

Title: Updating the Land Registration Act 2002 IA No: LAWCOM0065 RPC Reference No: Lead department or agency: Law Commission Other departments or agencies:	Impact Assessment (IA)			
	Date: 24/07/2018			
	Stage: Development/Options			
	Source of intervention: Domestic			
	Type of measure: Primary legislation			
	Contact for enquiries: Elizabeth Welch – elizabeth.welch@lawcommission.gov.uk			
Summary: Intervention and Options				RPC Opinion: RPC Opinion Status

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
£42.12m	£m	£m	Not in scope	Qualifying provision

What is the problem under consideration? Why is government intervention necessary?

The Land Registration Act 2002 governs the registration of titles in England and Wales. Approximately 85% of the land in England and Wales is registered, with HM Land Registry maintaining more than 25 million titles. The existing legislative framework has contributed to the lack of clarity and transparency in title registration. The legislative scheme has also failed to prevent fraud, particularly identity fraud and imposes significant costs on HM Land Registry through compensation pay-outs. There is also uncertainty in aspects of the regime which makes advising clients difficult and increases costs for landowners. Government intervention through primary legislation is required to harness the benefits of technology and to facilitate a clear, fair and future-proofed system.

What are the policy objectives and the intended effects?

The policy objectives are:

1. Prevent fraud in conveyancing of registered land and to promote fairness in land registration.
2. Increase transparency and symmetry of information to increase the usefulness of the register and prevent disputes.
3. Increase the reliability and stability of the register to promote confidence in it.
4. Update the law to harness the benefits of developing technology.

The intended effect is to promote fairness, efficiency and reliability of the land registration system.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0: Do Nothing.

Option 1: Wide-ranging reform – Primary and secondary legislation used in conjunction with non-statutory reforms to facilitate a clear legal framework.

Option 2: Limited reform – Application of reforms relating to Problem 3 (transparency) through secondary legislation only.

The preferred option is option 1 because this represents a proportionate approach and provides for a robust future proofed system.

Will the policy be reviewed? It will/will not be reviewed. If applicable, set review date: Month/Year

Does implementation go beyond minimum EU requirements?			Yes / No / N/A		
Are any of these organisations in scope?			Micro Yes/No	Small Yes/No	Medium Yes/No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Wide-ranging Reform

FULL ECONOMIC ASSESSMENT

Price Base Year 2017/18	PV Base Year 2017/18	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £23.63	High: £66.46	Best Estimate: £42.12

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0.82	2	£0.24	£2.76
High	£1.04		£0.97	£9.12
Best Estimate	£0.93		£0.51	£5.17

Description and scale of key monetised costs by 'main affected groups' ¹

Transitional costs: Update, review and change to guidance, rules, forms and IT systems over two years, £930,000 [HM Land Registry].
On-going costs: Problem 1 [Fraud] Cost of issuing two sets of directions - £60,000 [HM Land Registry]; Problem 3 [Lack of transparency in register] Average cost of compulsory registration of mines & minerals - £0.25 million per year [HM Land Registry], Cost of notifying owners of surface land with respect to mines & minerals - £0.17 million per year [HM Land Registry]; Problem 5 [Efficiency in dispute resolution], Increased cost of dealing with unilateral notices under the new procedure - £0.091 million per year [HM Land Registry]

Other key non-monetised costs by 'main affected groups'

Rule-making powers – cost of drafting and consulting on rules.
Conveyancers – cost of updated internal systems and procedures (fraud).

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0	£3.18	£26.39
High	0		£9.08	£75.59
Best Estimate	0		£5.69	£47.29

Description and scale of key monetised benefits by 'main affected groups'

Transitional benefits: None identified
On-going benefits: Problem 1 [Fraud] Savings from reduction in losses due to identity fraud - £3.95 million per year [HM Land Registry and members of the public]; Problem 2 [Electronic conveyancing] Efficiency savings from the accelerated take-up of digital mortgages - £0.16 million per year [HM Land Registry, conveyancers and members of the public]; Ensuring overreaching occurs increases the potential for efficiency savings through digital take up - £0.05 million per year ; Problem 5 [Efficiency in dispute resolution] Cost savings from new unilateral notice procedure - £0.92 million per year [HM Land Registry and members of public]; Cost savings from clarifying the law in relation to "reasonable belief" - £12,800 per year [members of the public], Cost savings from the relaxation of notification requirements for court-ordered restrictions - £0.13 million per year [HM Land Registry]; Problem 6 [Unfairness in Land registration regime] Increased recovery time - £0.025 million per year [HM Land Registry], Savings from exempting certain easements from registration - £0.45 million per year [HM Land Registry and members of the public]

Other key non-monetised benefits by 'main affected groups'

Increased transparency; Fairness and certainty for all stakeholders; Greater efficiency and less delays in land, housing and mortgage transactions.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
Risk: Increased cost of professional indemnity insurance. Assumption: parties have legal representation.		

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

¹ Best estimates are used for all monetised values. Rounding means that figures do not always precisely add up to totals indicated.

Summary: Analysis & Evidence

Policy Option 2

Description: Limited Reform

FULL ECONOMIC ASSESSMENT

Price Base Year 2017/18	PV Base Year 2017/18	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: - £0.54	High: - £2.43	Best Estimate: - £1.15

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0.08	£0.06	£0.54
High	£0.10	£0.28	£2.43
Best Estimate	£0.09	£0.13	£1.15

Description and scale of key monetised costs by 'main affected groups'¹

Transitional costs: Update forms and guidance over two years, £91,000 [best estimate].

On-going costs: Problem 3 [Lack of registry transparency] Cost of serving notices on owners of surface land with respect to mines & minerals - £0.13 million per year [HM Land Registry].

Other key non-monetised costs by 'main affected groups'

Lease variations – cost of processing applications.

Recording identity of a beneficiary of an agreed notice – cost of processing applications.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	N/A	N/A

Description and scale of key monetised benefits by 'main affected groups'

Transitional benefits: None identified.

On-going benefits: None identified.

Other key non-monetised benefits by 'main affected groups'

Increased transparency by making information more accessible;

Cost savings by making it easier to find information to relating to land;

Efficiency savings in avoiding delays in transactions where the surface owner is not notified of mines and minerals interests.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

¹ Best estimates are used for all monetised values. Rounding means that figures do not always precisely add up to totals indicated.

Evidence Base

Introduction

This Impact Assessment relates to the recommendations in the Law Commission's Report, "Updating the Land Registration Act 2002".¹ Implementation of the recommendations would resolve numerous technical legal problems in land law. The Report recommends reform by means of a combination of:

1. primary legislation (the Report includes a draft Bill); and
2. secondary legislation.

This Impact Assessment relates to both categories of reform. Option 1 involves the implementation of all recommendations. Option 2 involves the implementation of the small number of recommendations for reform that can be sensibly achieved by secondary legislation (excluding reform that would require primary legislation).

Terminology

The nature of this reform means that it is sometimes unavoidable that technical terms be used. Many of these terms have precise legal meanings and are well understood by HM Land Registry,² the courts and legal professionals. It was concluded that changing these would carry a significant risk of unintended changes in elements of the law that function as they should. To avoid loss of precision some of these technical terms are used in this Impact Assessment. In order to assist the reader, the key terminology is summarised in Appendix 2. The most frequently used terms are below:

- *Estate in land*: A right to land that confers use or possession of the land for a period of time. There are freehold estates (of potentially indefinite maximum duration) and leasehold estates (which last for a fixed duration). Those who hold a freehold estate or long leasehold are colloquially known as owners of land.
- *Grant*: The express creation of an estate or interest in land, for example, a lease or an easement.
- *Interest in land*: Interests confer a right over land that the person with the benefit of the interest does not own. For example, a right of way.
- *LRA 2002*: The Land Registration Act 2002
- *Priority*: Priority refers to the order in which interests are enforceable and which interests prevail over others. The priority rules for unregistered land and for registered land are different.
- *Registrar / Chief Land Registrar*: The head of HM Land Registry, who is appointed by the Secretary of State to be both Chief Land Registrar and Chief Executive of HM Land Registry.
- *Tribunal*: A judicial body that performs some of the same functions as courts in specialist areas. We use Tribunal as shorthand for the Land Registration Division of the First-tier Tribunal (Property Chamber). The Tribunal operates primarily to determine disputes arising out of applications made to HM Land Registry.

Background

The Land Registration Act 2002

Land registration in England and Wales is governed by the Land Registration Act 2002 ("LRA 2002"). The LRA 2002 is the latest in a series of statutes on land registration that began in 1862. It was a major reform of the law, which repealed and replaced its predecessor, the Land Registration Act 1925, and modernised the law. It was the result of a joint project undertaken by the Law Commission and HM Land Registry,

¹ Updating the Land Registration Act 2002 (2018) Law Com No 380. We refer to it as "the Report" throughout this Impact Assessment.

² We refer to HM Land Registry as "HMLR" within the tables in this Impact Assessment.

culminating in a joint report entitled “Land Registration for the Twenty-First Century”.³ The LRA 2002 came into force on 13 October 2003.

In the scheme under the LRA 2002, ownership of land and other property rights in land are recorded on a register kept by HM Land Registry. Entry in the register is all that is needed to prove title to land, and the law does not expect buyers of land (or lenders) to go behind the register to look at deeds and other documents to establish their title (although documents that are relevant to it might be referred to in the register). Many transactions involving registered land must also be registered. The law guarantees that the register is correct.

The Updating the LRA 2002 project

The Law Commission’s project originated from our Twelfth Programme of Law Reform.⁴ The project has been supported by HM Land Registry and by the Department for Business, Energy and Industrial Strategy (the Government department which sponsors HM Land Registry and is answerable for HM Land Registry in Parliament).⁵

However, the project is not a joint project with HM Land Registry. This Impact Assessment, and the conclusions reached in it, are the work of the Law Commission. Alongside other stakeholders, HM Land Registry has provided information that has been used in the preparation of this document. HM Land Registry has asked the Law Commission to highlight that, where HM Land Registry has not been in a position to supply specific data, the figures it has provided are provisional, or based on provisional estimates and have been provided to varying degrees of confidence, and are based upon varying methodology and available information.

We are grateful for HM Land Registry’s assistance in helping us present the best assessment of impact we can with the available information. We understand that in some areas HM Land Registry will be continuing impact analysis after publication of this Impact Assessment, which may result in updated presentation when reform is implemented by the Government.

The aim of the project is to update the LRA 2002 in the light of experience of its operation in practice. The project is therefore wide in scope, considering a range of issues spanning the whole of the legislation. However, the project is not fundamental in its nature: it has not sought to reformulate the LRA 2002. Instead, the aim has been to improve specific aspects of the operation of the legislation within the existing legal framework. As a result, the recommendations cover a range of discrete, and often technical, issues affecting the system of land registration. The detail regarding policy in this Impact Assessment is necessarily a summary only. Greater detail about the recommendations are contained in the Report.

The project commenced in early 2015, following preliminary work in the second half of 2014.

Public consultation

The Law Commission published a consultation paper on 31 March 2016⁶ which received responses from 70 consultees (including from membership organisations), and the Law Commission team attended over 20 consultation events. Consultees included HM Land Registry, legal practitioners specialising in property law and academics. These consultation responses fed into the final recommendations and some provided the basis for parts of the analysis in this Impact Assessment.

The importance of land registration

Land registration is important to everyone. The effective operation of the land registration system ensures that property rights are enforceable. This role is crucial both to individuals, because it governs our rights in our own homes, and to business.

First, ownership of land and rights in land are important to individuals. A home is often the most expensive thing we buy and we may look to our home as a good financial investment as well as a place to live. Other rights in land can also be very valuable: consider a right of way (called an easement) enabling access

³ Land Registration for the Twenty-First Century (2001) Law Com No 271.

⁴ Twelfth Programme of Law Reform (2014) Law Com No 354, paras 2.15 to 2.16.

⁵ HM Land Registry is a non-ministerial government department. It is also an Executive Agency of the Department for Business, Energy and Industrial Strategy and a trading fund.

⁶ Updating the Land Registration Act 2002 (2016) Law Com No 227.

across a neighbour's land, or a charge which gives a lender the power to take possession of, or sell, a property if the proprietor defaults on a debt.

An effective land registration system also provides reliable information about ownership information of land. This function is important for business and the economy. The broader impact of the land registration system is reflected in the *Doing Business 2018* report by the World Bank. The report highlights the importance of land registration for business and the economy, explaining that land registration “helps to eliminate uncertainty over property rights and obligations” and avoids situations where “the transaction costs...become overwhelming, risking that ownership becomes untraceable”.⁷

Structure of this evidence base

As this Impact Assessment focuses on seven discrete problems and individual recommendations to address them, the remainder of the evidence base takes the form of seven “mini” impact assessments. Problems 1 to 7 are taken in turn and the problem, current law, policy options, and cost and benefit analysis specific to each set out in more detail.

Problems under consideration

We analyse below the seven areas where the Law Commission's recommended reforms are likely to have the greatest practical and economic impact.

- **Problem 1:** fraud in conveyancing
- **Problem 2:** legal impediments to electronic conveyancing
- **Problem 3:** the lack of transparency due to information that does not appear in the register
- **Problem 4:** the lack of stability of the register in certain cases
- **Problem 5:** inefficiencies in the resolution of disputes
- **Problem 6:** potential unfairness in the land registration regime
- **Problem 7:** uncertainty in the law

Rationale for intervention

The conventional economic approaches to government intervention are based on efficiency and equity arguments. In terms of the former, the government may consider intervening if there are serious enough failures in the way markets operate or there are significant failures in existing government interventions. In all cases the proposed intervention should avoid generating a further set of disproportionate costs and distortions. The government may also intervene for reasons of equity or fairness and for re-distributional reasons.

Reform in the law governing land registration is driven by a need to reduce inefficiencies in the registration of property rights under the LRA 2002. These inefficiencies can increase the costs of conveyancing, undermine confidence in the register, and result in legal disputes. The practical experience of the regime under the LRA 2002 has demonstrated that it is inefficient because the LRA 2002 is in some places uncertain, provides imperfect information, and creates a moral hazard.

In some places the LRA 2002 is uncertain about the protection of property rights, undermining reliance on the register, imposing costs in conveyancing (to provide belt-and-braces protection), and results in disputes. In some situations, the LRA 2002 provides imperfect information, specifically an imbalance of information among parties which increases the likelihood of parties obtaining legal advice and engaging in disputes. While conveyancers do have incentives to prevent fraud in conveyancing, these incentives are

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World Bank Group, *Doing Business 2018: Reforming to Create Jobs* (October 31, 2017) p 53, <http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB2018-Full-Report.pdf> {last visited date}.

undermined due to the fact that the risk of loss due to fraud will fall on HM Land Registry, rather than the conveyancers themselves. This creates a “moral hazard”:⁸ a conveyancer may take the risk, but is protected from many of its consequences because the loss from a mistake in the register will generally fall with HM Land Registry. This loss will be passed on to customers generally, through fees.

