



# THE CITY OF LONDON LAW SOCIETY

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Mr Peter Collis  
Chief Land Registrar and Chief Executive  
The Land Registry, Head Office  
32 Lincoln's Inn Fields  
London  
WC2A 3PH

11 January 2007

*By email and post*

Dear Mr Collis

## **Proposal 66, Review of Land Registration Rules 2003**

I am writing to you as Chair of the City of London Law Society, which represents over 13,000 City solicitors through individual and corporate membership. The CLLS operates 17 specialist committees that respond to Government consultations on behalf of its members.

This letter outlines concerns raised with me by the CLLS Regulatory Law Committee and their Money Laundering Sub-Committee about Proposal 66 the Review of the Land Registration Rules 2003 consultation (the "Consultation"). The CLLS is aware and agrees with similar concerns that have been raised in responses from the Law Society, the Association of Professional Support Lawyers and the London Professional Support Lawyer Group.

Whilst the CLLS understands and agrees that fraud must be addressed, it believes the implications of Proposal 66 are very serious and warrant a separate consultation and further discussions with relevant professional bodies.

In addition, the CLLS highlights the following specific concerns:

### **Shift in responsibility for identity fraud**

- The effect of the implementation of Proposal 66 is to allow the Land Registry to argue that it relied upon the confirmations given in Forms AP1 and FR, thereby shifting responsibility for identity fraud

on to conveyancers. This is a very serious reallocation of risk from the Land Registry to conveyancers.

- Whilst the CLLS sees the benefits of the Land Registry's desire to progress electronic conveyancing, there have always been associated security risks which were previously highlighted to the Government and the Land Registry when the proposals for electronic conveyancing were first floated. It is wholly inappropriate for the Government to introduce electronic conveyancing fully aware of the associated security risks only to then pass that risk on to conveyancers.
- The CLLS considers that the issue is very important and must be considered separately; it requires serious thought and discussion between the Land Registry and the relevant professional bodies including the Law Society and Council for Licensed Conveyancers. The Solicitors Regulation Authority should also be involved in any discussions. It is clear from the Land Registry's commentary that this reallocation of responsibility will apply in the electronic environment and this is, therefore, an issue that has constitutional and long term implications.
- The CLLS is very firmly of the view that this change should be fully considered and not rushed through as part of a wider Land Registry consultation on what are, in the main, technical points. Furthermore it is wholly inappropriate to implement such a major shift in responsibility for identity fraud by means of secondary legislation.

#### **Identification issues**

- The CLLS agrees with the points set out in the Responses.
- In addition, the CLLS is concerned with what the conveyancer is being asked to confirm where the disponor is not represented. The CLLS does not believe that "professional duties" extend to verifying (in the sense contemplated by paragraph 66) that the disponor is the registered proprietor/estate owner. The solicitor can look at the official copies and see that the person/company on the relevant title is the same as who the disponor claims to be. But is the disponor who he claims to be? There must be greater clarity as to the specific professional obligations at issue.

#### **Legal status of the confirmation**

- It is not clear what the legal status of a "certificate of confirmation" is intended to be as between the disponent's conveyancer and the Land Registry; and the disponent's conveyancer and the disponent's conveyancer.
- In each case it is not clear whether the relationship is intended to operate as an indemnity or whether it is based on contract or statutory breach; whether negligence is a key element; what measures of damages could be sought or which party is intended to be responsible legally?
- The CLLS believes that the conveyancer should be protected from himself being the victim of fraud etc, where he had acted reasonably in his identification/verification procedures.

## **Costs**

- Finally is it clearly understood that the effect of introducing Proposal 66 is to increase the costs of the conveyancer which will inevitably be passed on to his client?

In conclusion, the CLLS considers that the changes to the AP1 and FR1 forms in relation to identity have serious implications and must be considered as part of a separate consultation.

Members of the CLLS would be happy to discuss these issues with you in an attempt to find a workable solution.

Yours sincerely

David McIntosh

Chair, CLLS

Cc Land Registry Consultation Team