



# BIRMINGHAM LAW SOCIETY

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## **RESPONSE OF BIRMINGHAM LAW SOCIETY CONSULTATION COMMITTEE ON LAND REGISTRY DRAFT GUIDANCE ON ELECTRONIC SIGNATURES**

**July 2020**

This response has been prepared by the Property & Development Committee of Birmingham Law Society. The Committee is comprised of representatives from across commercial and residential property, construction, and planning law. The Birmingham Law Society was Founded in 1818, Birmingham Law Society is the largest regional society of its kind, representing more than 5000 legal professionals across Birmingham and the Greater Midlands.

Through our core values of community, advocacy and excellence, we are dedicated to connecting, championing and supporting all of our members.

We have considered the draft guidance and have some concerns relating to cost, practicality, and security of the Land Registry's proposal, and we set these out below.

Before we address those points we would welcome the Land Registry's clarification on point 13.3.1., where it is stated that your requirement is that "all the parties agree to the use of electronic signatures and an electronic platform in relation to the deed". However, in 13.5 (Mixed signing) it is stated that if it is necessary for one party to a deed to sign in wet ink... and another to sign with an electronic signature, this can be done by counterpart deeds. This will surely cause confusion.

We would also like confirmation on whether the Land Registry's proposals for simple e signatures are only for use in the current coronavirus pandemic as suggested by the Registry's General Counsel in his recent blog, where he states, "On top of the other practice changes we have already introduced this should provide conveyancers with immediate help in meeting the difficulties of working with paper in the current crisis."

We have concerns over additional costs that may be associated with a "platform" service, especially if it is intended for long-term usage. We are unsure of the costs of using such a system. It is unlikely that conveyancers will currently be using such platforms and will need to understand the General Counsel's view that "we believe that a number of businesses that currently provide electronic signatures to other sectors should be able to quickly meet these criteria". There is clearly a cost to this service. We also need to understand whether the Land Registry will publish a list of those e signature providers whose systems are acceptable to The Land Registry. Is the Land Registry itself considering operating a platform? We think this requires clarification, in particular because the Law Commission in a recent consultation paper "did not take issue with HM Land Registry's position in its response to the Law Commission's earlier consultation paper that a registration authority needs to have control of the means of execution used for documents that must be registered, particularly where title guarantee is offered'" (see paragraph 13.1 of the draft guidance).

Our next concern is the practicality of the proposals, in particular, the position of the conveyancer in being responsible "for setting up and controlling the signing process". In 13.3.4 of the draft guidance the signing and dating process is set out. Step 1 talks about the duties of the "conveyancer controlling the signing process". This can be construed as directing that where all parties to a transfer have to execute the deed only one of the conveyancers can control the signing process. We would welcome clarification on this point and, if we are mistaken in this view, can you please explain the process whereby both conveyancers separately control the signing process of their respective clients.

We also have concerns about the finer details of the process. If a conveyancer completes all the requirements of step 1, then step 2 is instigated by the Platform and an email is sent to the signatories. However, we think step 3 as currently explained implies that the signatories will receive the email and the text with the one-time password at the same time. We think the step should be as follows:

1. Platform emails the signatories to let them know the deed is ready to sign.
2. When the signatory is ready to sign and his/her proposed witness is standing by the signatory should request the one-time password, which should be sent by return. Only then should the process move on to step 4.

This is probably what the Land Registry has in mind, but clarity in the guidance is essential. What cannot happen is for the platform to issue both the email and the text containing the one-time password at the same time. Most OTPs tend to be valid for only a short period of time, so the signatory must be ready to sign and have his witness in place when he receives the OTP.

The other problem with practicality here is the fact that not only must the conveyancer populate the platform with the details of his clients, but he must also do the same for the potential witnesses. So, his clients must, at some point earlier in the transaction, select their witnesses and ensure they are willing and able to act in that role at the appropriate time. This is something that is not required under the paper system and will cause problems if a selected witness later becomes unavailable.

Finally, there are concerns over security. We are not saying that paper is risk free in terms of possible fraudulent activity, but there may be new risks in the electronic system. For example, unless the Land Registry produces a list of approved platform providers it is possible that a conveyancer may choose a supplier whose systems are either not watertight or even fraudulent. It may also be the case that either the signatory or the witness may introduce a virus or other malware into the platform.

Also, since the conveyancer is submitting information to the platform containing the details of the witnesses, would he be liable if it turns out that the witness is not who he says he is? The conveyancer has a duty to confirm the identity of his client, but should that duty now extend to the witnesses?

It may be that we have misconstrued the draft guidance and it is possible that the Land Registry is only saying that it will now allow registration of deeds signed using simple e signatures, with the exact method of execution being up to the parties and their conveyancers. If that is the case, we should be reluctant to recommend execution of deeds in this way.

**16<sup>th</sup> July 2020**

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