This reform to the LRA 2002 also aims to increase the fairness in the land registration system to ensure that property owners and purchasers are protected, and that disputes are resolved fairly.

Policy objectives

The Law Commission's recommendations aim to improve the land registration regime by ensuring that the legal framework in which it operates is rational, efficient and fair. More specifically these recommendations aim to fulfil the following objectives.

1. To prevent fraud in conveyancing of registered land and to promote fairness in land registration.
2. To increase transparency and symmetry of information in the register to increase the usefulness of the register and prevent disputes.
3. To increase reliability and stability of the register to promote confidence in it.
4. To update the law to harness the benefits of developing technology in conveyancing.

Scale and context

With over 25 million registered titles, any inefficiencies, uncertainties or problems in the land registration system have the capacity to have a significant impact on the property market in England and Wales. While most transactions are problem-free, everybody dealing with land risks being affected by the land registration system. The smooth functioning of this system is therefore important to everyone.

Main stakeholders

Property/land ownership will affect most people at some point in their lives. The main stakeholders are listed below.

- HM Land Registry
- Members of the public, including homeowners, leaseholders and short-term tenants
- Businesses who have property interests, for example as landowners or tenants of commercial leases
- Mortgage lenders, including banks and other financial institutions
- The National Trust and other conservation bodies with interests in land
- Conveyancers
- Other legal practitioners – particularly those involved in land/property transactions
- HM Courts and Tribunal Service

HM Land Registry

HM Land Registry registers the ownership of land and rights in land in England and Wales. It is empowered to keep the register of title as governed by the LRA 2002.

HM Land Registry was established in 1862. It is a non-ministerial government department, an executive agency, and a trading fund. The Department for Business, Energy and Industrial Strategy has Parliamentary Responsibility for it, and it is headed by the Chief Land Registrar. The functions of HM Land Registry are statutory, with the LRA 2002 as its primary governing statute.⁹

⁸ A moral hazard is a term used in economics to refer to a fact that a person increases their exposure to risk when he or she is insured or otherwise protected from those risks.

⁹ HM Land Registry, *Business Strategy 2017-2022* (November 2017) p 6; HM Land Registry, *Annual Report and Accounts 2016/17* (September 2017) p 4.

HM Land Registry's primary role is to provide:

- a reliable record of information about the ownership of and interests affecting land and property;
- land and property owners with a title which is guaranteed by the state; and
- the financial sector with the capability to secure lending against property.¹⁰

HM Land Registry records and guarantees the ownership of property worth over £4 trillion, which includes over £1 trillion in mortgages.¹¹

HM Land Registry's ambition is "to become the world's leading land registry for speed, simplicity and an open approach to data".¹² HM Land Registry sees its digital transformation programme as playing a key role in achieving its ambition. Just under 95% of the 31.8 million applications for its services are now received through electronic channels.¹³

In April 2018, HM Land Registry introduced the first form of electronic conveyancing, digital mortgages. It assessed¹⁴ the gross benefits of digital mortgages from 2017 to 2027 as £6.76 million, based on savings for HM Land Registry, conveyancers and customers.

Table 0.1: HM Land Registry's estimated annual gross savings from digital mortgages in the first 5 years¹⁵

Year	Take up	Savings (£millions)
2017/2018	2%	£0.02
2018/2019	26%	£0.82
2019/2020	29%	£0.94
2020/2021	34%	£1.09
2021/2022	44%	£1.41

HM Land Registry's estimates for take up of digital mortgages and the resulting savings for the years following 2021/2022 are the same as that year: 44% take up and £1.41 million in savings. A more detailed breakdown of its estimated savings is set out in Table A2.1 in Appendix 1

¹⁰ HM Land Registry, *Business Strategy 2017-2022* (November 2017) p 6.

¹¹ HM Land Registry, *Business Strategy 2017-2022* (November 2017) p 4.

¹² HM Land Registry, *Business Strategy 2017-2022* (November 2017) p 4. Fixing our broken housing market (2017) Cm 9352, paras 1.18.

¹³ HM Land Registry, *Annual Report and Accounts 2016/17* (July 2017) p 5.

¹⁴ Impact Assessment of the Land Registration (Amendment) Rules 2017 [2017], BEIS LR006, p 23. Digital mortgages were later introduced by the Land Registration (Amendment) Rules 2018.

¹⁵ Above.

Extent of registered land

Since 1990 land registration has been compulsory in England and Wales. Registration levels grew from 40% in 2004 to nearly 85% by 2017¹⁶. Table 0.2 shows the volume of applications for 2016/17 and 2015/16.¹⁷

Table 0.2: number of applications by type, 2016/17 to 2014/15

	2016/17	2015/16	2014/15
Total number of applications	31,836,030	30,372,360	28,569,636
Substantive applications ¹⁸	4,905,545	4,721,574	4,724,245
<i>Of which are applications for first registration</i> ¹⁹	339,594	335,838	327,385
<i>Of which are dealings with registered land</i> ²⁰	4,565,951	4,385,736	4,396,860

Even under registered land, it is still possible to acquire land on the basis of possession. The LRA 2002 sets out a scheme for persons in adverse possession of registered land for at least 10 years to apply to be registered as proprietor of that land. The application may succeed if it meets conditions set out in the LRA 2002. HM Land Registry receives approximately 695 applications from adverse possessors to be registered as proprietors each year.²¹

How land is registered

Government and HM Land Registry have a goal to achieve comprehensive registration by 2030. That involves bringing land in England and Wales that remains unregistered onto the register. This will bring to an end the two different systems of conveyancing for registered and unregistered land that have run in parallel since land registration began.

Unregistered land is brought onto the register by a combination of voluntary and mandatory first registration. When unregistered land is transferred, or a lease or mortgage is granted in respect of unregistered land, the estate owner (or his or her successors) must apply for first registration of the estate. An owner of unregistered land can also voluntarily apply for first registration. On first registration, a register of title will be created for the estate. Each estate has a unique title number, which will record the name of the registered proprietor and describe the estate, as well as rights that benefit or affect the estate.

Once land is registered, dispositions of the land must be registered. This requirement applies to transfers and grants of long leases, mortgages, and easements.²² On a disposition, an application must be made to change the register, to reflect that there is a new owner of the estate, or to reflect the legal right granted by the owner of the estate.

The register of title therefore comprises millions of unique registers of title. Information on each title can be searched.

¹⁶ HM Land Registry, *Annual Report and Accounts 2016/17* (July 2017) p 11.

¹⁷ HM Land Registry, *Annual Report and Accounts 2016/17* (July 2017) p 121; *Annual Report and Accounts 2016/17* (July 2016), Appendix A.

¹⁸ Excludes bulk register updates (BRUs), which are groups of applications lodged at HM Land Registry affecting a large volume of registered titles, such as a bank changing the address for service on all of its registered charges.

¹⁹ Including dispositional first leases.

²⁰ Including dealings with the whole land, and transfers of part of the land.

²¹ Based on the number of ADV1 forms received in the year between November 2016 and October 2017 inclusive.

²² As well as other legal interests.

Indemnity Fund and Fraud

The LRA 2002 provides for statutory compensation or “indemnity” when mistakes arise in the register or in official copies of documents which are referred to in the register – also when mistakes occur in official searches of the register. This includes cases where there is a mistake in the register due to fraud.

See table 0.3 below setting out claims for indemnity (including those relating to fraud), for 2016/17 and 2015/16.

Table 0.3: Indemnity Fund 2016/17 and 2015/16²³

	2016/17	2015/16
Total number of claims	995	1,003
<i>Of which relates to fraud</i>	53	49
Total substantive loss	£4,709,028	£6,439,568
<i>Of which relates to fraud</i>	£3,881,225	£5,086,260
Costs incurred	£2,248,876	£1,581,230
<i>Of which relates to fraud</i>	£1,060,200	£837,098
Sums recovered under statutory right of recourse ²⁴	£308,388	£231,298
Net indemnity	£6,649,516	£7,789,500

As can be seen from Table 0.3 above, indemnity payments in respect of fraud constitute the majority of total indemnity payments: in both of the years above, payment in respect of fraud amounted to over 70% of the gross indemnity payment.

An example of a case where HM Land Registry has to pay an indemnity due to a mistake in the register caused by fraud is where a fraudster forges a transfer of A’s land to B. In that case, B’s registration is a “mistake”. Due to the guarantee of title, HM Land Registry has guaranteed A’s title and B’s title: as a result, it will have to pay an indemnity to the person who ends up without the land. In this example, HM Land Registry could either return the land to A and pay an indemnity to B, or leave the land with B and pay an indemnity to A.

Registered title fraud

We estimate that there are currently around 100 cases of registered title fraud annually, based on the fact that each year there are:

- 52 successful claims for indemnity in respect of fraud,²⁵ and
- 50 applications to register fraudulent conveyances which are spotted and rejected by HM Land Registry.²⁶

Where an application is rejected by HM Land Registry, a victim of fraud will not be entitled to claim an indemnity (as HM Land Registry has not given him or her a guarantee of title). However, that victim will have already lost the purchase price, or the value of the discharge of the mortgage, which has been paid to the fraudster. Therefore, we estimate in approximately half of the cases of registered title fraud the victim will bear the loss, and in the other half HM Land Registry will bear the loss.

We estimate that the annual total loss due to fraud involving registered land is **£10.97 million**.

²³ Various HM Land Registry annual reports eg 2016/17, p 127.

²⁴ HM Land Registry’s rights to recover some or all of an indemnity payment from someone else who caused or contributed to the loss.

²⁵ Three-year average from the year 2014/2015 to the year 2016/2017. See Table A1.1 below.

²⁶ Annual Report 2016/2017, p 29. No data in previous 2 years.

In the cases where a victim of fraud is entitled to an indemnity, HM Land Registry pays, on average, **£107,500** in indemnity per claim in respect of fraud (see Table A1.1 below). We have assumed that the loss to a victim of fraud who is *not* entitled to an indemnity will be approximately the same.²⁷

Costs

By statute HM Land Registry is required to ensure that all its income from fees covers its expenditure under normal operating conditions.²⁸ In several parts of this Impact Assessment, we indicate the cost of recommendations to HM Land Registry. Although these costs may be recovered by HM Land Registry through fees, the recommendations will nonetheless generate costs; therefore, instead of being borne by HM Land Registry itself, the cost will be borne by its customers.

Description of options considered

Three options have been considered in response to each of Problems 1 – 7.

- **Option 0: Do nothing.** Retain the existing law. The key features, problems and costs associated with the current law will remain.
- **Option 1: Wide-ranging reform.** Primary and secondary legislation.
- **Option 2: Limited reform.** This option is considered, where applicable, to show limited reform which could be effected using only secondary legislation.

In each case Option 1 is the preferred option as it has the greatest net benefit.

Costs and benefits analysis

For each of Problems 1-7 this Impact Assessment identifies both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of each option are compared to the “do nothing” option. Impact assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.

Throughout this Impact Assessment, we have estimated the costs incurred or saved by multiplying the time spent by a lawyer or caseworker, and the cost per hour of employing that lawyer or caseworker.

- A typical lawyer²⁹ costs approximately **£41.00**³⁰ per hour based on average £32.78³¹ with an additional 25% to reflect employer contributions.³²
- HM Land Registry lawyer: **£58.00** based on 2017/18 HM Land Registry estimate (including employer contributions).
- HM Land Registry caseworker (Executive Officer grade) for 2017 / 2018 costs approximately **£26.00**³³ per hour (including employer contributions).

We have assumed that work at HM Land Registry would be undertaken by lawyers or caseworkers (Executive Officer grade), and we have estimated how work would be distributed between them when

²⁷ The available evidence indicates that the loss due to fraud in these cases is at least similar to cases where indemnity is payable, if not greater. For example, in *P&P Property Ltd v Owen White & Catlin LLP* [2018] EWCA Civ 1082, there were two cases which were joined on appeal. The value of the fraud in each case exceeded £1 million.

²⁸ HM Land Registry, *Business Strategy 2017-2022* (November 2017) p 6.

²⁹ For convenience, we refer to solicitors, conveyancers and legal executives as “lawyers” throughout this Impact Assessment.

³⁰ Rounded up from £40.98, which is the figure used in calculations.

³¹ Office of National Statistics, *Annual Survey of Hours and Earnings* (2017) (provisional), Table 14.6a. The figure used is the mean hourly pay (excluding overtime) for legal professionals.

³² This is an approximate approach that does not reflect the use of fixed fees by solicitors or conveyancers, nor the cost of overheads and reinvestment monies for the firm which might be passed on to the client through fees.

³³ Rounded down from £26.46, which is the figure used in calculations.

these reforms are implemented. When these reforms are implemented, the distribution of work between lawyers and caseworkers may, in practice, differ from our estimates.

When calculating the net present value (“NPV”) for the Impact Assessment we have used a time frame of ten years, with the present being year 0. We have assumed that the transitional costs and benefits occur in year 0, the current year, unless otherwise indicated. Ongoing costs and benefits accrue in years 1 to 10. We have used a discount rate of 3.5%, in accordance with HM Treasury guidance. Unless stated, all figures are in 2017/18 prices, and have been uprated using the GDP deflator to adjust for inflation.

Option 0: Do nothing [base case]

Because the “do nothing” option is compared against itself its costs and benefits are necessarily zero, as is its NPV.³⁴

Costs and benefits of reform common to all policies

Option 1: wide-ranging reform

This is the preferred option.

Transitional costs

1. Training costs

Lawyer, judges and conveyancers are required to stay up to date with changes to areas of the law in which they practice. These professionals will need to ensure that they have a comprehensive understanding of how the reforms operate, which will require them to become familiar with the reforms. Familiarisation is likely to be either by attending training and / or reading the Act and Explanatory Notes.

To minimise the need for training, the Report and Explanatory Notes to the draft Bill explain how the reforms are to operate. It is expected that much, if not all, of any training costs will be absorbed by (a) the existing continuing professional development (“CPD”) requirements for lawyers and conveyancers, and (b) the existing training programmes for judges. The relevant professional associations are likely to provide lectures and seminars on the reforms which lawyers will attend as part of their CPD requirements. If they were not attending training on these reforms, they would be likely to attend similar training on other developments in the law. As a result, we do not anticipate additional professional training costs.

2. Precedents and standard form documents

We anticipate that there will be a review of standard documents used by conveyancers to ensure that they take advantage of the reforms. There will be no need for significant investment by businesses in these. Many will use documents that are standard in the legal profession.³⁵ We anticipate that the cost to businesses of reviewing precedents will be minimal and we have not monetised this.

