society is promoting an online conveyancing system called Veyo, due to be launched in Spring 2015. The scheme will put all documentation online, with activity being tracked online. Automatic reminders will be generated by the system and the status of dependent transactions through the chain will be visible to all parties using the system. In March 2015, Veyo stated that conveyancing professionals will be able to utilize the portal to conduct residential conveyancing work for only £20 per transaction—with this fee to include free anti-money laundering searches and free conveyancing forms. The joint venture between The Law Society and Mastek (UK) Ltd intends to bring together electronically all the processes, checks, and documentation prepared and undertaken by solicitors and licensed conveyancers in the sale and purchase of residential properties. **1.163**

USEFUL WEBSITES

A list of useful websites can be found in Appendix 2.

1.164

KEY POINTS SUMMARY

- Consider using the Land Registry Portal system direct to your own computers as well as the NLIS for online searching.

- Investigate the suitability of Veyo for your practice.
- Legal on-screen forms are essential for conveyancers. These enable you to call up on-screen any form you require, e.g. a Land Registry search request, transfer, Land Charges Registry search request, SDLT form or whatever, which you can then complete on-screen. This means that mistakes can be corrected without the expense of a new pre-printed form, as would be necessary if you did not have on-screen forms.
- Conveyancers must communicate to operate. PCs can run software that will allow that communication by fax direct from your PC (and thereby cutting out the expense of a dedicated fax machine) as well as by e-mail. E-mails use the Internet (a global system of networked computers) and are fast and cheap. E-mails are documents which can be sent electronically. Video conferencing using PCs is becoming an increasingly popular means of communication as well.
- Access to the Internet should be encouraged and, in particular, the World Wide Web. This is where you can make searches for desired information both legal and general. Access to government records is possible as well as details of statutes. It is an invaluable source of detail to all conveyancers. However, the real importance lies in the conducting of conveyancing transactions over the Internet (see Section E for progress in this regard). A web browser is required. The most popular browsers are Google Chrome, Mozilla Firefox, and Microsoft Internet Explorer. Obtain the latest version, as they are constantly rewritten to correct security problems. Presently they are free of charge.
- There are transaction management software packages available that purport to conduct each conveyancing transaction for you by producing diaries, letters, checklists, and precedents. They seek to make the conveyancing process quicker and cheaper for the practitioner and client.
- PCs can also be used to hold databases, i.e. lists of important data. These could include a Registry of all the client deeds that you are including in your fireproof safe, or the details of your clients for future reference. Databases are becoming easier to use and more versatile, and offer practitioners assistance in the smooth operation of their office records systems.
- Online searches are now commonplace. It is possible to arrange access from your computer to Land Registry, so that you can obtain copy deeds and search results. In effect your computer will talk direct to the Land Registry computer. Access to land and property information held by local authorities and other agencies responsible for searches (see 4.55) is also available via the NLIS.

E THE FUTURE OF CONVEYANCING

INTRODUCTION

- 1.165** Following on from the discussion set out above concerning the integral use of IT by conveyancing practitioners, we believe that much of the success in the future will lie in a reconstruction of the way in which many conveyancers presently work. We advocate the full integration of all the facilities that legal IT can offer. However, there are other external influences at work that may dictate to conveyancing practitioners what the future will hold.
- 1.166** In the light of declining profit costs and increasing competition in the conveyancing marketplace, many solicitors have decided to change their own working practices, in particular in two different patterns. First, to try to make the process of buying and selling a house all-inclusive: the one-stop approach, in which solicitors will sell property in the style of estate agents and also offer the conveyancing of the property. Secondly, to set up conveyancing call centres. These areas are examined in 1.173. Further changes will, in the near future, alter

conveyancing practice in a very substantial way and will bring about e-conveyancing. This will mean that the whole process will take place online using the Internet. Deeds will not need to be in a printed format and contracts will be exchanged electronically. Section 8 of the Electronic Communications Act 2000 gives statutory recognition to digital signatures. In a Land Registry press release issued on 20 March 2002, the Registry stated that ‘the aim of the electronic conveyancing programme is to introduce, over the next five to 10 years, a radical overhaul of the systems for buying, selling and registering property in England and Wales’. This has not taken place within the timescale envisaged, but the opportunity that technology provides is being used to re-engineer the process so as ultimately to replace the present paper-based system of conveyancing with a paperless system of e-conveyancing (see 1.188 for details).

