THE LAW SOCIETY OF ENGLAND AND WALES

RESPONSE TO THE LAND REGISTRY E-CONVEYANCING CONSULTATION

1. INTRODUCTION

1.1 This paper sets out The Law Society (the "Society") response to the Land Registry e-Conveyancing Consultation Paper (the "Consultation").

1.2 The Society's response to the Consultation encompasses its:

1.2.1 analysis of the draft Land Registration (Network Access) Rules 2007 (the "Rules") and the draft Full Network Access Agreement (NAA) focusing on:

(a) contractual issues and risk allocation; and
(b) the impact on conveyancing law and practice.

It is the Society's position that the form and substance of the NAA are of key importance to its members involved in conveyancing. The Society has provided significant commentary on the NAA, which can also be considered as applicable in the context of the Rules (in particular as large parts of the NAA reproduce or paraphrase the Rules).

1.2.2 responses to the questions raised in the Consultation.

2. EXECUTIVE SUMMARY

2.1 The Society has identified a series of key issues. The issues, along with possible solutions, are discussed in detail in section 3. In outline:

2.1.1 the NAA does not provide a clear statement of the services a user will receive, which means the obligations of each party are not clearly defined. It also fails to include a meaningful mechanism for incorporating new services or changing existing services;

2.1.2 the liability position adopted in the Rules and the NAA does not:

(a) reflect the existing position between the Land Registry and conveyancers; and
(b) fairly apportion the additional risks created by the introduction of e-Conveyancing and the Network;

2.1.3 as a general issue (and as is perhaps illustrated by the comments received by the Society contained in section 5), the Society is of the opinion that there is a fundamental lack of information about (and therefore understanding of)
the system's scope and operation. This has made the task of developing a response particularly difficult.

3. **DETAILED COMMENTARY**

**NAA Structural Issues**

3.1 The Society believes there are fundamental structural issues relating to the way in which the e-Conveyancing solution is being offered at a contractual level. These issues must be resolved to ensure take up of the system by conveyancing professionals.

3.2 Question 3 of the Consultation touches on one aspect of this issue by proposing two alternative contractual structures for the NAA (a 'single' all encompassing agreement or an 'access NAA' with added 'component sections'). In this regard the Society proposes two main changes:

3.2.1 the NAA (and to the extent required the Rules) should be redrafted to provide a service orientated approach (as explained in paragraphs 3.4 to 3.7 below) as opposed to the current amalgam of technical jargon and 'component' descriptions; and

3.2.2 there should be a 'core' NAA (addressing question 3), which will set out the initial set of services to be provided and related obligations. Contractual mechanisms should be included in the core NAA to enable existing services to be adapted and new services introduced. In essence this proposal falls between the two options outlined in the Consultation.

3.3 Contractual structures such as that proposed above are typical in agreements involving access to and use of IT systems.

3.4 It is the Society's opinion that neither the NAA nor the Rules make clear what the User will initially receive or how the scope of the services will be extended and that, as a result, the NAA and Rules are difficult to interpret. This is, in part, due to the draft NAA adopting the language of the Rules, which in turn adopt the language used in the Act.

3.5 An approach is required that allows the legislative framework (i.e. the Rules) to flow down to a clear contractual statement of the services to be provided and the parties' obligations in relation to those services.

3.6 In relation to the NAA, this could be achieved by identifying the services the user will receive, defining the overarching obligations and then linking to each service any specific obligations. This creates a service orientated agreement, which would be more meaningful to Users. This approach would also facilitate the inclusion of a mechanism to deal with the introduction of new services, making the agreement more easily extendable and providing the opportunity to incorporate proper controls on the inclusion of new services (or changes to existing services).

3.7 This approach can also be incorporated into the Rules, for instance Schedule 2 (Terms that must be included in a full NAA) could be extended to include:

3.7.1 a requirement that the services to be provided are defined; and

3.7.2 an outline mechanism enabling services to be adapted or introduced.

3.8 The Society has identified the following 'services' in the existing draft NAA:

3.8.1 "Chain Matrix" (Definitions): From an IT perspective, the Chain Matrix is a 'component' of the Network (as specified). It would be clearer to define it as a service setting out its key features, for instance enabling Authorised Users
to view the progress of Residential Property Transactions in a particular chain.

3.8.2 "Security Measures" (Definitions, Clause 48.2): By defining a set of security services it is possible to clarify to a User what is being secured rather than just outlining a series of technologies in the form of Security Measures. For instance:

(a) access security is a service utilising a logon, password (and such other physical measures as the Land Registry may implement) that limits access to the Network;

(b) transactional security is a service provided by the Network, using digital signature technologies, to validate the origin of a document (although please refer to the Society's comments below at paragraphs 3.16 to 3.33).

3.8.3 "electronic contract" (Clause 47.2): If the Land Registry provides standard form documents (including contracts) that are to be used over the Network this should be defined as a service setting out which documents will be available and a mechanism for introducing further documents (alternatively, if a service is changed or a new service introduced part of the process for introducing it should be to identify the electronic documents that will be used).

3.8.4 "electronic lodgement of Stamp Duty Land Tax returns" (Clause 48.3): again this is a service and should be defined in terms of what is does, the inputs and outputs and what the User may achieve by using it.

3.8.5 "system of electronic settlement" (Clause 51): The Society acknowledges that an electronic settlement service will be a beneficial feature of the e-conveyancing solution. However including a loose and (as an agreement to agree) legally unenforceable obligation to enter into an agreement with an unknown service provider is not helpful. This provides an example of where a clearly defined process, set out in the NAA, enabling the addition of new services would be a more appropriate approach.

3.8.6 "notional register" (Clause 55): This appears to be a 'preview' service enabling a User to view a 'draft' of the entry that would be included on the register should registration occur. Again, defining it as a service would assist in clarifying to a User what will be provided and how the obligations that surround it apply.

Registrar's Liability

3.9 The limitation of the Registrar's liability in the NAA (clauses 87 to 96) excludes virtually all conceivable forms of liability that arise in relation to the Network:

3.9.1 Clause 87 excludes the Registrar, Land Registry and any agents of the Registrar from any liability for loss or damage arising in relation to a Users performance of the agreement or use of the Network;

3.9.2 Clause 91 then sets out further, wide ranging exclusions.

3.10 Clause 92 creates a liability cap on any other form of liability which is not excluded and Clause 93 sets a de minimis. Indicative values for both the cap and de minimis should be proposed during the consultation phase).