3. Costs to HM Land Registry of implementing the reforms

General

Implementation of these reforms would require HM Land Registry to review, change and update its guidance, rules, forms, notices (and other correspondence) and IT systems. HM Land Registry would also have to give training to its employees, including lawyers and caseworkers, and would expect queries from customers about the changes.

Some of our recommendations result in the creation of rule-making powers. We have not included the cost of implementing new rules if these powers are exercised. We assume that the impact of new rules would

³⁴ The NPV shows the total net value of a project over a specific time period. The value of the costs and benefits in an NPV are adjusted to account for inflation and the fact that we generally value benefits that are provided now more than we value the same benefits provided in the future.

³⁵ For example, those available from the Encyclopaedia of Forms and Precedents, published by LexisNexis.

be assessed separately at the time the power is exercised. In any event, we would only expect these powers to be exercised if it created a rule with a net benefit.

It is difficult to estimate the overall cost for HM Land Registry for implementing these reforms (particularly at the point at which this Impact Assessment is drafted). HM Land Registry has provisionally estimated that the transitional costs for implementation might be broadly similar to the estimated transitional cost for one of our previous projects,³⁶ which at that point in time was estimated at **£816,000**.³⁷

On that basis, we estimate the costs to HM Land Registry of implementing the reforms as a similar figure (uprated to 2017 / 2018 prices) at approximately **£0.93 million** (± £110,000). This figure includes the costs of reviewing, changing and updating its guidance, rules, forms, notices (and other correspondence) and IT systems. It is a global figure for all recommendations and we generally do not consider these costs separately for the cost-benefit analysis for each recommendation.³⁸

Assumptions:

- Scale of actions suggests, at minimum, a two-year roll-out over years 0 and 1.
- The impact of the exercise of new rule making powers would be assessed separately, and would be exercised if there is a net benefit.

Annual cost³⁹ = £0.46 million [best estimate]

Present value over 2 years = £0.91 million [best estimate]

We have also assumed, for the purposes of this Impact Assessment, that the new powers to make electronic conveyancing mandatory (recommendations 2.1 and 2.2) will not be exercised within the next ten years. If these powers are exercised, it will be necessary to make further rules; unlike most rules made under the LRA 2002, these rules are subject to the affirmative resolution procedure and consultation is expressly required in respect of them. The cost of implementing an exercise of these powers would be significant, and might even match the general costs of implementation given above. However, any exercise of these new powers would likely be subject to its own Impact Assessment, and would be unlikely to be exercised unless there is a net benefit.

Ongoing costs

We expect any ongoing costs to HM Land Registry will be negligible. Day-to-day running, if increased, will be covered by fees.

Benefits

Transitional benefits

There are no identified transitional benefits to any of the recommendations.

Ongoing benefits

Clarity

The recommendations will make the law clearer. Clarity of the law will reduce the need for “belts and braces” approach needed to protect property rights in an uncertain regime. By providing certainty about the ownership of property rights and their priority in relation to others, the recommendations will reduce disputes between parties. Clarity of the law will reduce the need for the Tribunal and the courts to interpret unclear or ambiguous provisions in the legislation.

³⁶ *Making Land Work: Easements, Covenants and Profits à Prendre* (2011) Law Com No 327.

³⁷ Impact Assessment of the Law of Property Bill [2011], LAWCOM0008.

³⁸ For some recommendations, we specify which, for example, changes to forms or the rules will be needed. However, for most recommendations we do not specify which implementation costs will be incurred.

³⁹ Average cost over 2 years.

For example:

- Recommendation 5.3(a): clarifying that the Tribunal has the jurisdiction to decide where the exact line of a boundary lies. It will avoid time spent between parties to a dispute arguing over jurisdiction, and allow parties to rely more confidently on a decision of the Tribunal.
- Recommendation 7.2: by clarifying that a person entitled to be registered as the proprietor of an estate in land can grant interests that can operate at law, the law can be clarified without the need for the Supreme Court to consider and reconcile recent case law with the existing provisions of the LRA 2002.

Transparency

The recommendations will also improve transparency of the register by bringing more information onto the register. Including more information in the register will improve efficiency in conveyancing, by reducing the need to make off-register enquiries.

For example:

- Recommendation 5.1: by amending the regime for unilateral notices, it will be easier and more efficient to remove unilateral notices from the register where the beneficiary of the notice cannot prove his or her interest. As a result, the register will display more transparently whether an interest affects an estate.
- Recommendation 3.1(a) and (b): by requiring estates in mines and minerals to be registered, proprietors of surface land will be notified of these claims over their land.
- Recommendation 3.4: clarifying that it is possible to record voluntarily the variation of a lease in the register will make it easier for purchasers to ascertain the terms of the lease.

Fairness

The recommendations will ensure that the system of land registration and the outcomes of disputes are fair by balancing the protection of interest-holders and purchasers and that parties are appropriately indemnified for losses caused by mistakes in the register of title.

For example:

- Recommendation 1: by creating a power for HM Land Registry to impose reasonable standards for identity checks, conveyancers responsible for conducting the identity checks of their clients will be better incentivised to prevent identity fraud.
- Recommendation 6.2: will rationalise the registration and formality requirements of short leases and the easements which benefit them. It will recognise the unfairness of depriving a tenant of a short lease with the benefit of an easement, based on a registration requirement that the tenant could not be expected to appreciate.

Confidence

The recommendations will promote accuracy and stability of the register, which will increase reliance on it. They will therefore increase confidence in conveyancing of registered land.

An example is recommendation 4.3: it will revise the scheme for rectification, protecting owners of land in possession of it, and ensuring that parties who suffer losses from a mistake in the register are able to be indemnified.

Efficiency

The recommendations will make conveyancing and registration more efficient. They will reduce the costs of conveyancing for proprietors and others with interests in land.

An example is recommendation 2.2: by providing a power to introduce mandatory electronic conveyancing incrementally without additional secondary legislation, it will facilitate the development and adoption of electronic conveyancing, which will save parties and HM Land Registry costs.

Option 2: recommendations that can be implemented by secondary legislation only

Whereas Option 1 addresses Problems 1 – 7, Option 2 is limited to just (parts of) Problem 3, namely recommendations 3.1(b), 3.4 and 3.5. Option 2 involves much less significant reform.

Costs

We do not expect there to be any significant general transitional or ongoing costs for Option 2. This option only involves changes to the land registration rules. We expect that these amendments would be implemented alongside a broader change to the rules, and some of the costs would be absorbed in that change.

We make the assumption that the cost of implementing Option 2 would be approximately 10% of the costs of implementing Option 1, because it involves implementing around 1 in 10 of the recommendations under Option 1. Further, we think that the implementation costs of these recommendations are quite typical, and no one category accounts for a disproportionate share of total costs.

On this basis, we estimate the total implementation cost to be **£0.09 million** (± £0.01 million).

Benefits

As Option 2 is limited to Problem 3, the only benefits that Option 2 would generate would be in relation to transparency, and any consequential efficiency improvements in conveyancing due to more easily available information.

Each of the three recommendations that could be implemented by Option 2 promote transparency by way of either increasing the amount of information on the register of title or notifying surface owners of the registration of estates in relation to their land. Making information about interests in the land more readily available will lead to smoother conveyancing by preventing delays to dispositions, reduce the need for off-register searches, and make it easier for parties to contact beneficiaries of interests. Option 2 will therefore lead to more efficient conveyancing.

Problem 1: fraud

(1) Summary of the problem and current law

HM Land Registry guarantees title to registered land. Under the “insurance principle”, it stands in the position of insurer of first resort, in defined circumstances, to compensate those who lose title to land through the operation of the LRA 2002. Similar to an insurer, HM Land Registry can recover its losses by exercising its rights of recourse.⁴⁰ For example, it could bring an action against a conveyancer who breached a duty owed to HM Land Registry (a direct right), or against a conveyancer who breached a duty owed to the indemnity claimant (a subrogated right). HM Land Registry can also seek to reduce or refuse the payment of an indemnity where a person (or his or her agent) has caused or contributed to the loss by fraud or lack of proper care.

The insurance principle extends to cases of registered title fraud. For example, if a fraudster forges a transfer of A’s title to B, generally HM Land Registry will either pay an indemnity to A or rectify the register in A’s favour and pay an indemnity to B. The large majority of indemnity payouts made by HM Land Registry are due to fraud, usually some form of identity fraud, resulting in the submission of a fraudulent application to HM Land Registry.

In these cases, the risk of fraud falls on HM Land Registry, and practically it has no rights of recourse it can use to recover its loss; although the law is not clear, it seems that the fraudster’s conveyancer does not owe a duty of care directly to HM Land Registry, or to the victim of fraud.

Despite this, HM Land Registry is not in the best position to identify and prevent identity fraud. Conveyancers are best placed to conduct identity checks on their clients to prevent identity fraud. However, there is no single standard as to what steps need to be taken by a conveyancer to verify identity, leading to inconsistent practices. This makes it difficult for conveyancers to know whether they have done enough to verify a client’s identity in the circumstances. Even if a conveyancer has been negligent in verifying identity, it generally appears that HM Land Registry cannot recover an indemnity payment from him or her.

⁴⁰

The rights of recourse are HM Land Registry’s rights to bring an action to recover the amount of indemnity it paid to a claimant from someone who caused or contributed to the loss by breaching a duty owed to HM Land Registry or to the claimant.

(2) Options considered to solve the problem

Option 1: wide-ranging reform

Option 1 would address the deficiencies in the law through primary legislative reforms, namely by modifying existing provisions of the LRA 2002. The problems here stem from the legislation itself and can therefore only be addressed through primary legislative reform.

Option 1 would require implementation of the following recommendation.

Recommendation 1: introduce a new statutory duty of care in respect of identity checks

The recommendation introduces a new duty in respect of identity checks. Conveyancers must follow reasonable steps contained in directions issued by HM Land Registry, following consultation, when verifying identity. HM Land Registry will be able to issue new directions to ensure that identity checks are responsive to emerging schemes to commit fraud.

It will provide a set standard for identity checks by conveyancers, and provide an additional incentive to ensure conveyancers follow them. As a result, this recommendation will reduce fraud and give HM Land Registry a right of recovery if fraud nevertheless occurs.

Option 2: limited reform

There is no Option 2 for this problem as the recommendation above requires primary legislation to be implemented.

(3) Costs and benefits analysis

Option 1

Costs of the reform

Transitional costs

We expect any transitional costs for this reform will be negligible.

Ongoing costs

The recommendation is facilitative: HM Land Registry is able to issue directions which conveyancers will be obliged to follow. As different forms of fraud may emerge in the future, the recommendation provides that HM Land Registry is able to issue new directions (following consultation) to alter the steps required of conveyancers to verify identity.

In assessing the cost of issuing these directions, we make the following assumptions.

- Low estimate: HM Land Registry issues directions in year one only as it is in its interests to reduce fraud in registered land.
- Best estimate: HM Land Registry issues 2 new set of directions over the next ten years in years 1 and 5 on the basis that HM Land Registry will use information it has on registered land fraud in order to react to new types of fraud and changing technology.
- High estimate: HM Land Registry issues 3 sets of directives in years one, five and nine.
- Estimated cost of producing and consulting on new directions is **£30,000**, including any consultation events.

Annual cost = £0.006 million⁴¹ [best estimate]

Present value over 10 years = £0.05 million [best estimate]

⁴¹ 10-year average.

Conveyancers' procedures

In order to comply with directions, firms of conveyancers will have to amend their procedures for verifying identity to ensure they comply with HM Land Registry's requirements. In doing so, conveyancers may also have to update any linked systems that collect client information, such as their casework management systems or accounting software.

It is difficult to estimate the cost to a firm of conveyancers of reviewing and updating their procedures and systems in order to comply with new directions, as there is a lot of variety in current practice among conveyancers, in part due to the following factors.

- Size of conveyancing firms can vary from a handful of individuals to large international organisations. A conveyancing firm's size will affect the cost of implementing updates to procedure, and the extent to which those costs can be absorbed.
- The current procedure for verifying client identity can vary between firms, as there is no universal standard and some firms may go beyond minimum requirements. The need to update existing procedure will depend on current practice.
- Firms may have a subscription to case management software, which may include free updates. Firms may build their own software, which may be integrated with HM Land Registry's Business Gateway. The cost for firms of updating software will vary depending on these factors.

In addition, it is hard to predict the content of new directions, and consequently the extent to which conveyancers will need to update their procedures and systems.

Insurance

By allowing HM Land Registry to recover the cost of registered title fraud from the conveyancers who failed their duty to comply with the required steps in checking their clients' identity, there is a risk that this new risk of liability will increase the premiums for professional indemnity insurance. This cost would likely be passed onto clients.

We have been unable to calculate any increase in the cost of premiums of professional indemnity insurance for conveyancers. However, on balance we consider that this cost will be negligible for the following reasons.

- The duty to verify identity is narrow in scope: it is only a duty to follow specified steps in relation to verifying identity.
- Conveyancers, and their insurers, will be able tell with certainty whether the duty has been complied with.
- A recent case⁴² imposed liability on conveyancers for breach of trust in cases of identity fraud where the fraud was spotted prior to registration. We assume that the increase in cost arising from this development of the common law will subsume any increase in cost arising from the recommendation.

Benefits of the reform

1. Monetised

The new duty of care will reduce the incidence of fraud in relation to registered land in the following ways:

- producing a standard of identity checks which is reasonable, universal and responsive to changing fraudulent behaviour; and
- providing an additional incentive to conveyancers to conduct appropriate identity checks.

⁴² *P&P Property Ltd v Owen White & Catlin LLP* [2018] EWCA Civ 1082.

Reduction in amount of identity fraud

Identity fraud is the most common form of fraud in registered land, and we expect the new duty of care to prevent a significant proportion of identity fraud for the following reasons:

- there will be a single standard of identity checks for the purposes of preventing registered title fraud;
- HM Land Registry will be well-placed to determine and update the steps to be taken to verify identity, as it can identify emerging trends and methods used by fraudsters; and
- conveyancers will comply with these standards because (i) non-compliance exposes them to the risk that HM Land Registry will exercise its right of recourse against them, and (ii) compliance limits their liability to HM Land Registry.

As a result, it will reduce the annual amount of loss due to fraud. As we explained above, we expect that there are approximately **100** cases of fraud involving registered land each year, and the average loss caused by each case of fraud is **£107,500**.

To calculate this reduction, we multiplied the annual loss due to fraud by (i) the proportion of loss due to identity fraud under the current law, then (ii) the proportion of identity fraud that the new duty of care would prevent. This calculation gives the amount of loss caused by fraud which would be prevented by the new duty of care.