GAZUMPING AND CONVEYANCING REFORM

On 28 July 1997, *The Times* ran an article with the headline ‘House selling system to be overhauled’. This made clear that the Government was examining how radical changes could be made and that ‘[i]ts aim will be to cut costs, uncertainty, delay and unhappiness’. It would seem that top of the list of targets for change was the ‘resurgent menace of gazumping’. Two Ministers, for Housing and for Consumer Affairs, and a Parliamentary Secretary in the Lord Chancellor’s Department, were all charged with the responsibility for this examination. Individual case studies were considered to see where changes could be made to the role of solicitors as well as other integral elements of the conveyancing process, including the involvement of lenders, costs, charges, and delays. However, it is the scourge of gazumping that has come in for most scrutiny. When house prices are on the increase, gazumping occurs frequently. An article in *The Telegraph* of 3 October 2013 entitled ‘Five dirty tricks in today’s rising housing market’ stated

Dirty trick no. 4 Gazumping: Gazumping is an especially nasty by-product of a booming housing market. It describes a situation where an unreliable—and probably greedy—seller accepts a higher price on their property despite already having accepted an offer from another buyer. The original buyer either has to improve their offer or lose the property—and often they have already spent hundreds of pounds on conveyancing fees and a survey.

The Government clearly signalled that an end to gazumping was a core element within its proposals for streamlining the system of buying and selling properties in England and Wales. Following the Government examination of the system, it issued a Consultation Paper ‘The Key to Easier Home Buying and Selling’ (DETR Publications 1999, ISBN 1 85112 134). It contains details of the research carried out by the Department of the Environment, Transport and the Regions as well as its package of proposals. **1.168**

The Government research showed that by international standards our conveyancing system was apparently cheap but slow. As a result, proposals were made to try further to refine and streamline the system. **1.169**

Current suggestions to stop gazumping include two frontrunners, namely, the Scottish system or a forfeitable preliminary deposit. In Scotland the buyer and seller enter into a binding agreement as soon as an offer has been accepted. However, this apparently sensible system is not without its own problems, as before an offer can be made, the buyer still has to pay for, and have in place, a mortgage facility and a survey result. If the offer is then rejected, the fees for the offer and survey are wasted. It would therefore seem that the adoption of forfeitable deposits could find favour. **1.170**

In the circumstances where a deposit system is to be preferred, a sizeable deposit would be payable by both the proposed buyer and the seller. The size of the deposit would have to be **1.171**

at least 0.5 per cent or a full 1 per cent of the proposed purchase price. In the context of an average-priced property this could amount to somewhere in the region of between £850 and £1,700 per transaction. Indeed if this arrangement is to operate as a true sanction, a deposit of £1,000 would seem more appropriate. If subsequently, but before the creation of a binding agreement between them, either party withdrew, that deposit would be forfeited to the innocent party. The intention is to make sure that the innocent party is not out of pocket as a result of the other party withdrawing. Anti-gazumping deposits are not a perfect solution as they would involve the preparation of additional conditions listing when there would be no forfeiture, such as when the buyer's survey was adverse. Perhaps the best solution is to find another way to speed up the whole process so as to avoid long delays during which the seller might be tempted to decide to sell to another, higher, bidder. One other alternative is to adopt lock-out agreements (see the precedent available on the Online Resource Centre). However, the courts have not helped in their widespread adoption. In *Tye v House* [1997] 45 EG 144 it was held that no injunction would be granted to enforce a lock-out agreement. While they remain valid and enforceable, a breach of the agreement will only find a remedy in damages.

- 1.172** Ultimately, we anticipate that, in the future, the following will all amount to viable methods of improving the system:
- (a) Impose financial penalties on all agencies and authorities responsible for issuing search results where they are dilatory in sending out the result.
 - (b) Pre-contract lock-out agreements could be adopted in all cases, backed up with statutory support and with complete remedies in default.
 - (c) Impose the requirement for forfeitable deposits of not less than £1,500 to £2,000, again backed up by statutory authority.
 - (d) Adopt the Scottish system in all aspects, including solicitors selling property.
 - (e) Ensure all organizations and professions involved in conveyancing make better use of IT and electronic communication to streamline and speed up the process.