3.11 The effect of these provisions is to place all the financial risk on the Users, even if they have complied with the Land Registry's own rules and guidance.
3.12 A number of observations can be made about the exclusion of liability:

3.12.1 The position set out in the Rules does not appear to have been translated into the NAA. Currently the exclusion clauses protect the Registrar (defined as "the Chief Land Registrar or any other member of Land Registry ...") However, the Rules state (Rule 14) that liability should be excluded for "members of the land registry OTHER than the registrar". The Land Registry's own commentary on Paragraph 14 supports this as it states:

"the intention here is that only the Chief Land Registrar as office holder – in effect, the Land Registry – will be potentially liable. Agents ... will have no liability except where paragraph 13 [death or personal injury] applies."

3.12.2 If this is corrected, the very wide exclusion in clause 87 would apply only to employees and agents of the Chief Land Registry.

3.12.3 In addition Schedule 7 paragraph 4 of the Act excludes liability of the Land Registry 'members' only if their actions are not in bad faith. The clause 87 exclusion (and clause 91) should be made subject to that.

3.12.4 The exclusions contained in clause 91 are very wide and need to be clarified and/or limited in their scope:

(a) Clause 91.1 excludes liability for exercise of any "right, remedy or discretion". It is highly questionable whether the Registrar should be able to exclude liability where the exercise of the right, remedy or discretion was not justified.

(b) Clause 91.2 excludes liability for anything that is the "responsibility" of the User. It is the User's responsibility to ensure completion of a transaction occurs on the date agreed by the parties. If the User is unable to complete a transaction because the Network (which the User is obliged to use) is not available and either the User or the clients suffer a loss, should the Registrar be able to exclude liability in these circumstances? Is this reasonable or even enforceable?

(c) Clause 91.3 could be limited to any breach of the Security Measures caused by the User failing to comply with the terms of this agreement or the guidance issued by the Registrar. If the User has done everything asked of him and still incurs a loss as a result of weaknesses in the Network, should the User have to bear that risk?

(d) Clause 91.4 limits liability in relation to loss or corruption of the User's data or records. Its not clear whether this refers to information on the User's own systems, corrupted due to the User's use of the Network or whether it refers to information retained by the Registrar.

(e) Clause 91.5.2 and Clause 91.5.3 are reasonable assuming the User has been notified of the version of any software it should be using.

(f) Clause 91.5.4 (which should be Clause 91.6) is made very wide by the inclusion of "any third party". If the definition of User includes its own contractors, this should be sufficient. The User should not be liable for the actions of third parties over which it has no control (and as drafted this could include the Land Registry or its contractors).
3.12.5 Finally, the liability cap excludes "direct and indirect damages", limiting recovery to "additional costs or expenses arising directly from the breach". It would be understand able to exclude indirect loss (a position commonly adopted in software licensing agreements, to which in some ways the NAA is similar) and limit recovery to direct loss in the form of costs or expenses arising directly from the breach. It would be helpful when considering this clause to understand what the Land Registry envisaged direct "costs or expenses" might include. For instance if a conveyancer spends additional time on a matter due to a Network failure, which cannot be recouped from the client, is this a "cost"? If the client cannot move on the agreed date and has to pay the removals company, how would the client obtain compensation?

User’s Liability

3.13 Authorised users should have the benefit of the exclusion in Clause 97, which should not be limited to deeds but should apply to all instruments. The exclusion affects only claims by the Registrar. Conveyancers who sign instruments will impliedly warrant their authority not only to the Registrar but also to the other parties to those instruments, who could therefore have claims for breach of warranty in a case where the conveyancer has been deceived about the identity of a client despite having used due care and complied with the conditions of the exclusion. This could be dealt with in the NAA if the Registrar took an acknowledgement from the Firm, expressed to be for his own benefit and for the benefit of each and every person becoming a party to a transaction carried out through the network, that no warranty of authority in respect of any instrument executed by a conveyancer in connection with any such transaction was absolute but was a warranty that the conveyancer had complied with the requirements of Clause 97.1.

3.14 Unlike the Registrar’s liability, no cap is placed on the liability of the Users. This is unrealistic and may hinder take up of the service given that financial resources of many small firms of conveyancers or sole practitioners will be limited. Professional indemnity insurance is capped so it is unrealistic of the Land Registry to expect unlimited liability from its users. If for instance a virus was introduced accidentally by a User causing the Network to crash or damage to the data, the costs of restoring the Network or data could be very high. It is unrealistic to think that a single User would be able to bear this cost.

3.15 In addition, there should be an exclusion of liability for Administrators or other Authorised Users so that they cannot be personally liable under the NAA (similar to exclusion at Clause 87 for Land Registry ‘agents’).

Security

3.16 The Society has throughout insisted that the replacement of handwritten signatures by electronic signatures should not alter the allocation of the risk of forgery as between the Registrar and conveyancers.

3.17 This point has been made in writing in considerable detail on more than one occasion. The Registrar has responded, at least informally, that he does not seek to make any change in the allocation of risk.

3.18 The use of handwritten signatures on documents leaves the risk of forgery on the Registrar: if the Registrar acts on a document with a forged signature, he will have to compensate the person who suffers loss as a result. He may have a right of recourse against a conveyancer whose breach of duty caused the loss, but would have to prove such a claim.

3.19 Disputes about whether a document with a handwritten signature was a forgery are likely to be easy to resolve with the help of the expertise of document examiners. The
use of a handwritten signature, in other words, provides valuable evidence about who made that signature. That evidence is valuable because of the biometric connection between a handwritten signature and its maker.

3.20 The digital signatures to be used in electronic conveyancing have very different characteristics. A digital signature is the output data resulting from the application of an algorithm by a computer to two inputs: the text or file to be signed, and the signatory’s unique signature key. Neither the key nor the signature can have any biometric connection with any individual, and there is no way of distinguishing one individual’s digital signature from that made by another individual using the same key.

3.21 The only verification process which can be applied to a digital signature is to determine whether or not it was made by a particular signature key. That process cannot yield any information about who used the key to make the signature.

3.22 The only basis for attributing responsibility for a digital signature to an individual signatory is to implement procedures under which the signatory can control the use of the key to the exclusion of all other persons. If there are weaknesses in those procedures such that persons other than the signatory can cause the signatory’s key to be applied to a document, then verification that the signatory’s key was used cannot by itself prove that the signatory made the signature where that fact is disputed.

3.23 The present consultation does not provide details of the procedures intended to be implemented for this purpose, and we have therefore assumed that those procedures will be similar to those used in the 2006 Document Authentication Prototype project. Those procedures had at least two weaknesses, in the sense that there were at least two scenarios under which a signatory could appear to have signed a document without in fact having done so:

3.23.1 The token containing the signatory’s key might have been stolen surreptitiously, and the password required to operate it might have been obtained from the signatory’s workstation through the use of a key stroke logging device; or

3.23.2 The signatory’s workstation might have been compromised in such a way that when the signatory used the key to sign documents, other documents not seen by the signatory were also signed by the key.