The summary of the annual reduction in loss due to fraud is set out in table 1.1. Further detail can be seen in tables A1.1 and A1.3 of Appendix 1.

Table 1.1: Annual savings through reduced fraud involving registered land (in £million)

	Low estimate	Best estimate	High estimate
A. Estimated annual loss due to fraud under the current law	£10.97		
B. Proportion of loss due to identity fraud under the current law	45%	60%	75%
C. Estimated annual loss due to identity fraud under the current law (AB)	£4.94	£6.58	£8.23
D. Proportion of identity fraud prevented by the new duty of care	50%	60%	70%
E. Estimated loss caused by fraud which would be prevented by the new duty of care (CD)	£2.47	£3.95	£5.76

Assumptions:

- Indemnity payments reflect the loss due to registered title fraud in the cases in which they are paid.
- The average loss to a victim of registered title fraud who is not entitled to an indemnity is the same as one who is entitled to an indemnity.
- The annual loss due to identity fraud is 60% ($\pm 15\%$) of the loss due to fraud generally, on the basis that identity fraud is the most common type of registered land fraud.
- The duty of care would reduce the amount of this identity fraud by 60% ($\pm 10\%$), on the basis that we expect it to prevent most identity fraud given that directions allow the duty to adapt to changing practices, but that sophisticated fraud may remain difficult to detect.

Annual savings = £3.95 million [best estimate]

Present value over 10 years = £32.85 million

2. Non-monetised benefits

Reduced time spent dealing with fraudulent applications and indemnity claims.

As the new duty of care will prevent fraud, there will be fewer successful fraudulent applications, and fewer applications for indemnity due to fraud.

HM Land Registry will save lawyer time and caseworker time dealing with the **52** indemnity claims it receives each year, and dealing with the **50** fraudulent applications it identifies and rejects each year.

Recovery of indemnity payments

The recommendation gives HM Land Registry rights of recourse against negligent conveyancers. Based on an average over the last 3 years, HM Land Registry is only able to recover an average of **£220,000** annually, compared to paying out an average of **£7.8 million** annually in gross indemnity payments.

Where fraud does occur, HM Land Registry will more easily be able to recover the value of indemnity payments from negligent conveyancers. As a result, the risk of, and loss caused by, fraud will lie with negligent conveyancers, rather than HM Land Registry (and consequently, its customers through fees).

Criminal fraud

We have focussed on fraud from the perspective of civil law, which focusses on the financial loss caused by fraud, and the cost of obtaining compensation. However, fraud is also a criminal offence (under the Fraud Act 2006) and may well lead to a criminal investigation. By reducing the overall incidence of fraud in registered land, we will also save the costs of investigating and prosecuting fraud.

Summary of monetised costs and benefits

Table 1.2: Summary of annual costs and benefits (in £million)⁴³

	Low estimate	Best estimate	High estimate
Cost	£0	£0	£0
Benefit	£2.47	£3.95	£5.76
NPV over 10 years	£20.50	£32.80	£47.83

Problem 2: legal impediment to the introduction of electronic conveyancing

(1) Summary of the problem and current law

A major aim of the LRA 2002 was to enable the introduction of a system of electronic conveyancing. It was envisaged this would achieve efficiency savings as well as lead to the closure of the registration gap. However, the scheme for electronic conveyancing in the LRA 2002 poses some barriers to its development.

2.1 Simultaneous completion and registration

Under section 93 of the LRA 2002, the Secretary of State has the power to make electronic conveyancing compulsory, provided that the electronic disposition is both completed and registered at the same time (simultaneous completion and registration). Since the enactment of the LRA 2002, it has become clear that this advanced form of electronic conveyancing will not take place in the near future. However, it is not possible under the LRA 2002 to make electronic conveyancing compulsory in any other form or at any other stage of the development of electronic conveyancing.

⁴³ The cost of issuing directions is not included in the annual cost figure, because the cost is not incurred each year. This cost is taken into account in calculating the NPV over 10 years.

2.2 Incremental implementation

The power under section 93 to make electronic conveyancing compulsory can be exercised incrementally, by specifying that electronic conveyancing is compulsory for specified transactions. This power is exercised by creation of rules by the Secretary of State, after consultation. However, experience has shown that creating and enacting rules each time disposition is phased into the electronic conveyancing regime is time-consuming: the process for enacting rules requires Parliamentary scrutiny, and Parliament's time is a limited resource.

2.3 Operation of overreaching

Overreaching is a form of protection given to purchasers of land against interests in the land that exist under a trust. As long as two trustees sign the conveyance and give receipt for capital monies, the purchaser will take the land free of any interest under the trust. The trustees will hold the purchase money, rather than the land, on trust for the beneficiaries.

Electronic conveyancing under the LRA 2002 allows conveyancers to sign on behalf of sellers and buyers, effectively allowing delegation. Thus, a conveyance can be signed by a single conveyancer, instead of two trustees. Under the general law, overreaching does not take place if the conveyance is signed by a single attorney, and it may not take place if it is signed by a single agent. Thus, it seems that it may not be possible for overreaching to take place under electronic conveyancing if the execution of the document is delegated to a single conveyancer.

(2) Options considered to solve the problem

Option 1: wide-ranging reform

Option 1 would address the deficiencies in the law through primary legislative reforms, namely by modifying existing provisions of the LRA 2002. The problems here stem from the legislation itself and can therefore only be addressed through primary legislative reform.

Option 1 would require implementation of the following 3 recommendations.

Recommendation 2.1: new additional power to require electronic conveyancing without simultaneous completion and registration

This recommendation creates a new additional power to require electronic conveyancing in a form where completion and registration are not simultaneous. As a result, it will be possible to have an interim mandatory scheme of electronic conveyancing, before simultaneous completion and registration is developed.

This recommendation will enable compulsory electronic conveyancing, and so the benefits of a cohesive system in which all conveyances are electronic, to take place earlier than is possible under the existing legislation.

Recommendation 2.2: new power to make the implementation of rules requiring electronic conveyancing subject to notices

This recommendation is deregulatory: by allowing the timetable for mandatory electronic conveyancing to be set by notices published by the registrar, the need for a new set of rules for each type of disposition is obviated. Instead, a single set of rules can be enacted, and then notices published in respect of each type of disposition at the time when the system is in place to require electronic conveyancing for each.

Recommendation 2.3: allow two trustees to delegate signing an electronic conveyance to a sole conveyancer

This recommendation treats a document which is electronically signed by a conveyancer on behalf of two trustees as signed by those trustees, ensuring that overreaching can take place in electronic conveyancing.

Option 2: limited reform

There is no Option 2 for this problem as there are no recommendations which do not require primary legislation.

(3) Costs and benefits analysis

Option 1

Recommendations 2.1 and 2.2

Costs of the reform

We expect any transitional or ongoing costs for these recommendations will be negligible.

We note that HM Land Registry's impact assessment for digital mortgages⁴⁴ gave the same figure each year for the costs of implementing and running electronic conveyancing, suggesting that these costs are not proportional to the rate of take up of electronic conveyancing. Thus, we do not expect the accelerated take up of electronic conveyancing caused by our recommendations to affect these costs.

When the new powers are exercised, there will be costs in producing and consulting on new rules as well as any amendments to HM Land Registry's guidance and forms. As indicated above, these costs are likely to be significant, especially given that the rules would be subject to the affirmative resolution procedure in Parliament. However, as we explain below, it is difficult to predict when the powers will be exercised, and, for simplicity, we have assumed for the purpose of this Impact Assessment that they will not be exercised within the next ten years. We note that any exercise of these rules would be subject to their own impact assessment, would be likely to be exercised where there is a net benefit, and would also produce further benefits which have not been monetised in this Impact Assessment.

Benefits of the reform

1. Monetised

Electronic conveyancing is more efficient than paper-based conveyancing for conveyancers, HM Land Registry, and customers. It will save costs in the following ways.

- Time savings
- Increased accuracy
- Reduced administration costs

The power to make electronic conveyancing compulsory for a particular type of disposition is likely to be exercised when the use of electronic conveyancing for that disposition is widespread. However, it is difficult to predict when it will be exercised, and for simplicity we have assumed for the purposes of this Impact Assessment that it will not be exercised within the next ten years.

Even if the powers are not exercised within the next ten years, the flexibility offered by these new powers will increase confidence in the future of electronic conveyancing. We expect this increased confidence to have a behavioural impact; conveyancers and customers will be more willing to use electronic conveyancing if they perceive that it is on track to become the norm.

HM Land Registry introduced digital mortgages (on a voluntary basis) in April 2018, and its impact assessment suggests that the annual savings would be proportional to the take up. The estimated savings from digital mortgages are set out in Table 0.1 above.

⁴⁴

The increase in take up of digital mortgages following our recommendations will lead to additional savings for HM Land Registry, conveyancers and customers. In order to calculate these additional savings:

- we estimated the savings per percentage take up of digital mortgages by dividing HM Land Registry's estimated savings by its estimated percentage take up, and
- we estimated additional savings by multiplying the increased percentage take up by the estimated savings per percentage take up.

The estimated additional savings generated by the new powers are set out in Table 2.2 below.

Table 2.2: Additional savings due to accelerated take up in digital mortgages

		Low estimate	Best estimate	High estimate
2018 to 2023	Percentage increased take up	0%	2.5%	5%
	Additional annual cost savings (in £million)	£0.00	£0.08	£0.16
2023 to 2028	Percentage increased take up	5%	7.5%	10%
	Additional annual cost savings (in £million)	£0.16	£0.24	£0.32

Assumptions:

- the behavioural impact of our recommendations would increase over time: early adopters of new technology are less influenced by its inevitability than later adopters;
- the recommendations would increase the take up in digital mortgages by 2.5% ($\pm 2.5\%$) in the first 5 years, and 7.5% ($\pm 2.5\%$) in the second 5 years (see Table A2.2 in Appendix 1);
- the annual saving for electronic conveyancing is proportional to the rate of take up, on the basis that this appears to have been the case in HM Land Registry's impact assessment;
- the annual savings per percentage take up in digital mortgages is **£32,000**, based on HM Land Registry's impact assessment.

Annual savings = £0.16 million⁴⁵ [best estimate].

Present value over 10 years = £1.28 million.

These savings are only for one type of disposition, namely digital mortgages. It is likely that voluntary electronic conveyancing will be introduced for other forms of dispositions within the next ten years. For example, in HM Land Registry's Business Strategy 2017 to 2022, its target for introducing voluntary digital transfers is the year 2019/2020. However, HM Land Registry has not, at this time, been able to provide meaningful estimates for costs saved from other forms of electronic conveyancing, but has indicated that the benefits may be higher due to the greater scope for increased accuracy, and benefits in dispositions which involve both a transfer and a mortgage.⁴⁶

We would expect our recommendations to have a similar effect on the rate of take up for other forms of electronic dispositions, and therefore a similar effect on the proportional increase in cost savings.

2. Non-monetised

Reduction in fraud

HM Land Registry explained in its impact assessment for digital mortgages that electronic conveyancing has the potential to reduce fraud. It identified two cases of mortgage fraud (out of eight) over an 11-month

⁴⁵ The average of the annual savings for the first 5 years (£0.08 million) and second 5 years (£0.24 million).

⁴⁶ Impact Assessment of the Land Registration (Amendment) Rules 2017 [2017], BEIS LR006.

period, where the fraud could have been prevented by electronic conveyancing. It made indemnity payments totalling **£277,000** in respect of these cases.⁴⁷ HM Land Registry noted that it could also prevent fraud in cases where no indemnity payment would be made.⁴⁸

Earlier exercise of a “switch-off” power

While we have assumed for the purposes of this Impact Assessment, that the interim “switch-off” power under recommendation 2.1 will not be exercised within the next ten years, it is nonetheless more likely to be exercised sooner than the existing power under section 93. As a result, it is worth noting the considerable benefits that the interim power will bring, by introducing a form of mandatory electronic conveyancing earlier.

The exercise of a switch-off power will save money in two ways:

- There will be efficiency savings for HM Land Registry, conveyancers and customers in respect of the remaining paper-based conveyances. For example, if 5% ($\pm 4.5\%$) of people were still using paper-based mortgages, requiring digital mortgages could save **£160,000** ($\pm £144,000$) each year
- HM Land Registry will save the costs of running a separate infrastructure for paper-based conveyancing alongside electronic conveyancing.

As recommendation 2.1 enables a form of electronic conveyancing to become mandatory sooner, then the benefits of mandatory electronic conveyancing will also be realised sooner.

Cost of rule change for incremental implementation

Recommendation 2.2 allows HM Land Registry to implement electronic conveyancing incrementally with fewer pieces of secondary legislation. It will save the costs to HM Land Registry and Parliamentary time in producing these rules.

Currently, mandatory electronic conveyancing can only be implemented through rules. In order to introduce mandatory electronic conveyancing incrementally, the Secretary of State would need to make a new rule for each type of disposition. Rules under the LRA 2002 are made by statutory instrument, which must be laid in each House of Parliament.⁴⁹ Rule-making is therefore a time-consuming and expensive process.

Recommendation 2.2 allows a single rule to be made to implement electronic conveyancing. The requirement for different types of disposition can then be exercised by publication of a notice by the registrar. Compared to the making of rules, the process for publishing a notice will be less time-consuming and expensive. The focus of the process can be on consultation with relevant stakeholders, rather than on Parliamentary procedure.

Recommendation 2.3

Costs of the reform

We expect any transitional or ongoing costs for this recommendation will be negligible.

Benefits of the reform

1. Monetised

Overreaching gives important protection for purchasers or mortgagees of land which is jointly owned or held on trust. By ensuring that overreaching can occur in electronic conveyancing, the recommendation will increase confidence in electronic conveyancing.

We expect that this increased confidence would result in accelerated take up of digital mortgages, with consequential increased cost savings.

⁴⁷ We have not included this figure in monetised benefits; HM Land Registry did not consider it had enough information to use these figures for monetised benefits in its impact assessment, and we take the same view here.

⁴⁸ eg the victim recovers his or her loss from elsewhere, or the victim is not entitled to an indemnity under the scheme of the LRA 2002: see Impact Assessment of the Land Registration (Amendment) Rules 2017 [2017], BEIS LR006 para 7.2.

⁴⁹ LRA 2002, s 128.

Table 2.3: Annual savings from the accelerated take up of digital mortgages due to ensuring overreaching can take place

	Low estate	Best estimate	High estimate
A. Percentage increased take up in digital mortgages (additive)	1%	1.5%	2%
B. Additional annual savings due to increased take up	£32,000	£48,000	£64,000

Assumptions:

- the estimated increase in the take up of digital mortgages is 1.5% ($\pm 0.5\%$), on the basis that overreaching is important, but does not arise frequently;
- the behavioural impact of this recommendation would be steady over time: the benefits of overreaching apply equally to early and late adopters; and
- the annual savings per percentage take up in digital mortgages is **£32,000**, based on HM Land Registry's impact assessment (see above).