ONE-STOP CONVEYANCING AND CONVEYANCING CALL CENTRES

- 1.173** 'An attempt to take the pain out of house buying through a network of one-stop services was announced yesterday by the Law Society.' So read a headline to an article in the *Guardian* on 1 August 1997 outlining a new scheme for Solicitors' Property Centres. These centres intend to provide 'consumers with all the services needed to buy and sell a home, including estate agents, solicitors and financial advisers'. The intention was to set up a chain of franchised centres covering the whole of the country. Inevitably, at the core of the service to be provided by the Solicitors' Property Centres, was easily accessible IT. The proposal was that this would speed up the flow of information through the estate agency stage as well as when the conveyancing itself is in progress.
- 1.174** However, this has really become a possibility only as a consequence of changes made by the Law Society. Rules inhibiting the work of solicitors in selling property were, in July 1997, earmarked for relaxation by the Law Society Council. It recommended that changes to the rules should be made to 'deregulate' estate agencies separately operated by solicitors. Further recommendations would enable a solicitor acting as an estate agent to work also as a solicitor for the seller and in certain circumstances a buyer, as well as to provide financial and mortgage advice. However, this clearly raises potential problems of conflict of interest (see Chapter 2).
- 1.175** In April 1997, a large countrywide company of estate agents opened the first-ever seven-day conveyancing call centre in southern England. This was quickly followed by two

more such centres, opened this time by two large firms of solicitors. They all work on a telephone-based approach to the conveyancing process and appeal, in particular, to direct lenders rather than those that deal with proposed borrowers from their high street locations. Teams of conveyancers function on a shift basis, with particular teams dealing with discrete elements of the transaction as it develops. This approach seems to appeal to the public as it mimics what many have come to expect, namely, the buying of services from home over the phone. A mortgage can be organized over the phone, as can house insurance, so why not conveyancing representation? This could be the way ahead for the conveyancing market. It is, of course, impersonal and does not help with the verification of your client's identity (see 1.144). 'But house-buying can never be reduced to that of the simplicity and efficiency of buying baked beans, precisely because houses are large, complex things and the amounts of money involved are so big' (*The Independent*, 7 December 1998, leader section, p 3). Clearly the approach must be considered, in whole or in part, by conveyancing practitioners if they wish to continue to work profitably in the future.

However, this method of handling conveyancing may have its difficulties. A leading article has stated: 'One of the country's leading bulk conveyancing firms has quit residential conveyancing, saying the factory concept neither works for the client nor makes any money' (LSG 98/01, 5 January 2001). The firm's view was that this system fails to provide local knowledge and connections. The individual nature of each transaction made it hard to keep costs down, thus making the process of bulk conveyancing uneconomic. And yet in the same publication in the next edition it was reported that a network of solicitors and conveyancers was to invest over £3 million in an effort to increase its share of the bulk conveyancing market (LSG 98/02, 11 January 2001). The aim was for the network to increase the number of conveyances conducted by them from 30,000 to 60,000 in three years (and thus handle approximately 10 per cent of the market). Conveyancers have also turned to the Internet in an attempt to offer a quick and competitive system for electronic property transfers. Bulk conveyancing solicitors use the Internet to obtain initial instructions and thereafter clients are allowed to access the firm's case management system (see <http://www.legalmove.com/>).

Solicitors have also tried to expand via property shops, offering conveyancing services alongside an estate agency. For example, it was reported in April 2000 that in the North East there were 55 branches of a chain of property shops with yearly sales of £20 million (NLJ, 28 April 2000, p 603). However, in April 2004, it was also reported that one of the two original Solicitors' Property Centres from the 1980s had closed. The centre in Wrexham was initially run by eight firms; since 1990 that number was down to three firms of solicitors. An internet search made in March 2014 for property centres run by solicitors showed only results for Scotland, a sign that the expansion in England and Wales has withered away to nothing.

Nevertheless, we suggest that the future conveyancing practitioner could work in a dedicated property centre where all types of properties are bought and sold, where the practitioner will offer mortgage and financial advice and will of course convey property for sellers and buyers. Practitioners will use IT as a core element of the working day for all aspects of their work, be it the giving of advice, making searches, the production of documents, letters, e-mails, faxes, or indeed sales documentation for properties on their sales lists. The present somewhat limited horizons for the high-street conveyancers must be broadened if their work and profit costs are to survive. Without this wholesale adoption of a generic approach to the process of buying and selling property, the future will be bleak. It is our view that with it the future will be assured.