3.24 We know of no available procedures or technology that can be sure to rule out these scenarios, and in our view both can occur despite the use of reasonable care by the signatory and the firm involved. Neither of them necessarily leaves evidence of their having occurred.

3.25 If the Registrar relies on a conveyancer’s digital signature in circumstances such as those described above, he may well alter the register and incur a liability to compensate some person who suffers loss as a result. If the conveyancer denies having made the signature, how is the loss to be allocated?

3.26 The Registrar may take the view that the conveyancer (or the relevant firm) must take the risk of a breach of security, and therefore that evidence that a conveyancer’s signature was used is sufficient to make the conveyancer (or the firm) responsible, however and by whomsoever the signature came to be made.

3.27 The Society remains of the view, which it has reiterated at every opportunity, that the replacement of handwritten signatures by a scheme of digital signatures proposed by the Registrar must not alter the allocation of the risk of forgery. The fact that the Registrar’s proposals deprive the conveyancer of the evidence (in the form of a handwritten signature) that a forgery has occurred must not prejudice the conveyancer’s position. If the Registrar wishes to maintain that a disputed signature was in fact made by the conveyancer concerned, or that the conveyancer failed to use
due care to prevent the misuse of the signature key in question, it must be for the Registrar to prove that this was so, and to do so by positive evidence other than the mere fact that the signature can be shown to be attributable to the signature key in question.

3.28 The Network Access Agreement does not reflect a position acceptable to the Society. NAA46 appears to embody exactly the change which the Society has throughout made it clear it would resist. It reads:

"The User agrees that any use of the Network by any person with access to the Security Measures used by or made available to the User or any of the User staff (whether authorised by the User or not) constitutes sufficient authority for the Registrar:

"56.1 to act on any enquiries, provide such information, update its registers or to otherwise transact such dealings, with or under the instruction of that person; and

56.2 to charge for the use of the products and services associated with that use of the Network"

3.29 For this purpose the following definition applies: Security Measures: means logon names, passwords, private keys used in relation to digital signatures and certificates, software, tokens or other measures provided by the Registrar from time to time to enable access to and use of the Network.

3.30 These provisions place the risk of security weaknesses wholly on conveyancers and their firms. The risk should instead be placed on the Registrar, on terms which enable the Registrar to impose liability on conveyancers only if he can establish positively that misuse of a signature key was attributable to demonstrable carelessness on the part of the conveyancer or firm concerned.

3.31 A further matter which arises out of the proposed security structure concerns issues which may arise between parties to property transactions as to the due execution of the relevant documents. The Registrar will in many cases not be the only person to rely on the documents in question, and there may be others who need to demonstrate that a document has the signature of a particular person.

3.32 It appears to be the case that only the Registrar will be in a position to verify digital signatures made in the course of electronic conveyancing. If a party challenges the validity of a signature, other parties must be entitled to require the Registrar to provide the necessary evidence to determine its validity. If a digital signature made through the Network is alleged to have been made otherwise than by the person whose signature it is, and the Registrar is unable to establish the liability of the purported signatory, he must be liable to compensate any person who relied on its validity. The NAA should be required to contain the necessary provisions, which should operate for the benefit of all parties liable to be affected by them (as well as the parties to the NAA itself).

3.33 Further comments on security include:

3.33.1 Given the potential for catastrophic exposure if an administrator misuses his or her power, e.g. to set up fraudulent accounts, it is essential that firms can have "echoed" back to them instantly (at an electronic address which is not that of the administrator nor under the administrator's control) details of all actions taken by the administrator.

3.33.2 Controls must exist to ensure the accidental assignment of the wrong access type is avoided (for instance assigning estate agents full access or signature when read only is required).
NAA Commentary

3.34 The NAA sometimes requires the Registrar to act reasonably, but at other times makes no such qualification. The Registrar is the holder of a public office, and as such he should always act reasonably and accept that his actions are liable to be challenged if he does not. The reasonableness requirement should not be expressed in some cases only, in case that is taken to suggest that reasonableness is required only where expressly stated.

3.35 In relation to the definitions in the NAA, the Society has the following comments:

3.35.1 "Address for Service": A general question exists as to whether the Administrator should be able to update basic account information through the Network without some form of additional control, for instance either a postal confirmation to the User or perhaps requiring a second Authorised User (perhaps the Deputy Administrator) to authenticate the change. Such technical or procedural issues create risk that may need to be apportioned within the NAA. The Society believes that where the Network has obvious weaknesses, the User (if it has followed the Land Registry's own guidance) should not bear the risk associated with exploitation of those weaknesses.

3.35.2 "Administrator": The definition should be "Administrator: means the person for the time being appointed as Administrator pursuant to clause {17}". The Society assumes the Administrator can only be an individual and not a body corporate.

3.35.3 "Authorised User": It is unhelpful to label the conveyancer as “the User” and at the same time label the individuals who use the Network as “Authorised Users”. This is almost bound to lead to confusion. It would be much better to label the conveyancer as “the Firm”, an expression equally suitable for partnerships (incorporated or not) and limited companies, and tolerable for sole practitioners. In addition, the Society would recommend including "contractors" within the definition of Authorised Users to cater for those firms that employ locums or consultants.

3.35.4 "Data Protection Legislation": the references given should be verified as current and incorporate the Privacy and Electronic Communications (EC Directive) Regulations 2003 are not mentioned.

3.35.5 "Electronic Address": This definition is unnecessarily complicated. Firstly it should refer to R 198(8), which states:

198(8) In this rule an electronic address means-

(a) an e-mail address, or

(b) any other form of electronic address specified in a direction under paragraph (9).

198(9) If the registrar is satisfied that a form of electronic address, other than an e-mail address, is a suitable form of address for service he may issue a direction to that effect.

While the Society accepts the need to future proof the NAA, this could, in certain circumstances be traded against clarity and so in the case of Electronic Address a clearer definition would be: an email address or such other forms of communication that the Registrar may nominate from time to time.
3.35.6 "Fees and Charges": It is not clear how the provisions referred to in this definition translate into fees or charges. In addition, the NAA is silent on the expected payment terms but allows for termination or suspension if the charges are not paid. If payment terms are contained in the Fee Order, then a draft should be supplied, otherwise the expected payment terms should be included in the NAA.