Annual savings = £0.05 million [best estimate]

Present value over 10 years = £0.40 million

Again, these estimates are only for digital mortgages; there would also be savings for any other forms of electronic conveyancing that are introduced.

2. Non-monetised

Fairness

Overreaching is a rule aimed at producing fairness by protecting both a purchaser from trustees, and beneficiaries of trusts of land. By ensuring that overreaching is capable of operating in the context of electronic conveyancing, we can ensure that there are fair outcomes in electronic conveyancing.

Summary of monetised costs and benefits

Table 2.4: Summary of costs and benefits for recommendations dealing with problem 2 (in £million)

		Low estimate	Best estimate	High estimate
Annual cost		£0	£0	£0
Annual benefit	Recommendations 2.1 and 2.2 (average)	£0.08	£0.16	£0.24
	Recommendation 2.3	£0.03	£0.05	£0.06
NPV over 10 years		£0.88	£1.68	£2.47

Problem 3: lack of transparency due to information that does not appear in the register

(1) Summary of the problem and current law

As the register of title is publicly accessible, it provides an open and transparent record of important legal interests in land. The Government's policy is to improve further the transparency of registered land.

In the Housing White Paper, Government outlined its goal of “comprehensive land registration” by 2030, and a register that better reflects “wider interests in land”.⁵⁰ It also indicates that Government will consult on improving the transparency of contractual arrangements used to control land, and on how the land register can better reflect wider interests in land with the intention of providing a “clear line of sight” across a piece of land setting out who owns, controls or has an interest in it.⁵¹

Alongside Government’s work, many of our recommendations seek to achieve the same goal of improving the transparency in registered land by bringing more information on the register.

3.1 Mines and minerals

In general, an owner of land is presumed to own the land beneath it; this includes mines and minerals, which are included in the statutory definition of land. There are exceptions to this general principle and, as a result, the owner of the surface land may no longer be the owner of the mines and minerals beneath that land. The dispositions that separated the mines and minerals from the surface land often have historic or feudal origins.⁵² It is difficult to know who owns mines and minerals unless and until they are exploited.

Registration: the uncertainty as to who owns mines and minerals is exacerbated by the fact that such ownership rights are unlikely to be recorded in the register of title. Mines and minerals which are held separately to surface land are exempt from the requirements of compulsory registration. They will only appear if voluntarily registered.

Notification: even where an estate in mines and minerals is registered, the owner of the surface land is rarely notified of the registration. HM Land Registry usually register estates in mines and minerals with qualified, rather than absolute title, due to the uncertainty surrounding such estates. HM Land Registry’s general practice is only to notify when registration is with absolute title, giving surface owners an opportunity to object (even if many such objections will be groundless). When a registration is with qualified title, owners of the surface land will miss out on the opportunity to object to the first registration of mines and minerals below their land.

3.2 Discontinuous leases

When an owner of land grants a discontinuous lease, the tenant is granted a right to possession that consists of separate time periods. An example of such a lease is a timeshare arrangement for a holiday home, where the tenant has a right to possess the home for one week per year for ten years. Because the tenant is not continuously in possession of the land, such leases are difficult for purchasers to detect.

The courts have said that the term of a discontinuous lease is the sum of the separate periods. For example, the term of the lease in the holiday home example above would be ten weeks, rather than ten years. Because of this calculation, discontinuous leases are unlikely to be recorded in the register of title.

First registration: a discontinuous lease granted out of unregistered land is only subject to the requirement of compulsory registration if its term exceeds seven years. Due to the way in which the term of a discontinuous lease is calculated, it is very unlikely for a discontinuous lease to exceed seven years. Nevertheless, under the LRA 2002 such a lease will be an overriding interest despite the fact it will be difficult for purchasers to detect, meaning that purchasers will be bound by the lease. This problem only applies to unregistered land: in registered land, the grant of a discontinuous lease must be completed by registration regardless of its length.

Notices: a lease cannot be recorded in a notice in the register if it is for a term of less than three years. Due to the way in which the term of a discontinuous lease is calculated, it is likely that the term will be less than three years. As a result, many discontinuous leases cannot even be recorded in the register voluntarily.

3.3 Restrictions – charging orders

A charging order is a court order which imposes an equitable charge over the property of a debtor for the purpose of securing a debt he or she owes as a result of a judgment or court order. A charging order may impose a charge over a person’s beneficial interest under a trust. Under section 42(4) of the LRA 2002,

⁵⁰ Fixing our broken housing market (2017) Cm 9352, paras 1.17 to 1.20.

⁵¹ Fixing our broken housing market (2017) Cm 9352, para 1.20.

⁵² For example, enclosure of manorial land, enfranchisement of copyhold land, or local custom: see HM Land Registry, *Practice Guide 65: registration of mines and minerals* (April 2018) para 3.

the registrar has the power to enter a restriction in respect of such a charging order. The standard form of restriction to be entered for such a charging order is Form K.

When making a charging order, courts commonly order the entry of a restriction in respect of that order. This practice does not have a clear statutory basis in relation to restrictions in Form K. The power of the court to order the entry of a restriction (under section 46 of the LRA 2002) is more limited than the power of the registrar (under section 42 of the LRA 2002); in particular, there is no equivalent provision to section 42(4) expressly relating to charging orders over a beneficial interest over a trust. If the court does make an order, it might not always order the entry of a restriction in standard Form K.

3.4 Lease variations

The variation of a lease must be recorded in the register in certain circumstances, such as where the variation amounts to a surrender and regrant or the grant of an easement. Other variations do not have to be registered, but there is uncertainty whether it is possible to record them on a voluntary basis. If such variations cannot be recorded, the register lacks transparency and accuracy in this context.

3.5 Identity of beneficiaries of agreed notices

A unilateral notice records both the nature of the interest, along with the name and contact details of the beneficiary. For an agreed notice, only the nature of an interest is recorded as it is not vulnerable to cancellation by the registered proprietor.

Nevertheless, it may be useful for a person examining the register of title to be able to identify the beneficiary of an agreed notice, or the proprietor of the benefitting land. However, it is not possible for this information to be recorded in the register.

(2) Options considered to solve the problem

Option 1: wide-ranging reform

Option 1 would address the deficiencies in the law through primary legislative reforms, namely by modifying existing provisions of the LRA 2002. The problems here stem from the legislation itself and can therefore only be addressed through primary legislative reform.

Option 1 would require implementation of the following seven recommendations.

Mines and minerals

Recommendation 3.1(a): new triggers for compulsory registration of mines and minerals

This reform introduces new requirements for the registration of mines and minerals where there is a disposition which, in our view, indicates an intent to exploit those mines and minerals. Registration will be required where (i) mines and minerals are separated from the surface land, and (ii) mines which have already been separated from the surface land are sold.

Recommendation 3.1(b): requiring notification of surface owners

This reform will amend the rules to require that the owner of the surface land is notified if there is an application to register an estate in mines and minerals, whether it is for absolute or qualified title. As a result, surface owners will be aware of, so be able to object to, an application to register mines and minerals under their land.

Discontinuous leases

Recommendation 3.2(a): new triggers for compulsory registration of discontinuous leases

This reform requires the registration of discontinuous leases, regardless of length, following their grant or transfer in unregistered land. It will bring more discontinuous leases on the register, and ensure that the registration requirements for discontinuous leases are the same whether or not the landlord's estate is registered.

Recommendation 3.2(b): allowing the entry of notices in respect of discontinuous leases

This reform allows a tenant of a discontinuous lease, regardless of length, to enter a notice in respect of his or her lease in the landlord's register of title. It would resolve the dilemma that it is possible to voluntarily register a discontinuous lease, but not to enter a notice in respect of it.

Recommendation 3.3: clarifying the existence and extent of the power of the court in respect of charging orders

This reform (i) clarifies that the court has the power under section 46 of the LRA 2002 to order the entry of a restriction in respect of a charging order over a beneficial interest under a trust; and (ii) limits the court's power so that it may only order the entry of a restriction in standard Form K. It ensures that the court can make orders for the entry of restrictions, and that those restrictions are in a standard form.

Recommendation 3.4: allowing the noting of lease variations in the register

This recommendation will allow landlords or tenants to record (voluntarily) lease variations which do not amount to a registrable disposition. It will be implemented by land registration rules made under existing rule-making powers.

Recommendation 3.5: allowing the noting of the identity of a beneficiary of an agreed notice in the register

This recommendation will allow (i) beneficiaries of agreed notices to record their identity, or relevant title number of the benefitting land, and (ii) new beneficiaries to update the identity of a beneficiary in the register of title. It will be implemented by land registration rules made under existing rule-making powers.

Option 2: limited reform

Option 2 would involve implementing recommendations 3.1(b), 3.4 and 3.5 only.

(3) Costs and benefits analysis

Option 1

Recommendation 3.1(a)

Costs of the reform

Transitional costs

We do not expect there to be any transitional costs for this recommendation, other than those which are included in the general figure.

Ongoing costs

This recommendation requires the registration of estates in mines and minerals after they have been purchased or separated from the surface land. The ongoing cost will be the cost of registration, for both the proprietor of an estate in mines and minerals, and for HM Land Registry, each time such an estate in mines and minerals is required to be registered.

In order to calculate the annual cost of compulsory registration, we multiplied (i) the estimated number of applications per year, (ii) the total cost per application for the proprietor of the estate and HM Land Registry. For further detail see tables A3.1 to A3.4.

The cost of compulsory registration of mines and minerals in year 1 is set out below.

Table 3.1: Cost of compulsory registration of mines and minerals in year 1

	Low estimate	Best estimate	High Estimate
A. Number of applications	21	31	42
B. Cost for HMLR per application	£7,000	£8,500	£10,000
C. Cost for proprietor per application	£82	£164	£246
D. Total cost (AB + AC)	£145,000	£264,000	£433,000

Assumptions:

- The number of dispositions of estates in mines and minerals which would trigger compulsory registration (in the first year) is **31** (with a range of 21 to 42), on the basis of our estimates based on data from the British Geological Survey in Appendix 1 (tables A3.1 and A3.2)
- Based on estimates provided by HM Land Registry (which were based on the registration of manorial interests)⁵³ we estimate that it costs HM Land Registry **£8,500.00** (± £1,500) to register an estate in mines and minerals, based on (i) the average cost of registration of such estates, and (ii) a range to reflect the considerable variance in the figure.
- It takes a lawyer an additional **4 hours** (± 2 hour) to complete the transfer or grant of an estate in mines and minerals in order to comply with the registration requirements, on the basis that much of the evidence required would have already been prepared for the disposition.
- Compulsory registration of mines and minerals will apply in circumstances where minerals are likely to be exploited, or are already being exploited, on the basis that (i) purchase of mines and minerals, or separation from surface land, indicates an intention to exploit, and (ii) we have not found any data on trade in mineral rights where there is no intention to exploit them.

Each year, more estates in mines and minerals will be registered due to compulsory registration; as a result, there will be fewer unregistered estates remaining which are affected by the compulsory triggers for first registration. Thus, there will be a decrease in the number of applications for first registration each year, lowering the annual cost of our recommendation.

The number of applications and cost per year for the next ten years are set out in Tables A3.4 and A3.5 in Appendix 1 below. For simplicity, we use an average of these figures for the purposes of this Impact Assessment. This is calculated by finding the sum of the figures for each year from year 1 to year 10, and dividing it by ten.

Table 3.2: Average annual and total cost over 10-years (£million)

Year	Low estimate	Best estimate	High estimate
A. Average annual cost	£0.14	£0.25	£0.40
B. Cost over next 10 years ⁵⁴	£1.37	£2.45	£3.98
C. Present value over 10 years	£1.25	£2.28	£3.73

⁵³ HM Land Registry estimated that, based on manorial mines and minerals estates, first registration would take 35 working days, with approximately 20% of the work done by a lawyer, and 80% of the work done by a caseworker. It noted it is difficult to give a general figure, because of considerable variance based on the size and complexity of the case. We also think that there may be variance depending on whether registration follows a sale or commercial transaction, or whether it follows a gift or no transaction.

⁵⁴ Rounding means that total cost is not always exactly equal to 10 x the average cost.

Assumptions:

- The number of dispositions triggering compulsory first registration each year would **decrease** on the basis there will be fewer unregistered estates (see table A3.4 in Appendix 1).⁵⁵
- There would be 0.5 (\pm 0.25) fewer applications for first registration each year, due to the decrease in the amount of unregistered land.
- The cost per application would remain the same each year.

Annual cost⁵⁶ = £0.25 million [best estimate]

Present value over 10 years = £2.28 million [best estimate]

Benefits of the reform

Transparency

Estates in mines and minerals which are held apart from the surface are, by their nature, difficult to discover, in part due to the fact that most of them are unregistered. Compulsory registration will bring more estates in mines and minerals onto the register, making them easier to discover.

In the context of mines and minerals, transparency will also have some particular benefits in practice.

- It will reduce the time spent during dealings with surface land determining whether the mines and minerals have been separated from the surface and, if so, who owns them. This is particularly important in developments which will require deep foundations, such as wind farms.
- Some stakeholder evidence suggests that it will lower the number of so-called “ransom claims”. Ransom claims are where a person claims that another is interfering with his or her mineral rights (which may not exist) relying on the fact that the surface owner might find it is easier to pay the person, than to confirm whether this is in fact the case.
- Some stakeholder evidence suggests that registration increases the value of estates in mines and minerals, as it shows the proprietor has proof of it which satisfies HM Land Registry.

Recommendation 3.1(b)

Costs of the reform

HM Land Registry currently registers estates in mines and minerals with absolute title approximately 40% to 50% of the time, and, for the purposes of this Impact Assessment assumed that it serves between 6,500 and 11,000 notices on surface owners each year in respect of those.⁵⁷ In other cases, it only registers the estate with qualified title, and does not serve notice on the owner of the surface land.

Recommendation 3.1(a) would increase the number of applications for first registration, and therefore the number of mines and minerals estate registered with qualified title that would be affected by this recommendation. We have taken into account this effect in calculating the cost of Recommendation 3.1(b).⁵⁸

⁵⁵ Although subsequent dispositions with that estate will also have to be registered, the cost will be much lower than for first registration, and will be outweighed by the fact that registered conveyancing is more efficient.

⁵⁶ Average over 10 years.

⁵⁷ This assumption was based on an estimate for the number of notices served between 2012 and 2017, and taking into account changing trends in applications for registration.

⁵⁸ For Option 2, we provide the cost of this recommendation on the assumption that Recommendation 3.1(a) is not implemented. This is based on the cost of serving notices in respect of mines and minerals estates which are voluntarily registered.