ENERGY PERFORMANCE CERTIFICATES

- 1.179** The Energy Performance Certificate (EPC)/Predicted Energy Assessment (PEA) which give home owners, tenants, and buyers information on the energy and carbon emission efficiency of a property are required to be available to buyers and need to be available prior to marketing a property.
- 1.180** **The Energy Performance Certificate** This certificate tells you how energy-efficient a home is on a scale of A–G. The most efficient homes—which should have the lowest fuel bills—are in band A. The certificate also tells you, on a scale of A–G, about the impact the home has on the environment. Better-rated homes should have less impact through carbon dioxide (CO₂) emissions. The average property in the UK is in bands D–E for both ratings. The certificate includes recommendations on ways to improve the home’s energy efficiency to save money and help the environment. Sellers of newly built homes will have to provide a predicted assessment of the energy efficiency of the property, but a full EPC should be provided to the buyer when the home is completed. Therefore there is a new duty on a seller to commission an EPC before marketing a property and to make reasonable efforts to secure an EPC within 28 days. If there is a pre-existing EPC it remains valid for ten years. Listed buildings are exempt from these requirements.
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E-CONVEYANCING

Introduction

- 1.181** In England and Wales contracts for the sale or creation of interests in land have to be made in writing and signed by the parties. Similarly, deeds must be in writing and the signature of the party or parties making the deed must be witnessed. All conveyances, transfers, leases, mortgages, and legal charges must be deeds. Thus, notwithstanding the growing use of electronic communication at all the other stages of a conveyancing transaction, the two key stages of making the contract and completion must be achieved by using paper documents.
- 1.182** The Electronic Communications Act 2000 gives Ministers the power to change the law to authorize or facilitate the use of electronic communication and electronic storage. This power will improve the conveyancing process by permitting the creation of e-conveyancing documents such as contracts, transfers, conveyances, leases, and mortgages.
- 1.183** E-conveyancing documents will have to be electronically signed with a certificated electronic signature and will have to specify when they are intended to take effect. Electronic documents, other than contracts, will also have to be made in a form prescribed by Land Registry. The format of the e-conveyancing documentation will be issued as the processes are prescribed.

E-conveyancing arising from the Land Registration Act 2002

- 1.184** The fundamental objective of the 2002 Act is focused closely on making e-conveyancing a distinct reality. The objective is to enable an effective system of electronic dealing with land as a result of the register being a complete and accurate reflection of the state of the title of the land at any given time. This is so that it is possible to investigate title to land online, with the absolute minimum of additional enquiries and inspections. From this fundamental aim flows the entire framework for e-conveyancing that has been constructed by the 2002 Act.
- 1.185** The 2002 Act constructs a framework in which it will be possible to generate and transfer estates and/or interests in registered land by e-conveyancing. The statute does this by authorizing the execution of formal deeds and documents electronically. The 2002 Act

also contemplates the formation of a secure electronic computer network within which to carry out e-conveyancing. It is envisaged that the execution of all such deeds and documents together with their registration will be simultaneous. To achieve this, the process of registration will be initiated by conveyancing practitioners. However, there is State control. Access to the computer network is to be controlled by Land Registry, which will also exercise control over the changes that can be made to the land register. The 2002 Act also provides for the Lord Chancellor to regulate by rules those transactions that can be carried out electronically. Furthermore, it gives the Lord Chancellor power to make the use of e-conveyancing compulsory. Compulsory e-conveyancing will arise only after a period of consultation and after a transitional period when conveyancers will move from the existing paper-based system to an electronic system. Consequently, there will of necessity be a period of time when the two systems co-exist.

The 2002 Act is intended to make it impossible to create or transfer many rights in or over registered land except by registering them. Investigation of title should be effected entirely online. It was originally intended that the Registry would also provide a means of managing a chain of transactions by monitoring them electronically. This was meant to enable the cause of delays in any chain to be identified. Once identified, steps would no doubt be taken to put pressure on the delaying party to make sure that the bottleneck to progress was removed. Despite a chain management pilot being processed by the Registry (see 1.189), it seems that they have drawn back from this aspect of the scheme and it may be for others to arrange chain management. (The Law Society Veyo scheme seems to involve a measure of chain management.) The Law Commission anticipated that, as a result of this supervision by the Registry (or others), far fewer chains will break and conveyancing will be considerably expedited. The involvement of chain management is expected at a very early stage in most, if not all, registered land transactions, as will be highlighted in 1.188.