3.35.7 "Network": The definition combines the underlying telecommunications ("electronic communications network"), the systems operated by the Land Registry ("components") and the services provided to the User. While this usefully encapsulates all elements, it makes it more difficult to distinguish those obligations that relate to the technology and those that apply to the specific service aspects. The Society would suggest that the definition is revised to focus on the systems and software used to provide the Services. A new generic definition, 'Services' should then be created, which is an umbrella term for all the specific services (refer to paragraph 3.8 above). This decouples the technical aspects of the Network from the Service offerings provided to the Users.

3.35.8 "Technical Manual": Significant aspects of this agreement, for instance security and other procedural requirements, are devolved into this document. It is therefore essential that a draft is provided for review as part of this consultation exercise. In addition, it is not clear in the NAA how Users are made aware of updates to the Technical Manual. A clear procedure should be defined. The Society also believes that wider controls should be included in the Rules to ensure important changes are not made using the Technical Manual without appropriate consultation.

The Society's comments on the main body of the agreement are set out below on a clause by clause basis:

3.36.1 Clause 7: The meaning of 'or the date on which the Network is first made available' is not clear. It would be clearer to retain just the first limb of clause 7 as presumably no user can access the Network until the first Administrator to be accepted by the Registrar has full access.

3.36.2 Clause 9: An appropriate notification procedure should be defined to ensure Users are made aware of changes in advance.

3.36.3 Clause 10: The Society does not believe it is acceptable for the Registrar to have such wide ranging powers to amend the NAA. Any unilateral changes made by the Registrar should be limited to a set of specific, defined circumstances agreed as part of this consultation process. A mechanism for notification of changes should be included.

3.36.4 Clause 13.2: This may, technically, create an issue on the admission / retirement of a new partner from some partnerships as these events can trigger dissolution of a partnership, which is then reformed after the admission or retirement. A simple carve out may rectify this issue.

3.36.5 Clause 13.3: This clause conflicts with clause 63.2, which allows for the Registrar to suspend access where the Network has not been used by the User for 1 year. The Society recommends that non-use results initially in suspension, with automatic termination only occurring if the User does not respond to a notice of termination from the Registrar within a defined period.

3.36.6 Clause 14: It would be clearer to spell out in the NAA each party's termination rights. If new termination rights are introduced these should be notified to the User as discussed above at paragraph 3.15.2.
3.36.7 Clause 15: Is it possible for access to continue even though the NAA has been terminated? If so, are the sanctions for unauthorised access defined or would existing legislation (for instance the Computer Misuse Act) be the basis for any action?

3.36.8 Clause 16: "physical Security Measures" should be “articles constituting or containing Security Measures”.

3.36.9 Clause 18: It is not clear what address is expected (home or business). Does the provision of these details relate to the identity and security checks alluded to in clause 20?

3.36.10 Clause 19 and 20: Rather than using 'unfit', this should reference the Rules, which should set out the criteria in full. In addition will an applicant or their employer be informed of the reasons for refusal? It would be prudent to take employment law advice on this point and if appropriate define the procedure for notifying a failed applicant.

3.36.11 Clause 23: An appeals procedure should be attached to this clause as it may prevent smaller firms from utilising the system.

3.36.12 Clause 26: The Society believes that this obligation is too general. The requirement to perform the obligations 'properly' should be deleted and replaced with "performed with reasonable skill and care". It is also questionable whether clause 26 is actually particularly meaningful given that a User will be vicariously liable for the actions of its employees. In addition the obligation lacks relevance in the context of sole practitioners.

3.36.13 Clause 27.1: Again, is an Administrator expected to provide personal details for the Authorised User or work contact details?

3.36.14 Clause 27.2: It is not clear what is meant by 'allocate'.

3.36.15 Clause 27.3: The NAA should include a clear statement that liability for the actions of an Authorised User is with the Registrar once notified by an Administrator that access should cease.

3.36.16 Clause 27.4: The Technical Manual needs to be reviewed to establish the extent of the proposed duties.

3.36.17 Clause 28: How many Deputy Administrators are allowed under the NAA? Some larger firms may find having only a single Administrator and Deputy a hindrance. In addition, it is not clear whether both the Administrator and the Deputy can perform administration duties simultaneously or whether access is mutually exclusive until 'switched over'?

3.36.18 Clause 29: this should be extended to include contractors of the User.

3.36.19 Clause 30: Will training be provided at a cost or will, for instance, free online training be made available? As the Land Registry may (depending on the final form of the NAA) be able to require Users to adopt new services, the position on training costs should be set out.

3.36.20 Clause 33: What records are required? Given that the Land Registry decides whether an Authorised User may use the Network, will the Network contain a reporting feature enabling a User to list it's Authorised Users?

3.36.21 Clause 34: Guidance on what qualifies as "supervision" should be produced and the basic requirements listed in the NAA. In addition, is "qualified person" used as defined in the Rules?
3.36.22 Clause 35: The concept of competence must be more specific for instance ensuring the Authorised Users have completed accredited training in use of the Network and that they have appropriate experience in conducting Residential Property Transactions.

3.36.23 Clause 38: The circumstances in which additional training can be required should be clarified. Will a single organisation have a monopoly on such training services? Will training be available cheaply as computer based training or via the internet?

3.36.24 Clause 41 and 42: Internet security is not infallible. At best a User can follow best practice and the guidance contained in the Technical Manual. The use of "will not disclose and will keep secure" is therefore not appropriate. The Society suggests this obligation should be limited to being "in accordance with the Technical Manual", where presumably the required security measures will be specified.

3.36.25 Clause 43: It is not clear what this obligation is trying to achieve. Will Administrators be able to require revocation of specific aspects of the Security Measures for instance a digital signature or is this obligation aimed at a User being able to cancel (and presumably request) new passwords or logons?

3.36.26 Clause 45: it is not clear what the difference is between the Registrar's right to suspend an Authorised User's access to the Network and the right to revoke any aspect of an Authorised User's Security Measures.

3.36.27 Clause 46.1: this obligation is too general. There is already an obligation that Authorised Users should be 'appropriately supervised'. In addition, it is not clear what might be required in terms of 'monitoring compliance'. Will the Network provide any features to assist with this, for instance reports on Authorised User activity? The Society suggests deleting the first part of this clause as it is covered elsewhere. Clause 46.1 then becomes an obligation to take reasonable steps on becoming aware of unauthorised use. In addition the obligation to report 'immediately' should be replaced with "as soon as reasonably practicable".