Table 3.3: Annual cost of serving notices on registration with qualified title

	Low estimate	Best estimate	High estimate
A. Additional notices served	7,800	14,000	23,000
B. Average cost per additional notice ⁵⁹	£9.00	£12.00	£17.00
C. Total cost (in £million)	£0.07	£0.17	£0.40

Assumptions:

- the number of notices served would increase by **125%** ($\pm 25\%$);
- the number of notices served for qualified titles would increase by virtue of compulsory registration (see Table A3.7 below);
- the number of titles registered compulsorily would decrease over time as more land becomes registered (see Table A3.4 below); and
- based on provisional estimates and assumptions it has provided, HM Land Registry would incur the following costs -
 - 20 minutes (with a range of 15 to 30 minutes) of caseworker time per notice,
 - 15% of notices would result in an enquiry which would take 15 minutes of caseworker time, and
 - 5% ($\pm 2.5\%$) of notices would result in an objection which would take (i) 30 minutes of lawyer time, and (ii) 20 minutes of caseworker time.

Cost to homeowners

Homeowners notified of an application to register mines and minerals may incur costs seeking legal advice in order to understand the meaning of the notice, and potentially to object to the notice due to misunderstanding it. The Justice Committee's Report,⁶⁰ which dealt with unilateral notices in respect of manorial rights, indicated the extent to which notifying a homeowner of a poorly-understood interest can lead to that person incurring cost.

However, we expect the impact of this recommendation on homeowners to be significantly smaller than manorial rights indicated by the Justice Committee's Report for the following reasons:

- fewer notices will be served per year due to the higher cost and standard of proof for first registration;
- the applications will be more spread out due to the lack of a "sunset clause"; and
- HM Land Registry will use the lessons learned from its experience in relation to manorial rights, to help provide material with a view to limiting the stress and confusion felt by homeowners during the notification process.

Annual cost = £0.17 million [best estimate]

Present value = £1.39 million [best estimate]

Benefits of the reform

Smoother conveyancing

Notifying surface owners of applications to register mines and minerals under their land would improve conveyancing. In fact, in relation to this, one consultee described notification as the "single most important

⁵⁹ Rounded to nearest £ value.

⁶⁰ Justice Committee, *Manorial Rights* (HC 657, January 2015).

issue” relating to registration of mines and minerals. Notification will result in smoother conveyancing in two ways.

First, it prevents delays in dispositions when a mines and minerals issue arises. As surface owners are not notified of registration of mines and minerals under their land, they only realise in the course of a disposition, such as a sale or a mortgage. If there is a disagreement as to who owns those mines and minerals, resolving it will delay the disposition. Notifying the surface owner allows these disputes to be resolved sooner without affecting a disposition.

Second, consultees have noted that the fact the registered proprietor is not notified causes problems when it is confirming title. Some practitioners stated that they have had to start undertaking multiple official searches to check whether any qualified estate in mines and minerals has been registered.

Improved transparency and fairness

Bringing more estates in mines and minerals onto the register improves transparency. However, transparency of information in the register does not operate fairly if information is quietly made available to the public, without notifying those who are most likely to be affected.

Registration of an estate in mines and minerals held apart from the surface involves an implicit claim that those mines and minerals have been separated from the surface title. It is only fair, as an extension of transparency, to notify the surface owner to give them an opportunity to object to that claim.

Recommendations 3.2(a) and (b)

Costs of the reform

Transitional costs

We expect any transitional costs for this recommendation to be negligible.

Ongoing costs

There will be the cost of first registration to both tenants and HM Land Registry where an unregistered discontinuous lease is granted or transferred. However, we do not expect these costs to be significant.

We would estimate that the cost of registration (for both HM Land Registry and the tenant) is around **£260** per discontinuous lease on the assumption that:

- it would require the tenant’s lawyer to spend 2 hours, and
- HM Land Registry estimates that it costs on average approximately £180 to process a new title application.

The cost of entering a notice in respect of an existing discontinuous lease (on a voluntary basis) would be much less, perhaps at most **£130**, on the assumption that it costs approximately half the cost of substantive registration.

We do not expect that many discontinuous leases will be affected by our recommendations. We can assume that the majority of discontinuous leases are in respect of registered land (and are therefore already subject to registration requirements) because the majority of land is registered.

However, HM Land Registry has informed us that in the period April 2016 to November 2017, there were only a small number titles where there was a dealing in respect of a discontinuous lease. The ratio between registered and unregistered land suggests that there are very few dealings with unregistered discontinuous leases each year that would be affected by our recommendations.

Benefits of the reform

Transparency and consistency

Most discontinuous leases which were granted out of unregistered land do not appear in the register. Bringing these leases onto the register will improve transparency, by providing a more accurate picture of the legal interests affecting the land.

This increased transparency also provides a consistent approach: discontinuous leases granted out of registered land must be registered, and recommendations 3.2(a) and (b) align that requirement for such leases granted out of unregistered land.

Purchaser protection

Discontinuous leases usually bind the purchaser of the landlord's estate, despite the fact that they are usually unregistered and difficult to discover. As a result of our recommendations, new discontinuous leases have to be registered to bind a purchaser, and existing ones have to be registered if transferred and can be registered voluntarily if not. As a result, purchasers will be able to be more confident when buying a property that they are aware of the interests affecting it.

Recommendation 3.3

Costs of the reform

We expect any transitional or ongoing costs for this recommendation will be negligible.

HM Land Registry has suggested correspondence with courts may be required for a period following implementation where a court orders the entry of a restriction in a form other than standard Form K. However, we expect that these costs are likely to be no greater than the costs HM Land Registry currently incurs when such a restriction is ordered.

Benefits of the reform

Restriction in non-standard forms

HM Land Registry has estimated that roughly 3% ($\pm 2\%$) of applications for the entry of a restriction in relation to a charging order over a beneficial interest under a trust are not for a restriction in standard Form K. Therefore, approximately **600** (± 400) applications per year will be affected by the requirement that the court orders the entry of restrictions in standard Form K.

HM Land Registry has estimated that between 25% and 50% of these applications for restrictions generate cost in the form of additional correspondence with the court. These costs will be avoided due to our recommendation.

Certainty

This recommendation will provide a statutory basis to existing practice.

This recommendation will also provide certainty to parties and the courts as to the appropriate restriction to be ordered. It will reduce the time spent by lawyers both advising clients and arguing in court as to the form of restriction that the court will order. This will also avoid the costs incurred by HM Land Registry due to further correspondence with parties following an order to enter a restriction in a form other than standard Form K.

Recommendation 3.4

Costs of the reform

Transitional costs

We expect any transitional costs for this recommendation will be negligible. The cost of changing the land registration rules forms part of the general costs of implementation set out above.

Ongoing costs

We estimate that it would cost a tenant or landlord approximately **£50** to enter a notice in respect of a lease variation, based on the following assumptions:

- it will take a lawyer 0.5 hours to apply to enter a notice in respect of a lease variation;
- HM Land Registry has indicated it anticipates that the cost of recording a lease variation will be covered by associated fees; and
- the fee for entering a notice will be **£20 - £40** (the current fixed fee for applying for the entry of a notice).

We have not been able to estimate how many applications there would be to enter such a notice: we do not know how often registered leases are varied, and how often such variations will be voluntarily registered. We note that, given that applications are not mandatory, a tenant or landlord will incur this cost only if he or she decides that it is beneficial.

There is also a risk that the recommendation would increase HM Land Registry's liability for indemnity payments as a result of lost documents. The recommendation would mean that more lease variations are kept by HM Land Registry, with the risk that they are lost. However, we do not expect the potential additional indemnity liability to be significant, given that payment in respect of lost documents constitutes a relatively small proportion of total indemnity payments. For example, in the year 2016/2017, only 2.6% of indemnity payments were made in respect of the general category "lost documents / administrative errors".

Benefits of the reform

Transparency and clarity

Recording variations in particular will improve transparency: third-parties to the lease variation who are, or will be, affected by its terms (for example, a purchaser or a sub-lessee) will be able to access more easily the current terms of the lease. HM Land Registry considered that, in some circumstances, the recommendation would give greater clarity to both the registrar (as to the extent of the relevant powers) and to individuals.

Conveyancing

The improved availability of information about lease variations will reduce costs in conveyancing: it will reduce the need for off-register enquiries which will reduce delays in completing registered dispositions.

Recommendation 3.5

Costs of the reform

Transitional costs

In addition to the general implementation costs, HM Land Registry would have to update its IT systems to reflect the possibility of recording the identity of a beneficiary of an agreed notice. These costs are included as part of the general transitional costs set out above.

Ongoing costs

There will be an ongoing cost to HM Land Registry of recording the identity of a beneficiary of an agreed notice, and the cost of updating these details when the beneficiary of an agreed notice changes.

The overall cost is difficult to estimate, because it is difficult to predict how many applications to include the identity of a beneficiary will be made, or what applications might follow through the life of an agreed notice.

Benefits of the reform

Transparency

Recording the identity of a beneficiary will improve transparency: people will be able to identify more easily who has an interest which affects an estate in land. This transparency will make it easier for purchasers, landowners and HM Land Registry to contact the beneficiary of the notice in the event of a dispute, and for potential purchasers to negotiate with the beneficiary. HM Land Registry has indicated that it may lower the risk that a mistake is made in removing an interest.

Summary of costs and benefits for Option 1

Table 3.4: Summary of costs and benefits for recommendations dealing with problem 3 (£million)

	Low estimate	Best estimate	High estimate
Annual ongoing cost	£0.21	£0.42	£0.81
Annual benefits	£0	£0	£0
Total NPV over 10 years	- £1.72	- £3.47	- £6.71

Option 2

Recommendation 3.1(b)

The calculations of the cost of this recommendation for Option 1 took into account the fact that we expected the number of applications for first registration of mines and minerals to increase due to recommendation 3.1(a). The below calculations proceed on the basis that the number of (voluntary) applications for first registration of mines and minerals will stay the same each year.

Table 3.3: Cost to HM Land Registry of serving notices on registration with qualified title

	Low estimate	Best estimate	High estimate
A. Additional notices served	6,500	11,000	16,500
B. Average cost per additional notice ⁶¹	£9.00	£12.00	£17.00
C. Total cost (in £million)	£0.06	£0.13	£0.28

Recommendation 3.4 and 3.5

The costs and benefits of this recommendation would be the same as under Option 1.

Summary of costs and benefits for Option 2

Table 3.5: Summary of costs and benefits for recommendations dealing with problem 3 (in £million)

	Best estimate		
Annual cost	£0.06	£0.13	£0.28
Annual benefit	£0	£0	£0
NPV over 10 years	- £0.50	- £1.12	- £2.45

Problem 4: stability and reliability of the register

(1) Summary of the problem and current law

4.1 Unilateral notices – former overriding interests

Some interests will affect a purchaser of registered land, even if they are unregistered. These interests are called overriding interests. “Former overriding interests,” including manorial rights and chancel repair liability, are those which ceased to be overriding in 2013. A purchaser of registered land after this date would usually not be affected by these interests, unless they were recorded in the register at the time of the purchase.

Most often, a former overriding interest will be recorded by a unilateral notice. However, it is possible to enter a unilateral notice in the register in respect of a former overriding interest even if the land has been sold after 2013 (so the interest usually no longer affects the land). The unilateral notice can be entered without proof that the interest affects the land. As a result, the register contains inaccuracies: notices appear in the register that reflect interests which no longer affect the land. The burden is on the registered owner of the land to apply to get the notice removed from the register, even if spuriously entered.

4.2 Restrictions – contractual obligations

A restriction prevents the registration of a disposition of registered land unless certain conditions have been met. Restrictions can be entered in respect of contractual obligations. In appropriate cases, these

⁶¹ Rounded to the nearest £.

restrictions can provide a useful way of enforcing contractual obligations. However, in other cases, they can cause delays in conveyancing, and can be used to extract fees from owners. They can also prevent parties from registering dispositions entirely, denying the owner a legal interest in the land.

4.3 Rectification – revising the scheme

The land registration system guarantees that a person who is registered as the proprietor of land is the owner of that land. This guarantee gives purchasers of land confidence that the registered proprietor of an estate is, indeed, the legal owner.

However, the LRA 2002 allows the registrar or the court to alter the register in certain circumstances. An alteration to correct a mistake which prejudices the title of the registered proprietor is known as “rectification”. A common case in which the register is rectified is a case of fraud, in order to restore the ownership of a person who has lost his or her land because of the fraud. When the registrar or court decides whether to rectify the register, any innocent parties suffering loss have the right to an indemnity. The issue the registrar or court must decide is often which party should get the land, and which party should get an indemnity.

The current law does not fully promote the objectives that we identified as underlying the scheme for rectification and indemnity: workability, clarity, finality, fact-sensitivity and reliability.

Workability: it is unclear whether a person’s right to apply for rectification is a property right that can bind the land if the person with the right is occupying the land.⁶² If so, the new owner whose land is subject to this so-called right would have no right to indemnity.

Clarity: the law is not always clear about which party should get the land and which party should get an indemnity. It is also unclear whether an entry in the register that comes after an existing mistake in the register is itself also a mistake, which can be rectified and for which indemnity can be paid.

Finality: rectification can be ordered against a registered proprietor, no matter how long ago the mistake was made in the register. Although the owner would be indemnified if the register is rectified, information in the register is less conclusive as it is indefinitely at risk of alteration.

Fact-sensitivity: the current law gives special protection to registered proprietors in possession of the land, but does not give equivalent protection to people in possession who have lost their registered title due to a mistake. Moreover, a mortgagee can try to oppose rectification of the register to remove its charge, even though its interest is purely financial, and would be adequately compensated by indemnity.

Reliability: the register is reliable if an adequate indemnity is available. Indemnity is not always available in cases of registration of the same land on multiple titles, and sometimes the indemnity available is not adequate because it is either too high (giving the person a windfall) or too low (so their losses are not compensated at an appropriate level).

4.4 Registration of title acquired by possession

On first registration, HM Land Registry may register the owner with possessory title, typically when the person is in possession of the land but cannot otherwise prove title to it.

Under the general law, a person in adverse possession acquires title to land which is subject to the existing title of the original owner, until the existing title is extinguished. For unregistered land, this happens after 12 years by the Limitation Act 1980; for registered land, this only happens on the registration of the adverse possessor in accordance with schedule 6 to the LRA 2002.

It is uncertain whether an adverse possessor can be registered with possessory title when the original owner’s title still exists. If so, the register could be cluttered with fragile interests of a potentially short duration. It is also unclear what effect registration would have on the limitation period; if the limitation period ceases to run, the adverse possessor will never be able to extinguish the original owner’s title despite long-term possession.