Anticipated model of e-conveyancing

The computer e-conveyancing network will be accessible only by contractually authorized professionals, whether those are solicitors, licensed conveyancers, estate agents, or mortgagees. The e-conveyancing network will not be used just for the several stages of each transaction, but also for the provision of property information and to coordinate and manage chains of registered land dealings. **1.187**

We originally anticipated that Land Registry would be made responsible for managing chains of transactions in order to smooth their progress. When a buyer or a seller instructs a conveyancing practitioner to act on his or her behalf where there is likely to be a chain of transactions, that practitioner was to be required to notify the Land Registry 'chain manager' of those instructions. Thereafter the practitioner was also to be obliged to advise the Registry of the completion of the several stages in the conveyancing procedure so that the chain manager could log them. In this way each step can be shown in a matrix, thereby building up a complete picture of where in the chain each transaction is. This process should enable all those involved in a transaction to identify bottlenecks within the chain that can be addressed so as to try to expedite the process. This information will be made available via the secure intranet to all parties in the chain. This will be by way of the chain matrix, a grid setting out the steps taken or to be taken in a transaction. **1.188**

Land Registry announced a trial of a prototype 'Chain Matrix' service, one of the key elements of its e-conveyancing system, between autumn 2006 and spring 2007. The prototype chain matrix allowed conveyancers, their clients, and selected estate agents to view the progress of property transactions in chains on a dedicated website. This meant that they were able to see if there were any delays in particular transactions, what was causing them, **1.189**

and when exchange and completion had taken place. Bristol, Portsmouth, and Fareham were chosen for the initial six-month trial. Conveyancers in those areas, dealing with the sale and purchase of properties, were able to update details of the progress of the transactions in the matrix and, using the notepad facility, leave messages for other participants in the chain. Following the trial, Land Registry offered to support developers and commercial enterprises that want to develop chain matrix-type services. The Chief Executive of Land Registry said of this development that '[t]his decision is both in keeping with our policy of concentrating our resource on enhancing and expanding e-registration services and in line with the research findings. It enables us to carry on doing what we do best, while supporting the commercial market to develop entrepreneurial or innovative new services which will meet the needs of conveyancers in the future.' It would seem however that Land Registry has for the moment abandoned the chain matrix in favour of developing e-documents and electronic applications. Land Registry is introducing an enhanced facility to lodge documents electronically, for registration or noting by Land Registry, through the new portal. The e-documents system currently provides for the introduction of:

- e-DS1 (electronic discharge);
- e-AN1 (application to enter an agreed notice);
- e-CN1 (application to cancel a notice (other than a unilateral notice));
- e-RX3 (application to cancel a restriction); and
- e-CSF (an electronic charge in standard form which is the first electronic equivalent to a deed to be accessed and created through the Land Registry Portal. It enables mortgages to be signed electronically and submitted to Land Registry for registration);
- e-DRS (an important new document registration service introduced in December 2012. With e-DRS, you can send and receive applications to change the register electronically, attaching scanned copies of supporting documents. Details of this new facility can be found in Chapter 9).

- 1.190** In the original e-conveyancing proposal, when the seller and buyer have agreed the terms of the contract, they will send a copy in electronic form to Land Registry, where it will be checked electronically. This is meant to enable any inconsistencies in the agreement on factual matters, such as property address, title number, and seller's name, to be identified and corrected before the contract is made binding. The contract will be made in electronic form and signed using a digital signature, i.e. electronically by the seller and buyer. As is the case now, estate contracts should be protected in the register by the entry of a notice (currently a caution). This noting in the register should be made electronically at the same time as the establishment of the binding contract.
- 1.191** The draft transfer and any mortgage will be prepared in electronic format and in relation to the transfer agreed between the seller and buyer. As was the case for the contract, the draft will be submitted to the Registry for scrutiny. The particulars in the transfer will be checked electronically against the contract to ensure that there are no inconsistencies. The Registry, in consultation with the seller and buyer, will indicate the form that the land register will take when the transaction is completed by assembling a pre-completion draft register.
- 1.192** Completion will entail the concurrent happening of the following events:
- (a) the execution of the transfer and any charges in electronic form, and their transmission to the Registry where they will be stored;
 - (b) the registration of the dispositions so that the register conforms with the notional register previously agreed with the Registry; and
 - (c) the appropriate (and automatic) movement of funds and the payment of SDLT and Land Registry fees.