3.36.28 Clause 46.2: Again this should be "as soon as reasonably practicable".

3.36.29 Clause 46.3: While the reporting of faults and defects is beneficial to all Users, at whose expense would any co-operation be? Many firms or sole practitioners will not have IT departments to assist them and may have to find the time themselves. Therefore co-operation should be on a "reasonable endeavours" level as ultimately the rectification of faults and defects has to be the Land Registry's responsibility as the system owner.

3.36.30 Clause 46.4: Guidance is required on the types of information expected. This should be considered in light of data protection legislation and employment law.

3.36.31 Clause 47.1: The meaning of 'chain' is not clear. Would a chain include 'simple' transactions involving just a vendor and purchaser?

3.36.32 Clause 47.2: The word 'transaction' is used; should this refer to a Residential Property Transaction involving a contract? Further, are the buyer and seller prevented from making ancillary contracts outside the system (or having the help of their solicitor to do so)?

3.36.33 Clause 48.4 and 48.4: It is not clear that all documents required will be available in advance of completion or that all information for those
documents is known in advance of completion. The practical conveyancing implications need to be considered further.

3.36.34 Clause 48.6: Does this represent a new obligation in terms of general record keeping or is 'record...of transactions' referring to information specific to the Network? Conveyancing professionals should work within existing statutory requirements for instance Under Schedule 11, paragraph 6(3) of the Value Added Tax Act 1994 and the relevant professional guidance. In any event, the expected record keeping requirements should be made clear as part of this consultation. In addition, the access requirements would need to be considered in light of a solicitor's duty of confidentiality to their client.

3.36.35 Clause 49.1: Does this overlap with the obligation in Clause 48.6?

3.36.36 Clause 49.2: The provision of documents to the Registrar should be on reasonable notice.

3.36.37 Clause 52.1: There are several, relatively generic information retention and provision type obligations (see alsoClauses 46.1, 48.6 and 49). The Society suggests bringing these together into a single obligation setting out the information to be retained, the information the Registrar might reasonably request and the circumstances in which it may be requested. This would also assist in avoiding duplication and establishing whether any data protection, employment law or confidentiality issues arise.

3.36.38 Clause 53: What is a "channel" system?

3.36.39 Clause 54: The Society has three comments on Clause 54:

(a) The Society believes that the fragment of Clause 54 stating that the User is "responsible for the accuracy and completeness" is unreasonable as it may not necessarily reflect the functionality of the Network. For instance it may be possible to implement certain automated checks that would enhance accuracy and completeness. The correct functioning of these would not be the responsibility of the User. Clause 54 should be limited to the User agreeing to use due care and skill in relation to the accuracy and completeness of information provided by it to the Registrar.

(b) The Society suggests that the word "submitted" (rather than "provided to the Registrar") is more appropriate, as the User's responsibility lies in submitting the information correctly, not what might happen to it during transmission or when stored in the Land Registry's systems.

(c) The wording "at any stage of a network transaction" is unclear. Was the intention to create a wide obligation, for instance "at any stage of Residential Property Transaction conducted using the Network"?

3.36.40 Clause 55: The purpose of this clause is not clear. Is the clause endeavouring to make Users liable for checking the proposed entry on the register? Given the obligation in Clause 54, once accurate and complete information has been submitted, surely it is for the Registrar (as is the position now) to create and check the entry before including it in the register? This obligation could easily be construed as an attempt by the Land Registry to shift liability for accuracy of the register to Users (even though the Registrar makes "no representation as to the final form of the Register..."). In addition, the word "Register" is not a defined term so should not be capitalised.
3.36.41 Clause 56: This is very widely defined and could include hackers and the Land Registry's own employees and contractors. It is the Society's opinion that this obligation should be limited to "use of the Network by any employee or contractor of the User with access...". The User should not be responsible for the actions of a third party who gains access to the Security Measures, where Land Registry guidance has been followed by the User. Please also refer to the detailed comments above in paragraphs 3.16 to 3.33.

3.36.42 Clause 58: The Land Registry should clarify the types of information and activities that will be monitored so any confidentiality issues can be identified.

3.36.43 Clause 60: Given the sensitivity surrounding insolvency, the Society would suggest notification "as soon as reasonably practicable" rather than "immediately".

3.36.44 Clause 61 (and rights of suspension and termination generally): Such rights need to be carefully controlled, particularly where small firms or sole practitioners are involved due to the potential damage to their businesses. Appropriate controls must be included for instance an expedited procedure to enable Users quickly to end a suspension if unwarranted or contested (i.e. innocent until proven guilty).

3.36.45 Clause 62: Paragraph 6(b) of Schedule 2 of the draft Rules provides the right of termination. However the Rules do not appear consistent; the immediate termination of the NAA under Rule 7 is only possible if the Rule 6 grounds are met as set out in Schedule 3 to the Rules. Schedule 3 does not include non-payment of fees as a ground for termination.

3.36.46 Clause 64: The ten day period to respond is very slow. An expedited service should be available, for instance where there has been an error on the part of the Registrar.

3.36.47 Clause 67: "Business days" is used elsewhere. For consistency this should be used throughout and a definition of Business days introduced.

3.36.48 Clause 68: The draft Rules also allow for an extension where the notice period has expired but no action has been taken by the Registrar (Schedule 2 R3(2)). This should be incorporated into the NAA.

3.36.49 Clause 71: The Society suggests introducing the concept of materiality into this clause as not every issue arising under Clauses 71.1 or 71.2 warrants termination or suspension. In addition the clause should be objective and not in the opinion of the Registrar.

3.36.50 Clause 71.2: this uses the expression "contract, disposition or application"; should this be replaced with Residential Property Transaction? In addition the concept of an 'incorrect certificate' should be clarified. The Society suggests 'incorrect' should be limited to manifest or material error.

3.36.51 Clause 73: IT contracts often include a set of service levels (for instance specifying the expected system availability). Given the importance of the e-Conveyancing Network, service level commitments should be provided by the Registrar. Is this the intention of Clause 73 or does this Clause refer to notification of specific issues, for instance notifying Users of planned outages? Presumably the Land Registry in contracting with a systems supplier has agreed or intends to agree service levels with that supplier. The benefit should be passed back to the User community.
3.36.52 Clause 74: The Society acknowledges that no IT System will be available 100% of the time and therefore certain rights to suspend the service are necessary. However, the position in Clause 74 should be modified as follows:

(a) Clause 74.3 should contain a caveat to the effect that the Registrar will only suspend the service if it is not possible to perform the urgent maintenance or repairs outside of normal business hours (this could be defined).