4.5 Further advances and tacking

Tacking allows a lender to add (or “tack”) a subsequent loan to his or her original secured loan with the effect that the subsequent loan takes priority over intervening charges. The tacking provisions of the LRA

⁶² *Malory Enterprises Ltd v Cheshire Homes (UK) Ltd* [2002] EWCA Civ 151, [2002] Ch 216; *Swift 1st Ltd v Chief Land Registrar* [2015] EWCA Civ 330, [2015] Ch 602.

2002 do not allow members of a syndicated loan to tack because the members of the syndicate will not be the registered proprietor of the charge. Instead lenders are beneficiaries under a trust of the registered charge. Therefore, participants in the syndicated loan market must rely on inter-creditor arrangements as the transactions are not supported within the provisions of the LRA 2002.

(2) Options considered to solve the problem

Option 1: wide-ranging reform

Option 1 would address the deficiencies in the law through primary legislative reforms, namely by modifying existing provisions of the LRA 2002. The problems here stem from the legislation itself and can therefore only be addressed through primary legislative reform.

Option 1 would require implementation of the following 5 recommendations.

Recommendation 4.1: reduce the entry of notices to protect former overriding interests after a registered disposition

This recommendation (i) requires applicants for unilateral notices to provide reasons why their former overriding interests still affects the land, and (ii) prevents entry of a notice where the applicant fails to provide non-groundless reasons.

Recommendation 4.2: rule-making power to limit restrictions to protect certain contractual obligations

This recommendation will allow rules to be created to prevent the entry of restrictions to protect certain contractual obligations.

Once exercised, we expect that the rules made under our recommendation will prevent delays in conveyancing and registration, and prevent the use of restrictions to extract unwarranted fees from owners of land.

Recommendation 4.3: revised scheme for alteration and rectification of the register

Nine recommendations implementing a revised scheme for alteration and rectification of the register will clarify uncertainties, fill gaps and improve upon the existing scheme. These recommendations will do the following:

- prevent a right to rectification from acting as an overriding interest, which will ensure parties in alteration cases are indemnified for their losses;
- ensure that registration of a disposition made as a result of a mistake in the register will itself be a mistake, to which the scheme for alteration and rectification applies;
- clarify that rectification of a mistake which involved the removal or omission of an interest from the register which derives from a registered estate operates retrospectively;
- provide that, if a mistake has been entered in the register for ten years or more, the register cannot be rectified;
- strengthen the protection of proprietors and former proprietors in possession;
- prevent mortgagees, whose interest in the land is entirely financial, from opposing rectification on the basis only that they will lose that interest;
- require cases of multiple registration – where the same land is registered within multiple registered estates – to be resolved through the scheme for alteration and indemnity;
- ensure that parties do not receive a windfall from the operation of the rectification and indemnity scheme; and
- ensure that the register cannot be altered to protect the priority of former overriding interests which ceased to be overriding, where the beneficiary of the interests did not take steps to protect his or her interest.

Recommendation 4.4: revised scheme for grant of possessory title to an adverse possessor

These recommendations will (i) prevent applications for first registration of a title acquired by adverse possession unless the limitation period has expired and (ii) ensure the limitation period continues to run if such a title is mistakenly registered.

Recommendation 4.5: enabling tacking by members of a syndicated loan

This recommendation will allow members of a syndicated loan to provide further advances on the security of a registered charge, facilitating the syndicated loan market.

Option 2: limited reform

There is no Option 2 for this problem as there are no recommendations which do not require primary legislation.

(3) Costs and benefits analysis

Option 1

Recommendation 4.1

Costs of the reform

Transitional costs

We expect any transitional costs for this recommendation will be negligible. The cost of changes to forms and guidance, for example, are included in the figure provided for general transitional costs.

Ongoing costs

There will be a minor additional cost in preparing an application for the entry of a unilateral notice in respect of a former overriding interest, and for HM Land Registry to consider that application. These costs relate to the additional time filling in (and considering) the effect of a registered disposition since October 2013. Nonetheless, we consider that the changes are simple enough that the costs are unlikely to be significant.

Benefits of the reform

Reducing distress for homeowners

There is evidence that homeowners suffer distress upon receiving notification that a unilateral notice has been entered against their property to protect a manorial right (a type of former overriding interest). In some cases, this distress is unwarranted, because the manor which gave rise to the manorial right never included the homeowner's land.⁶³ By preventing meritless unilateral notices from being entered, we will prevent the distress caused to ordinary homeowners in those cases.

Reducing delay and cost in transactions

On receiving notification that a unilateral notice has been entered in the register of their properties to protect a manorial right, homeowners often obtain legal advice and apply to cancel the notice. Homeowners therefore incur cost in responding to the entry of a unilateral notice. In some cases, there have been suggestions that disputes about the entry of a unilateral notice caused short delays in the homeowner obtaining mortgage financing.⁶⁴ By preventing meritless unilateral notice applications from being entered to protect former overriding interests, the reform will eliminate those costs and any delays in dispositions.

Confidence in the register

By preventing meritless unilateral notices to protect former overriding interests, notices which do not affect the registered estate will not be entered in the register. The register will become a more correct statement of the interests that affect the registered estate. Accuracy of the register will promote reliance on it, which contributes to cost-efficient conveyancing.

⁶³ Justice Committee, *Manorial Rights* (HC 657, January 2015) pp 10, 12, and 16 to 17.

⁶⁴ Justice Committee, *Manorial Rights* (HC 657, January 2015) pp 9 to 10 and 23.

Recommendation 4.2

It is likely that the power introduced by our recommendation will be exercised within the next ten years. We assume that, when the exercise of this power is contemplated, a separate impact will be carried out, and it will only be exercised if there is a net benefit to conveyancing.

Costs of the reform

Transitional costs

We expect any transitional costs for this recommendation will be negligible.

Ongoing costs

The reform enables the Secretary of State to create new land registration rules, and requires consultation on them. As a result, HM Land Registry will incur costs whenever it seeks to exercise this power in drafting the rules and consulting on them. It is difficult to estimate these costs, as it depends on the nature of the rules proposed and how frequently the power is exercised. Nonetheless, we anticipate that HM Land Registry would likely produce its own impact assessment when exercising this power, and that it would not exercise the power if the costs were outweighed by the benefits.

Benefits of the reform

Efficiency

Restrictions protecting contractual obligations can cause delays in conveyancing and in registering dispositions. Delays can be caused by a failure of the beneficiary of the restriction to give consent or certification necessary for registration to take place. Delays can also be caused when the beneficiary of the restriction changes.

By creating a power to prevent the use of restrictions to protect certain contractual obligations, the reform will enable delays in conveyancing and registration to be avoided.

Fairness

Restrictions protecting contractual obligations can be used to extract unwarranted fees from property owners, for example, a fee imposed by a landlord to provide the certificate of compliance. Restrictions can also be used to protect covenants which are not enforceable at law.

By creating a power to prevent this use of restrictions, the reform will ensure that the register of title is not used unfairly, to extract fees from those with property rights or to force compliance with legally invalid obligations. We note that it will not prevent the valid creation or enforcement of these obligations; it will only prevent restrictions being used as a means of enforcement.

Confidence

There are concerns about the register of title being used to protect interests that do not amount to property rights. These contractual obligations may clutter the register, and take away from the register as an accurate and reliable register of interests affecting a registered estate. By creating a power to eliminate entry of restrictions where they cause problems and undermine the purpose of the register, perhaps by being too far removed from the registered estate, the register will become a more accurate statement of title.

Recommendation 4.3

Costs of the reform

We expect any transitional or ongoing costs for this recommendation will be negligible. HM Land Registry noted that the increased certainty leads to a corresponding decrease in its flexibility in dealing with indemnity claims. On balance, we consider that this does not amount to a net cost.

Benefits of the reform

By clarifying and improving the scheme for rectification and indemnity, these recommendations will overall promote stability and reliability of the register. Indemnity will be available to those who rely in the register, in accordance with the title guarantee. The register will be less vulnerable to rectification over time. We anticipate that these recommendations will promote confidence in the register.

Clarity

The reforms will provide greater clarity about which party will receive the land, and which party an indemnity. It will therefore prevent disputes between parties about rectification in some cases, with the attendant costs to the parties and to HM Land Registry.

Workability

The reforms will ensure that mistakes in the register are determined by the provisions for alteration and rectification, rather than other provisions in the LRA 2002. This will ensure that parties who rely on the register will be indemnified for losses that are caused by a mistake in the register.

Fairness and fact-sensitivity

The reforms will strengthen the protection of persons in possession and prevent mortgagees, whose interests are purely financial, from opposing rectification solely on the grounds that their charge will be lost. We are therefore ensuring a fair outcome will be reached in decisions about who will receive the land, and who will receive indemnity.

Our reform promotes fairness, by ensuring that the cost of mistakes in the register are borne by HM Land Registry (so all users) rather than falling disproportionately on any individual users of the system. We will also promote reliance on the register, by ensuring the title guarantee operates as it should. Both will increase confidence in the register, and consequently in conveyancing.

Stability and reliability

The reforms will prevent the register from being rectified after a mistake has been in the register for more than ten years. Therefore, the register will be less vulnerable to change, becoming final after ten years. The register will be more stable, which will promote reliance on the register, and confidence in registered conveyancing.

Recommendation 4.4

Costs of the reform

We expect any transitional or ongoing costs for this recommendation will be negligible.

Benefits of the reform

Protection of registered proprietors

Under the land registration system, title to land is governed by registration, not possession. This recommendation will ensure that registration governs title, by protecting registered proprietors from adverse possession.

Stability and reliability

This recommendation will prevent adverse possessors from being registered with possessory title while their title is fragile and vulnerable to coming to an end. It will therefore put HM Land Registry's practice of preventing interests from being entered in the register that are likely to be of short duration, and which do not adversely affect other registered interests, on statutory footing. Because such interests will not be able to be entered and removed from the register in short succession, it will ensure the stability and reliability of the register.

Fairness

This recommendation will ensure that the limitation period continues to run if such a title is mistakenly registered. It will ensure that adverse possessors who engage with the registration system by registering their interest are not punished if their registration was a mistake. We will promote fairness by ensuring that mistaken registrations do not result in an adverse possessor losing his or her claim.

Recommendation 4.5

Costs of the reform

We expect any transitional or ongoing costs for this recommendation will be negligible.

Benefits of the reform

Protection of lending under the syndicated loan market

This recommendation will facilitate the syndicated loan market. It will provide the ability to tack within the terms of the LRA 2002, rather than placing reliance on inter-creditor arrangements. Further, it will provide a backstop where inter-creditor arrangements are not completed.

Transparency

By allowing tacking within the terms of the LRA 2002, the ability to tack will be more apparent from the register, rather than existing behind inter-creditor arrangements. By making the existence of such agreements explicit on the face of the register, the lending market will be more transparent.

Problem 5: inefficiencies in the resolution of disputes

(1) Summary of the problem and current law

5.1 Unilateral notice procedure

A notice is an entry in the register which protects the priority of an interest in the event of a disposition of the registered estate. A unilateral notice is a type of notice which can be entered in the register without an applicant having to provide evidence of the validity of the interest to be protected. When the registrar enters a unilateral notice, the registrar will notify the proprietor of the registered estate which is affected by the notice. The proprietor can apply to cancel that unilateral notice pursuant to section 36 of the LRA 2002. The procedure for cancelling a unilateral notice is currently inefficient due to asymmetry of information between the proprietor and the beneficiary of the notice.

Cancellation procedure: under the current procedure, the beneficiary of the unilateral notice is not required to provide evidence as to the existence of his or her interest until the registered proprietor has objected and their dispute has escalated to litigation in the Tribunal. A dispute can reach the Tribunal when the beneficiary has no evidence that he or she is entitled to an interest that affects the registered proprietor's estate. Because the beneficiary is not required to provide any evidence, in some cases it is difficult for parties to resolve or settle their dispute at an earlier stage.

5.2 Applications for adverse possession under schedule 6

The scheme for adverse possession of registered land enables an adverse possessor to make two applications. A person with ten years adverse possession can make a first application under paragraph 1. That application will ordinarily be rejected; it will only succeed if the registered proprietor fails to respond within a set period of time or if the applicant is also able to satisfy one of three conditions. The third of these conditions is that the applicant had possessed land neighbouring his or her own land under the reasonable, but mistaken, belief that the land belonged to him or her.

A person may make a second application under paragraph 6 if he or she has continued in adverse possession for at least two years after his or her application under paragraph 1 has been rejected.

There are two uncertain aspects of the scheme under schedule 6, which impact on the cost of resolving adverse possession disputes.

Repeat applications: the scheme does not specify that a person whose application under paragraph 1 is rejected cannot re-apply under the same paragraph. Thus, it is not clear whether a person can opportunistically re-apply under paragraph 1, where, for example he or she knew the registered proprietor would be unable to respond to the application. HM Land Registry currently rejects such applications, but its practice lacks a clear statutory footing.

Requirements of the third condition: the third condition requires that the person in adverse possession of land reasonably believed that he or she owned that land for a period of ten years. The legislation is uncertain as to how long a person has to make an application after his or her reasonable belief comes to an end.

5.3 Jurisdiction of the Tribunal

In the context of land registration, the main function of the Tribunal is to determine disputes arising out of an objection to an application to HM Land Registry.⁶⁵ The registrar must refer these disputes to the Tribunal if the objection is not groundless and the dispute cannot be resolved by agreement between the parties.⁶⁶ There are two limits to the Tribunal's jurisdiction which lead to inefficiencies in the resolution of cases before it.

Determination of boundaries: the Tribunal is referred disputes arising from an application to determine the exact line of a boundary. Although the Tribunal is empowered to determine whether the application is successful, there is uncertainty as to whether the Tribunal has the power to decide the exact line of a boundary when it has found that an application is unsuccessful. Insofar as the Tribunal does have this jurisdiction, there is uncertainty as to the extent that the Tribunal can direct the registrar to make an entry in the register to reflect the determined boundary.

Estoppel and beneficial interests: in the disputes referred to it, the Tribunal has the power to determine the existence of an equity by estoppel or beneficial interest. Having done so, it is unable to determine how the equity by estoppel is to be satisfied or declare the extent of the beneficial interest.⁶⁷

In these cases, the LRA 2002 does not grant the Tribunal jurisdiction to fully resolve the matters that come before it by providing a secure remedy to the parties. It can only give a finding of fact, which may not bind the parties in all cases. The parties must therefore begin further proceedings at court in order to resolve their dispute, despite the fact that the Tribunal has heard all the relevant evidence and arguments.