The beneficial effect of this system of e-conveyancing is that the time lag between completion and registration that arises in the paper-based system will be eradicated. Changes to the register will be made automatically as a consequence of electronic deeds and documents and applications created by conveyancing practitioners on behalf of their client sellers and buyers. Land Registry previously issued additional notes about the possible new e-conveyancing system website and these are set out below: **1.193**

E-conveyancing will comprise a certain amount of re-engineering of the process and is expected to incorporate the following new features:

- At the time the seller's conveyancer uses the e-conveyancing service to transmit the draft contract from their computer to the buyer's conveyancer, automatic validation checks will compare contract data with Land Registry data and electronic messages will indicate any discrepancies and/or omissions. It is anticipated that these will be resolved online. At this time, a new 'notional' register will be built on the system indicating, as each document is prepared, what the new register would look like.
- Conveyancers will also record on the system the stage reached on each transaction by adding data to a 'chain matrix' available in the central service. This will enable conveyancers and Land Registry to see the progress of all the transactions linked together in a chain. Chains will therefore become more transparent. The conveyancer's task in synchronizing exchange and completion dates should be simplified, with any blockage points being immediately identifiable to facilitate enquiries.
- There will also be a facility for conveyancers to view Land Registry's day list (a log of all pending applications) prior to exchange of contracts, in order to ascertain whether or not there is such an application which may adversely affect the transaction—for example a bankruptcy notice.
- At the contract stage, there will be an electronic equivalent of contracts. Contracts will be exchanged electronically when the buyer's and seller's conveyancers have signalled that agreement has been reached and contracts have been signed and released for electronic exchange. The central service will provide for automatic exchange of contracts relating to all transactions in a property chain. For this and other purposes, conveyancers will need to have electronic signatures. Land Registry has initiated a project to determine an effective and affordable e-signature ('document authentication') solution. Payment of deposits on exchange will be accounted for in the central service and paid by the electronic funds transfer (EFT) service.
- A substantive register entry will be made to note the contract. This would also provide, automatically, a priority protection period in respect of any competing application and during which completion with registration would normally be expected to take place. Provision to extend the priority protection period may be necessary for delayed completion.
- During this period the draft electronic transfer and any draft electronic legal charges will be agreed and finalized. These documents will then be signed electronically in anticipation of completion just as they are in the existing paper system. Shortly before completion the parties to the transaction (and all parties in the chain) will signal their readiness to complete in accordance with the terms of the contract. They will do so by using an extension of the chain matrix, which will indicate, first, that all necessary documentation is signed and, secondly, that all the financial arrangements are in place. Registration will take place with completion.
- All financial obligations, including SDLT and Land Registry fees as well as payments between buyers, sellers, lenders, and conveyancers, will be settled through the EFT service. With the help of e-technologies, the amounts of SDLT and Land Registry fees will be correct in virtually all cases. This will contrast with the present high incidence of errors.
- Post-completion—it is envisaged that no further action would be needed for transfers relating to registered land. When the purchase of unregistered land is included in a chain of transactions, it will only be possible to achieve simultaneous completion and conditional registration for that transaction. The reason for this is that the unregistered title needs to be examined by Land Registry.

A comparison between paper-based conveyancing and e-conveyancing

1.194 It may assist practitioners to see how stages in a conveyance compare as between the present paper-based system and its likely successor, e-conveyancing. The comparison will follow the five stages in a normal conveyance for a purchaser (see Table 1.1):

1. estate agent/marketing stage;
2. pre-contract stage;
3. contract stage;
4. post-contract but pre-completion stage; and
5. completion and post-completion stage.