(b) The Society believes that clause 74.4 is unnecessary as disruption of the type envisaged (and particularly for the potential duration specified i.e. up to four weeks) should not result in a long term loss of the service. Businesses frequently move premises with minimal disruption to their systems. Further, 'reprogramming' (assuming this to mean that a system requires some sort of a modification to the underlying hardware or software) should not require the system to be shut down. The Society does not understand why 'reprogramming' could not be done 'offline' in a test system before being propagated into a live environment as is normal in such circumstances. Further, one month's notice is insufficient for a major, planned, service disruption.

3.36.53 Clause 76 to Clause 79: The Society would suggest reorganising this section for clarity so the basic obligations of the Registrar are set out first (clause 79), followed by the restoration obligations (clauses 76 and 77) and then the content of the Technical Manual (clause 78).

3.36.54 Clause 76: It is the Society's opinion that a 'reasonable endeavours' obligation is not sufficient given the importance of the Network. The obligation should be at a best endeavours level and should include that in any event restoration will be in accordance with the service levels.

3.36.55 Clause 77: If clause 76 is not an absolute obligation to restore the Network (i.e. the obligation is only at a best endeavours level), then there must be an absolute obligation to provide an alternative service (either an IT solution, for instance switching to a back-up system within a certain time frame or moving to paper based working). The Registrar's disaster recovery and business continuity plans (as they apply to Users) should be set out in the Technical Manual.

3.36.56 Clause 79.1: It is the Society's view that this should not be a reasonable endeavours obligation but an absolute obligation to provide the Network in accordance with the service levels (proposed at paragraph 3.36.51). The Society would also like to understand what the proposed 'hours of access' will be.

3.36.57 Clause 79.2: The Society believes that this should not be a "reasonable endeavours" obligation but an obligation to maintain the Network with diligence and despatch and with all skill and expertise or such language that reflects the obligations placed on the Registrar's own service provider in relation to maintaining the Network.

3.36.58 Clause 79.3: This obligation should be extended to include a notification requirement so Users are made aware when a new version of the Technical Manual is published.

3.36.59 Clause 79.4: The Society would like to understand in more detail the intended scope of the Helpdesk and whether there will be additional charges for its use.
3.36.60 Clause 79.6: This appears to be a statement of intent rather than a useful obligation. It should either be made into an obligation e.g. "reasonable or best endeavours" or omitted in favour of a mechanism that allows new services to be incorporated.

3.36.61 Clause 79.7: Is a draft description available of the types of training that might be provided together with a charging framework to provide an indication of what 'reasonable charges' might be? The Society believes it is not equitable to charge for training in all circumstances, for instance where training is made essential by the introduction of a (mandatory) new service.

3.36.62 Clause 79.8: What is meant by a 'proportionate' amount of the 'fees and charges'? Would this include fees paid for training in accordance with clause 79.7? In addition, this clause does not distinguish between those circumstances where the system is shut down suddenly, which might involve significant cost and expense for Users and circumstances where the shut down in planned and so Users have an opportunity to mitigate any potential costs.

3.36.63 Clause 81.3: Presumably credit checking would only be performed in relation to Users and not for the purpose of vetting individual Authorised Users e.g. the Administrator?

3.36.64 Clause 83.1: It is not clear to whom the reference to 'their' is referring? FOIA assistance should only be at the Land Registry's expense.

3.36.65 Clause 84: The rights of data subjects in relation to Data Protection legislation cannot be excluded.

3.36.66 Clause 88: Clause 84 excludes any contractual rights a third party may have. However it is not clear legally how this operates when the potential third party is not a contracting party. It is not clear what mischief the Registrar is seeking to avoid.

3.36.67 Clause 101: this should be mutual.

4. RESPONSE TO QUESTIONS RAISED IN THE CONSULTATION

A. The network access agreement (NAA)

4.1 Q1: Do you have any comments on the contents of the draft full NAA?

Refer to section 3 of this Response for a clause by clause response.

4.2 Q2: Is there anything else you feel should be included in the NAA? Please give details and reasons for your answer.

Please refer to section 3 of this Response.

4.3 Q3: Do you agree with our proposal to have a single NAA per firm covering all proposed services, or would you prefer an ‘access’ NAA with added component sections, bearing in mind our reasons for having a single agreement? Please give reasons for your answer.

Please refer to paragraphs 3.1 to 3.8 of this Response for our comments on the structure of the full NAA.

B. Signing up to e-conveyancing

4.4 Q4: Do you agree with our training proposals generally?
Please refer to section 3.18.16, 3.18.20 and 3.18.57 of this Response. In addition the Society has the following general comment:

Consideration should be given to interactive training that can be integrated with a firm's own training/skills management systems. It would be helpful if training results could be downloaded in a standard format to allow a firm's administrator to analyse, understand and address any specific training issues.

4.5 **Q5:** Specifically, do you agree with our training proposals for an appointed supervisor to ensure standards are met? Yes/ no/ don't know Please give reasons for your answer.

Without having seen the proposed training framework referred to in the Consultation, it is difficult to assess whether a supervisor ‘super user’ role would be appropriate. The Land Registry must, if it intends to develop this concept, balance the expectations for the role with the cost to conveyancers in terms of creating a new role within their business.

4.6 **Q6:** Do you agree that authorised users should be able to update their own contact details?

— Yes

— Yes, with some reservations

— No, with some reservations

— No

Please explain your answer.

While self service administration for users is becoming a common feature of IT systems this must be balanced with the security and integrity of the system. Administration may depend on the type of Authorised User for instance it might be acceptable for full access users to update their own details (perhaps with a notification to the Administrator) however without appropriate controls, allowing clients to amend their contact details could create administrative issues.

4.7 **Q7:** Do you have any comments on our proposal for an e-charge in standard form?

— Good idea

— No objection in principle

— Problematic for lenders

— Need more detail before commenting

— Other

Please explain your answer. The Society believes that the standardisation of documentation is beneficial so long as a degree of flexibility is retained. However to comment on the e-Charge specifically would require further information about the form of the e-Charge, the scenarios in which it would be employed and the surrounding processes.

4.8 **Q8:** We have not included in our definition of ‘qualified person’ overseas lawyers with rights of establishment in England and Wales. Should we include them?
The Society believes English land law is unique and so the definition of ‘qualified persons’ should not extend to overseas lawyers purely on the basis of a right of establishment.

Will the system employ technologies that prevent or limit access from outside of the UK? If access is not limited additional legal issues may arise (for instance data protection).

4.9 Q9: In paragraph 9(1)(b) of Schedule 1 to the Rules, we refer to several regulatory tribunals. Are there any others that, in your opinion, should be added?

The Society is not aware of any other regulatory tribunals that should be added.

4.10 Q10: Do you agree that the measures in paragraphs 6 to 9 of Schedule 1 are necessary (for the reasons given) and reasonable?

— Yes

— Unreasonably rigorous

— Necessary but…

— No

Please give reasons for your answer and any suggestions for improvement.

The Society recognises the Land Registry’s need to be rigorous but, as drafted, the paragraph 7 requirement is unreasonable due to the Registrar’s wide ranging termination rights, which include termination for relatively trivial breaches.

4.11 Q11: Do you agree that the criteria for entry into a full NAA set out in Schedule 1 satisfy paragraph 11(3) of Schedule 5 to the Act?

— Yes, completely

— No, do not sufficiently satisfy:

— confidentiality

— competence

— insurance.

Please tick those that apply.

The Society believes that the Land Registry must satisfy itself that it has correctly interpreted all relevant enabling legislation.

4.12 Q12: Do you have any comments on our definition of ‘serious breach’?

Please refer to paragraph 3.36.49 of this Response.

4.13 Q13: In paragraph 10 of Schedule 2 to the Rules we refer to a requirement for users to retain original or certified copies of certain documents for a period not exceeding six years. Do you agree that six years is a reasonable amount of time to retain such documents?

What would be a reasonable retention period?
— Two years
— Four years
— Other
Please give reasons.

It is the Society's opinion that this will depend on the nature of the document, for instance a deed should be retained for 12 years. If a document is of importance to the Land Registry, could the Land Registry accept a scanned copy of that document, possibly signed with the digital signature of the User or Authorised User? Further, the Society is of the opinion that the document retention requirements do not align with the notion of e-Conveyancing and a paperless process. If certain documents are of significance to the Land Registry, should they simply be retained by the Land Registry (possibly in a certified electronic form)? Otherwise the Land Registry is (in essence) 'outsourcing' its document archiving requirements to the User community.

4.14 **Q14:** Do you have any comments on the limitation of liability clauses at paragraphs 12 to 19 of Schedule 2?

Please refer to paragraphs 3.9 to 3.15 of this Response.

4.15 **Q15:** Do you have any further comments on the terms that must be included in a full network access agreement set out in Schedule 2?

Please refer to section 3 of this Response.

4.16 **Q16:** Do you think any further terms should be added to Schedule 2?

Please refer to section 3 of this Response.

4.17 **Q17:** Do you have any comments on the grounds for termination set out in Schedule 3 to the Rules?

Please refer to paragraphs 3.36.4 to 3.36.7, 3.36.43 to 3.36.44 and 3.36.49 to 3.36.50 of this Response.

4.18 **Q18:** Do you feel there should be any further grounds for termination not already mentioned?

The User should have an explicit right to terminate the NAA at any time with a pro-rata refund of any advance fees or charges paid.

4.19 **Q19:** Would you like to make any further observations on the Network Access Rules as a whole or as to a specific aspect of them?

Please refer to section 3 of this Response.

4.20 **Q20:** Do you have any comments on the Land Registration (Electronic Communications) Order 2007?

The Society is not clear how the electronic document will "make provision" for the time and date the contract takes effect as frequently this is not known at the time of signature. Signature by both parties is not necessarily indicative of an intention that the contract should take effect. There may be other aspects of the process that are incomplete and signature is provided early on practical grounds, for instance if the client will be out of the country.
The Society believes that this aspect of the process needs to be considered further to ensure adequate flexibility is built in, for instance allowing late changes to the contract and providing the conveyancers with control over when the contract comes into effect.

4.21 Q21: Do you have any comments on the partial regulatory impact assessment included in this consultation paper?

While the Society welcomes the introduction of an e-Conveyancing system, it cannot be predicated on illusory benefits. The Society believes that a more realistic position (and typical of many IT projects), is that the early phases of such a project do not provide immediate, tangible benefits to the User community. The 'benefit' of the initial phase of the project accrues (primarily) to the Land Registry in that it will have a basic infrastructure that can be developed and expanded upon.

The Society believes that the Land Registry should make this clear to all parties so expectations are set at an appropriate level. The Society therefore believes that initially:

- there will be no material change in the reliability of information;
- there will be no demonstrable cost savings;
- the speed of any conveyancing transaction will continue to be a function of the market and the individuals that are party to that transaction.

With this basic expectation in place, a clear and realistic assessment of the benefits should be performed and mapped to the various 'phases' of the e-Conveyancing initiative. Again, taking a service orientated approach would assist as the benefits of each Service could be analysed individually. If the Services are then placed in a sequence mirroring the likely sequence in which they will be introduced it will be possible to see how the cumulative benefits accrue as Services are introduced to the User Community.

5. OTHER ISSUES

5.1 This section contains additional comments obtained by the Society, which are categorised as more general, practical points or functional requirements of the system (rather than commentary on the NAA or Rules).

Practical Issues

5.2 There is a presumption throughout the consultation document that the Land Registry will have to become through the Chief Land Registrar some sort of quasi regulator in a future e-conveyancing regime, as the consultation envisages parties beyond just solicitors or licensed conveyancers being able to enter into Full Network Access agreements. If only solicitors and licensed conveyancers were to be permitted to enter Network Access Agreements, the Land Registry would not need to become a regulator because the regulatory bodies of the two professions could be asked to draw up and agree appropriate rules for their own members which they would enforce through existing structures. If the scheme is set up as envisaged in the Consultation document, it is possible that a dual regulation position will be created. This should be avoided at as it is unduly expensive and unnecessary. It is also inevitably unfair to those involved. If it is within the future plans for e-conveyancing for the Land Registry to permit access by unregulated firms or persons then the Land Registry can, at that time, create appropriate separate and equivalent regulatory structures. Such considerations on regulatory issues should similarly apply to educational and training requirements where these again can be dealt with at the present time through the existing regulatory bodies.
5.3 Page 17 of the Consultation - This section puts forward the three types of proposed NAAAs but gives no details as to what “limited access” means for the read only type and does not set out the limitation details on the signature NAA either, only save to say that conveyancers will act as “gatekeepers” in these circumstances.

5.4 What guidance will be given to “gatekeepers” by the Land Registry on such matters as client confidentiality and freedom of information?

5.5 What protection will be given to other users in the event of a liberal interpretation of access by other “gatekeepers”? Matters such as KYC and the face to face check referred to in paragraph 1.1.1 of the Response should be otiose where the Land Registry are dealing with regulated professionals or their firms.

5.6 It is noted that the term “sole practitioner” is used only once in the whole of the Consultation document. There are in excess of 4,000 sole practitioner solicitors in England Wales the majority of whom are involved in conveyancing. Much of the terminology in the Consultation document seems barely relevant to or at best ignores the structures of these practices. The Land Registry must confirm that it has an absolute commitment to ensure that sole practitioners will be able to play a full and equal part in any future e-conveyancing system subject only to compliance with the requirements of their own regulatory body.