Table 1.1 Paper-based conveyancing and e-conveyancing

Paper-based conveyancing	E-conveyancing
<p>Estate agent/marketing stage</p> <p>Traditional marketing methods used by private sellers or their agents, e.g. adverts, boards, signs, lists, etc.</p>	<p>Estate agent/marketing stage</p> <p>Traditional marketing methods used by private sellers or their agents, e.g. adverts, boards, signs, lists, etc. There could be additional e-marketing on the Internet through agents or possibly the NLIS.</p>
<p>Pre-contract stage</p> <p>1. Buyer makes an offer which the seller accepts. Their respective conveyancers are instructed.</p> <p>2. Several searches required, all requested by post.</p> <p>3. Paper-based enquiries issued and answers reviewed.</p> <p>4. Survey commissioned.</p> <p>5. Mortgage arrangements made.</p> <p>6. Paper contract approved and signed by the hand of the contracting party and held by practitioners.</p> <p>7. Where a chain of transactions exists, practitioners acting for buyers and sellers in the chain arrange a proposed completion date and seek to make a series of coordinated exchanges.</p>	<p>Pre-contract stage</p> <p>1. Buyer makes an offer which the seller accepts. Their respective conveyancers are instructed. There may be a requirement to notify Land Registry of a potential transaction so that the chain matrix can be formed, the notification made by the seller, or the estate agent by e-mail.</p> <p>2. Several searches required, all requested electronically via the NLIS.</p> <p>3. Enquiries made by e-mail and answers received by e-mail and reviewed.</p> <p>4. Survey commissioned.</p> <p>5. Mortgage arrangements made online.</p> <p>6. E-contract approved by the practitioners and then by Land Registry and electronic signatures arranged.</p> <p>7. Guided by Land Registry chain manager and by reference to the online chain matrix, a completion date is agreed and contracts are ready to be electronically concluded. The Registry before exchange may enter the proposed new title entries in draft form on the register in readiness for exchange—the notional register.</p>
<p>Contract stage</p> <p>Contracts exchanged usually following one of the Law Society formulae (A, B, or C) and usually by telephone between practitioners involved in the chain of transactions.</p>	<p>Contract stage</p> <p>Electronic exchange based on electronic signatures and the approved e-documentation based on the online matrix information. Deposits paid by EFT system. Completion of financial e-settlement arrangements to be prepared. A note of the contract is entered on the relevant title at the time of exchange and the title freezes. The Registry after exchange will enter the proposed new title entries in draft form on the register in readiness for completion—the notional register.</p>

Paper-based conveyancing	E-conveyancing
Post-contract but pre-completion stage	Post-contract but pre-completion stage
Requisitions on title.	No need for requisitions on title.
Drafting and approval of transfer deed.	The e-transfer will be approved by the practitioners and Land Registry and draft changes to be made to the register are approved by the Registry.
Final searches.	No need for final Land Registry search, the title is frozen and there is an entry protecting the contract but a bankruptcy search will be required against the borrowers to protect any lenders. (A company search will still be required if the seller is a company—it can be completed online at Companies House.)
The seller signs the transfer in readiness for completion.	No further signatures required.
Completion and post-completion stage	Completion and post-completion stage
<i>Completion</i>	<i>Completion</i>
The transfer deed is signed, dated, and delivered to effect completion and the deeds passed over to the buyer's practitioner with undertakings to pay off mortgages and to pass over forms DS1 and END1. Payments are made either by bank transfer, banker's draft, or cheque.	There is no need for a transfer and there are no deeds. Once all parties are advised, Land Registry will complete the change of ownership by making the draft entries of the formal details of title and ownership on the e-register. Payments are made by e-settlement including redemption monies, fees, SDLT, and costs—the EFT system.
<i>Post-completion</i>	<i>Post-completion</i>
SDLT paid. Land registration application made, it is hoped, in the priority period. The Registry updates the title and issues a Title Information Document.	Unless the title is for first registration, there is nothing further to be done. The title has been instantly updated at completion. The title can be accessed electronically on the open-to-the-public land register.

E-conveyancing and first registration

The effect of e-conveyancing on the practice of first registration is unlikely to be of any great consequence. We assume that the transfer inducing first registration will be possible in electronic format. In essence, while the transaction will be conducted on a paper-based system, the transfer deed will be prepared electronically so that it can then be adopted for the purposes of the first registration application to the Registry. Secondly, where first registration is voluntary, it will be possible to make the application for electronic voluntary first registration. In both cases the supporting title deeds will have to be physically delivered to the Registry to enable it to approve and first register the newly registered title. **1.195**

State control of conveyancers and conveyancing

Substantial State control of the conveyancing process and those who conduct that process is put firmly in place by this intended model of e-conveyancing. Only those solicitors or licensed conveyancers who have been authorized to do so will be permitted to conduct e-conveyancing. The relationship with the Registry will be contractual, under a 'network access agreement', and the Registry will be obliged to contract with any solicitor or licensed conveyancer who meets specified criteria. **1.196**

- 1.197** Those specified criteria will be the subject of wide consultation and discussion with the relevant professional and other interested bodies. It may be that the intention of the 2002 Act is to raise the standards of conveyancing. It may achieve that; but what it certainly achieves is the State control of conveyancers and conveyancing. Presumably, if an authorized e-conveyancer starts to be identified as a regular producer of bottlenecks in matrices, he or she could be at risk of losing his or her authority. Perhaps such a conveyancer would then have to limit his or her work to unregistered transactions.