5.7 Pages 20 and 21 of the Response:

5.7.1 Paragraph 1.3 on DIY conveyancers is very imprecise. Fuller details are required so that comment can be made.

5.7.2 In Paragraph 1.4 the Land Registry should be more precise on access that is granted to these agencies.

5.8 As an alternative to a Land Registry training regime, this could be dealt with by the relevant regulatory bodies having compulsory CPD requirements. Again much of the terminology in this section seems to ignore the sole practitioner situation. Mention is made of a “signing-up” charge for the service. It is crucial that this is fair and reasonable to all firms taking into account their size, make up and potential profitability.

Functional Issues

5.9 The Society would recommend that the Land Registry publish its position on integration with other systems including Case Management systems. Clearly it is advantageous if the Land Registry develops or adopts open standards (XML based) that can be adopted by suppliers of systems. Integration opportunities that reduce manual data input and facilitate integration with the existing systems of conveyancers will improve the uptake of the e-Conveyancing solution.

5.10 Consideration should be given to the system having the ability to call up on screen walk through training so that a user can see an example of what to do next at every stage.

5.11 Paragraph 3 of the Response – Many firms will wish to administer their own users’, new joiners’ and leavers’ access. There should be multiple deputies and a mechanism for quickly changing the Administrator in case of sudden loss of staff.

5.12 Consideration should be given to a buddy system so other staff in a team can administer another team member’s transaction in case of holidays as otherwise again there will be sharing of user account information with associated security risks. Self service of user details is essential to limit the administrative burden on Administrators. This is standard on nearly every web application now so should not be a problem.
5.13 The costs for access should be published. There should not be a bias towards high volume users.

5.14 Tools with the capability to identify abuse or irregular behaviour will be essential to assist Administrators. Reporting tools will be an essential part of the Administrator console. The Land Registry should also share some of the burden of identifying suspicious activity as it has access to the back end global data sets. Alternatively the security model could restrict access to specific IP addresses of the firms granted access so that users can only log on from the office. This increases the ability to monitor behaviour and limit the risk of breach of the NAA by rogue users.

5.15 There seems to be no planned integration with firms' existing case management systems and due to the limited functionality of e-Conveyancing this will result in additional administrative tasks required to maintain two separate systems. There is also no link with a firm's accounting systems.

5.16 The e-Conveyancing system primarily relies on the solicitor signing documents for the client. Some firms may not wish to adopt the obligation to sign off an SDLT return for a client.

5.17 The document refers to an alternative paper based system. This is simply not feasible unless the system prompts the user to download a legally enforceable copy of key documents at key stages – e.g. the e-Contract. This necessitates printing as you go so may not in fact reduce the paper burden.

5.18 There is also no explanation of how processes carried out using the fall back (paper) system goes back into e-Conveyancing when the system is back up as this may appear to the system as unauthorised processes. The system will necessarily have built in rules anticipating certain steps to be complete before the parties can move on to the next stage with in built data validation and system rules as you go. It may be difficult to override this if the process falls down and the legal effect of which will be difficult to determine. Following a system failure with e-Conveyancing thousands of data changes may be required to get the system to mirror the parties' behaviour in the period of system downtime. Relaxing the system rules is not the answer either as this allows users to perform 'illegal' (in the system sense) transactions.

5.19 For example, parties are ready to exchange on a critical deadline and the parties have set up e-Conveyancing to e-Exchange with deposits moving up the chain; fortunately all parties have printed off the contracts; the system goes down. The parties exchange by formula B in the current way and agree to TT funds or send by cheque outside the e-Conveyancing and EFT system. Can the parties override the system which was expecting to have money coming in and out? Can they simply tell the system that regardless of what it thinks should be happening, they have in fact already exchanged? Assuming they can, when legally is the contract actually exchanged? Assuming they can, when legally is the contract actually exchanged as the system rules/revised Standard Conditions will determine that it happened when the process was executed in e-Conveyancing (assuming the parties can input this information when the system is back up and running so that they can go on with the process to completion) i.e. when they restarted back in e-Conveyancing. The parties were however actually contractually bound based on the printed documents some time earlier. Risk passes on exchange so in the event of a fire (for example), the precise legal timing of exchange can be critical.

5.20 Further comments on the "E-CONVEYANCING SERVICES: AN OVERVIEW" section of the Consultation:

(a) In relation to the section 9 (page 64), the paragraph stating "It will also confirm that the content of the document has not changed since the signature was attached by 'locking' the document." This is misleading to the extent that it implies the document cannot be
changed. It can be changed, but thereafter the signature cannot be verified as valid.

(b) “Various types of e-signatures have been trialed by volunteer customers over the past year and we are now finalizing our requirements”. The e-signatures were all of the same type (X.509 PKI): the signature keys were held in a variety of ways. The suitability of an X.509 PKI was not established by trials, and remains disputed.

(c) Registration on completion ought to be available for transactions not involving chains.

(d) There should be no reason why solicitors should not be provided with electronic copies of electronically signed documents; and their clients may need them (e.g. to sue on a covenant), although perhaps if the Registrar provides them at no cost, this would not be an issue.

6. SUMMARY

6.1 In developing this Response the Society has given careful consideration to the structure, detail and legal relationships created by the NAA and the Rules. In addition, the Society felt that a comprehensive commentary on the draft NAA was appropriate as the NAA will be integral to the take up and thus success of the e-Conveyancing system.

6.2 The Society wishes to reiterate its support for an e-Conveyancing system. The following, primary issues have however been identified in this Response, which the Society believes will inhibit the take-up and jeopardise the success of the e-Conveyancing initiative unless addressed:

6.2.1 The Society is of the opinion that there is a fundamental lack of information about the system’s scope and operation. This made the task of developing a response particularly difficult. The Society believes that the services and processes that will be available to end users must be clarified and made available to interested parties before the Rules and the NAA can be finalised.

6.2.2 The Land Registry must decouple the language and structure of the Rules from the NAA. While Rules should define the basic obligations to be included in the NAA, the NAA must take a more service oriented perspective to enable users to understand what they will receive, the obligations they are taking on and hence the risks associated with the use of the system.

6.2.3 The liability position in the NAA is flawed and must be adjusted so the Land Registry bears the risks it is best placed to manage. Failure to do so will seriously inhibit adoption of the system by conveyancers.

6.3 The Society has provided constructive criticism wherever possible and welcomes any opportunity to engage in further dialogue with the Land Registry on the issues contained in this Response.

May 2007