Pitfalls of e-conveyancing

- 1.198** E-conveyancing is not without potential difficulties. Several have been anticipated in legal and computing journals. Two relevant articles looked at the potential abuse and misuse of digital signatures by unauthorized third parties. See 'The cost of e-conveyancing', LSG 99/11, 14 March 2002, p 43, and 'The perils of non-repudiation', LSG 98/39, 11 October 2001, p 45. Practitioners should also consider the warnings about security and computer-virus attacks set out in 'The BadTrans virus and e-conveyancing' *Computers & Law*, December 2001/January 2002, p 8. In that article the author, Raymond Perry, says: 'The Government has already given an indication that in cases where a solicitor is negligent in protecting his digital signature as a result of which the register is altered then Land Registry may look to the solicitor for an indemnity if compensation has to be paid.' This means that solicitors will need to be sure that they have taken all reasonable steps to protect their IT systems from third-party attack and misuse of their digital signatures. Failure to do so could be expensive. The future will clearly require conveyancing practitioners to be experts in 'software updates and virus warnings' as well as in the law and practice of conveyancing.
- 1.199** In the *Law Society Gazette* of 13 December 2012 the Chief Land Registrar was reported as saying: 'Electronic conveyancing remains on the agenda of the Land Registry despite proving more difficult to realize than anyone had thought'. This appears to underline the reasons for the slow progress to full e-conveyancing.

THE LAW SOCIETY CONVEYANCING QUALITY SCHEME

- 1.200** The Law Society have designed and are now actively promoting a Conveyancing Quality Scheme (CQS) the aim of which is to provide a recognized quality standard for residential conveyancing practices. This new scheme was introduced from the start of 2011. The Law Society say that the scheme will enhance the reputation of conveyancing solicitors, provide reassurance about integrity and practice standards, and that it will create a trusted conveyancing community that will deter fraud whilst providing a more effective service for clients.
- 1.201** The scheme utilizes the transaction Protocol and adopts four guiding principles:
1. Probity: application for membership focuses on identity and status checks for individual conveyancers and firms to create a trusted conveyancing community.
 2. Practice quality standards: consistent processes and standards are central.
 3. Client/stakeholder service: a new client charter aims to ensure quality of service delivery.
 4. Quality assurance: monitoring and enforcement are robust and members may be subject to spot checks and audits.

Practices must have three years' conveyancing experience to apply. Membership is annual with re-accreditation at the end of each 12-month period. Applicants will have to produce evidence that they have vetted and identified key conveyancing staff in the firm. As a

minimum all partners connected with residential conveyancing within the firm must have had a Criminal Records Bureau check within the last 12 months. The Law Society further advise that all members of staff involved in residential conveyancing or in a position to handle financial transactions should also have an up-to-date Criminal Records Bureau check.

The firm will also be required to produce procedures for practice management focusing on financial management, supervision, file auditing, client care, and complaints. It should also be noted that the application process will include the mandatory training for a new post required by the scheme called the Senior Responsible Officer (SRO). The SRO must be nominated by the firm as being responsible for the scheme. Other staff will also require training on how to comply with the scheme requirements. The Law Society provides courses that are being designed to meet the requirements of the accreditation process and are currently the only ones authorized to do so. **1.202**

There are fees payable on applying and for membership. When the scheme was introduced a sole practitioner was required to pay £150 plus VAT to apply (now £165 plus VAT) and a £200 membership fee (now £220 plus VAT), while a 50+ partnership had fees of £950 plus VAT (now £1,045 plus VAT) and £1,000 plus VAT (now £1,100 plus VAT), respectively. Members can display the scheme logo on their stationery and in their offices. **1.203**

To coincide with the promotion of this Scheme the Law Society also issued the fifth edition of the Standard Conditions of Sale (see Chapter 3), and a 2011 Law Society Code for Completion by Post (see Chapter 8). The Law Society have also issued a revised Conveyancing Protocol, see Chapter 2 for more details. **1.204**

It was reported in February 2015 that all solicitors on the Nationwide Building Society conveyancing panel will have to be accredited under the CQS. This requirement of the largest building society in the country will be put in place during the summer of 2015. The Nationwide stated: 'We see CQS as best practice and a valuable indication of firms' commitment to providing a quality service to their clients' (*The Law Society Gazette*, 23 February 2015, p. 3). **1.205**