5.4 Notifying proprietors of restrictions – charging orders

A charging order is a court order which imposes an equitable charge over the property of a debtor for the purpose of securing a debt he or she owes as a result of a judgment or court order. A charging order may impose a charge over a person's beneficial interest under a trust. Under section 42(4) of the LRA 2002, the registrar has the power to enter a restriction in respect of such a charging order. The standard form of restriction to be entered for such a charging order is Form K.

Notification of a Form K restriction: under section 45 of the LRA 2002, the registrar must notify the registered proprietor of an application to enter a restriction. It is not clear whether the registrar is required to do so when the application is for a restriction in Form K to protect a charging order over a person's beneficial interest under a trust. The purpose of notification is to enable persons to object to the application. However, where the restriction reflects a charging order, it is unlikely that there will be any valid grounds for objection.

5.5 General boundaries

The majority of boundaries shown on HM Land Registry title plans are "general boundaries". General boundaries indicate approximate boundaries, which are not guaranteed and thus does not engage indemnity. If there is a dispute relating to the position of a legal boundary between two neighbouring proprietors, it is significant whether their dispute falls within the general boundaries rule. The losing party will receive an indemnity payment only if the dispute does not fall within this rule, and is a "property dispute" rather than a "boundary dispute".

There are a number of factors which are consistently used to determine whether a dispute is a property dispute or a boundary dispute. However, these factors do not appear in the legislation or the rules, which makes it difficult for ordinary proprietors or their advisors to understand the nature of their dispute.

⁶⁵ LRA 2002, s 108.

⁶⁶ LRA 2002, s 73(7).

⁶⁷ Exception in certain cases of adverse possession: LRA 2002, s 110(4).

(2) Options considered to solve the problem

Option 1: wide-ranging reform

Option 1 would address the deficiencies in the law through primary legislative reforms, namely by modifying existing provisions of the LRA 2002. The problems here stem from the legislation itself and can therefore only be addressed through primary legislative reform.⁶⁸

Option 1 would require implementation of the following recommendations.

Recommendation 5.1: new procedure for cancellation of unilateral notices

This recommendation (i) requires a beneficiary of a unilateral notice to provide evidence of his or her interest within 30 business days of an application to cancel the notice, and (ii) requires HM Land Registry to cancel the unilateral notice if the beneficiary fails to provide evidence to satisfy the registrar of the validity of his or her claim.

Applications for adverse possession under Schedule 6

Recommendation 5.2(a): prevention of repeat applications under paragraph 1 of schedule 6

This recommendation will prevent adverse possessors from making repeat applications under paragraph 1 of schedule 6. It will ensure that the LRA 2002 is interpreted in line with HM Land Registry's current practice so that i) applications cannot be opportunistically made by an adverse possessor where the registered proprietor has already responded to an earlier application and ii) that the scheme in schedule 6 operates as it was intended, by protecting registered proprietors from adverse possessors and giving them a two-year period during which to end the adverse possession.

Recommendation 5.2(b): requirement to apply for registration within 12 months of the applicant's reasonable belief coming to an end

This recommendation requires that an adverse possessor of land neighbouring his or her own must apply for registration of the land within 12 months of his or her reasonable belief, which lasted for at least ten years, coming to an end. It will require adverse possessors to make their claims promptly, once they have realised their mistake about the true ownership of the land. It will promote the resolution of boundary claims based on adverse possession.

Jurisdiction of the Tribunal

Recommendation 5.3(a): an express statutory power for the Tribunal to decide the exact line of a boundary

This reform clarifies that where the Tribunal hears a dispute arising from an application for a determined boundary, it has the power to decide the exact line of the boundary.

Recommendation 5.3(b): clarifying that the Tribunal must direct the registrar to reflect in the register a finding as to the exact line of a boundary

This reform clarifies that where the Tribunal exercises the express statutory power in recommendation 5.3(a), it shall also direct the registrar to make an entry in respect of the exact line of the boundary.

Recommendation 5.3(c): expansion of the Tribunal's jurisdiction to allow it to grant equitable relief in respect of an equity by estoppel and to determine the extent of a beneficial interest

This recommendation will empower the Tribunal to fully resolve the issues that come before it, by enabling it to make orders that direct how an equity by estoppel is to be satisfied, and declare the extent of a beneficial interest. It will prevent parties from having to re-litigate the same issues before a court.

⁶⁸

Although recommendation 3(b) involves amendment to secondary legislation, it presupposes amendment to primary legislation in line with recommendation 3(a).

Recommendation 5.4: remove the requirement to give notice of the entry of a Form K restriction

This reform is deregulatory: it removes the requirement on the registrar to notify the registered proprietor of the entry of a restriction in standard Form K (in other words, in respect of a charging order over a beneficial interest under a trust). Thus, it reduces the administrative burden imposed by legislation on the registrar. The registrar will still have the power to notify registered proprietors or other persons in cases when he or she considers it appropriate. By eliminating notification in cases in which there is no valid grounds of dispute, it will prevent these disputes between parties.

Recommendation 5.5: include in primary legislation the factors which determine whether a dispute is a “boundary dispute” or a “property dispute”

This recommendation (i) inserts into primary legislation the factors which determine whether a dispute is a boundary or property dispute, and (ii) creates a power to insert new factors which may arise in case law into the legislation.

Option 2: limited reform

There is no Option 2 for this problem as there are no recommendations to it which do not require primary legislation.

Although recommendation 5.3(b) involves amendment to secondary legislation,⁶⁹ such amendment presupposes the existence of an express statutory power in line with recommendation 5.3(a). Thus, it cannot be implemented effectively in the absence of primary legislation.

(3) Costs and benefits analysis

Option 1

Recommendation 5.1

Costs of the reform

Transitional costs

We expect any transitional costs for this recommendation will be negligible.

Ongoing costs

This recommendation will alter the procedure for dealing with applications to cancel unilateral notices. We expect that HM Land Registry will incur ongoing costs as a result of the recommendation:

- the higher threshold for objections to applications to cancel unilateral notices will mean that HM Land Registry will have to spend more time considering these objections; and
- the higher threshold will lead to an increase in the number of complaints and requests to review these decisions.

The increased costs are set out in the table below.

⁶⁹ Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, r 40.

Table 5.1: Annual cost of new unilateral procedure

		Low estimate	Best estimate	High estimate
Cost to HMLR dealing with objections to applications to cancel unilateral notices	A. Estimated annual number of objections to applications to cancel a unilateral notice (see Table A5.1)	650	1,850	2,860
	B. Additional lawyer time spent considering an objection to cancel a unilateral notice (hours)	0.5		
	C. Lawyer cost per hour	£58		
	D. Total annual cost to HMLR of spending additional time considering objections	£19,000	£54,000	£83,000
Cost to HMLR of complaints about and requests to review decisions	E. Estimated number of complaints / reviews of decisions made	138	392	616
	F. Lawyer time spent responding to a complaint or review (hours)	1	1.5	2
	G. Total annual cost to HMLR dealing with complaints and reviews (CEF)	£8,000	£34,000	£71,000
	H. Estimated cost to local land registrars dealing with escalated complaints (G/10)	£800	£3,400	£7,100
I. Total ongoing annual cost to HMLR (D + G + H)		£28,000	£91,000	£162,000

Assumptions:

- There will be 1,850 (with a range of 650 to 2,860) objections to applications to cancel unilateral notices per year based on the number of applications per year⁷⁰ and HM Land Registry's provisional estimated objection rate (see Table A5.1).⁷¹
- The recommendation will require an additional 0.5 hours of lawyer time per application, based on HM Land Registry's provisional estimate.
- HM Land Registry will receive a complaint or a request for review in 3% (± 2%) of applications to cancel a unilateral notice⁷² based on HM Land Registry's estimate.
- Dealing with a complaint or a request for review will take 1.5 hours (± 0.5 hours) lawyer time, based on HM Land Registry's provisional estimate.
- There will be an additional 10% increase in escalated complaints and requests for review to local land registrars.

Annual ongoing cost = £91,000 [best estimate]

Present value over 10 years = £0.76 million [best estimate]

⁷⁰ Taking into account our assumption that the recommendation would lead to a decrease in the number of UN1 applications, by discouraging meritless applications for unilateral notices: see monetised benefits below.

⁷¹ This figure takes into account the fact that we think that overall the recommendation will *decrease* the total number of such applications per year – see further below.

⁷² We estimate that there are 14,500 (± 750) such applications per year. The figure in row E of Table 5.1 is calculated by taking into account the estimated reduced applications (see Table A5.1), before working out 3% (± 2%) of that figure.

Benefits of the reform

1. Monetised

This recommendation would save costs in the following three ways:

- discouraging meritless applications to enter unilateral notices;
- allowing the rejection of objections to applications to cancel unilateral notices which do not provide sufficient evidence; and
- encourage negotiation and earlier dispute resolution between the parties.

Discourage meritless applications

The new unilateral notice procedure will discourage meritless applications for the entry of such notices. This will save the costs of HM Land Registry in processing these applications. The estimated savings for HM Land Registry are set out in Table 5.2 below; for further detail, see tables A5.2 and A5.3 in Appendix 1.

Table 5.2: Annual savings from reduction in applications to enter a unilateral notice

	Low estimate	Best estimate	High estimate
A. Total annual cost of HMLR processing applications to enter unilateral notices in the register.	£221,000	£467,000	£617,000
B. Total annual cost of HMLR processing applications to cancel a unilateral notice.	£61,000	£96,000	£135,000
C. Decrease in percentage of applications to enter unilateral notices and (consequently) to cancel unilateral notices.	5%	10%	15%
D. Annual savings to HMLR due to decrease in applications (AC + BC)	£14,000	£56,000	£113,000

Assumptions:

- there are 53,000 ($\pm 3,000$) applications to enter a unilateral notice each year, based on HM Land Registry's estimates over a three-year period;
- there are 14,500 (± 750) applications to cancel a unilateral notice each year, based on HM Land Registry's estimates over a three-year period;
- it takes a caseworker 0.33 hours (with a range of 0.17 to 0.42 hours) to process an application to enter a unilateral notice, based on HM Land Registry's estimates;⁷³
- it takes a caseworker 0.25 hours (± 0.08 hours) to process an application to cancel a unilateral notice;⁷⁴ and
- there is an objection to an application to cancel a unilateral notice 15% ($\pm 10\%$) of the time, based on HM Land Registry estimates.

Annual savings = £0.06 million [best estimate]

Present value over 10 years = £0.47 million [best estimate]

Increased rejection of objections

If the beneficiary of a unilateral notice objects to an application to cancel that notice, HM Land Registry will consider whether that objection is "groundless". If the objection is groundless, HM Land Registry will

⁷³ This estimate was based on applications to enter a notice generally, so included agreed notices.

⁷⁴ This estimate was based on applications to cancel or remove entries generally, and included applications to cancel restrictions and cautions as well as notices.

reject the objection, and give effect to the application to cancel the unilateral notice. If the objection is not groundless, in most cases HM Land Registry will give the parties time to negotiate (unless it is clear that negotiations will not be fruitful) before referring the case to the Tribunal.

Our recommendation will require HM Land Registry to reject an objection by a beneficiary of a unilateral notice where it fails to satisfy the registrar of the validity of the beneficiary's claim. As a result, more applications to cancel unilateral notices will succeed at this stage, saving the parties the cost of negotiating and going to the Tribunal.

The increased rejection of these objections would save the parties the cost of negotiating and going to the Tribunal. We estimate that approximately **460** additional objections (with a range of 130 to 860) would be rejected by the new test introduced by this recommendation.⁷⁵ Table 5.3 sets out the cost of dealing with these objections under the current law, which would be saved following the implementation of these recommendations. For further detail see Tables A5.4 to A5.6 in Appendix 1.

Table 5.3: Annual savings due to increase rate of rejected objections

	Low estimate	Best estimate	High estimate
A. Total cost of parties negotiating over an objection (before referral to the Tribunal) ⁷⁶	£64,000	£450,000	£1,270,000
B. Total additional costs of parties negotiating in respect of applications referred to the Tribunal.	£11,000	£27,000	£49,000
C. Total annual cost of Tribunal hearings	£5,500	£14,000	£25,000
D. Total costs saved (A + B + C) ⁷⁷	£81,000	£491,000	£1,344,000

Assumptions:

- there will be about 1,850 (with an approximate range of 620 to 3,050) objections to applications to cancel unilateral notices per year based on the number of applications per year and HM Land Registry's estimated objection rate (see Table A5.1 and A5.4);
- an additional 25% (\pm 5%) of objections would be rejected under our reform;
- parties spend 12 hours (\pm 6 hours) lawyer time each negotiating in relation to a unilateral notice before referral to the Tribunal;
- around 110 applications to cancel a unilateral notice are referred to the Tribunal each year, based on HM Land Registry's estimates;
- parties spend an additional 12 hours (\pm 6 hours) lawyer time each on further negotiation following referral to the Tribunal;
- around 10% (\pm 5%) of cases referred lead to a hearing in the Tribunal, based on the fact that there were **3** cases reported from January 2018 to March 2018; and
- the total cost of a Tribunal hearing is £5,000, based on data from HM Courts and Tribunal services that it costs on average £2,500 per reference, and on the assumption that each party would spend £1,250 on lawyers and other costs.

The estimated lawyer time spent on a negotiation takes into account that our recommendation will also encourage earlier resolution of dispute by requiring parties to share information and evidence at an earlier stage (see below).

⁷⁵ See Table A5.4 in Appendix 1 below.

⁷⁶ This figure takes into account the fact that we also expect our recommendations to allow parties to spend less time negotiating.

⁷⁷ Rounded to nearest £'000.

Annual savings = £0.49 million [best estimate]

Present value over 10 years = £4.08 million [best estimate]

Encourage earlier dispute resolution

Even if, following an objection, the registrar is satisfied as to the validity of the beneficiary's claim, then we expect that negotiation between the parties would be quicker. The recommendation would require the beneficiary to share evidence at an earlier stage.

Table 5.4: Annual savings due to earlier dispute resolution

	Low estimate	Best estimate	High estimate
A. Annual number of objections that will not be rejected by HMLR (see Table A5.7 below).	460	1100	1430
B. Lawyer time saved negotiating due to the requirement to share evidence at an earlier stage (per party)	2	4	6
C. Lawyer cost per hour	£41		
D. Total annual savings due to earlier agreement by negotiation (2ABC)	£75,000	£364,000	£703,000

Assumptions:

- 1100 objections (with a range of 460 to 1430) to applications to cancel unilateral notices would not be rejected following the implementation of our reform (see Table A5.7 in Appendix 1 below); and
- the sharing of information at an earlier stage would make negotiation 4 hours (\pm 2 hours) shorter.

Annual savings = £0.36 million [best estimate]

Present value over 10 years = £3.02 million [best estimate]

2. Non-monetised

This recommendation promotes fairness between the beneficiary of the unilateral notice and the owner of the land. Evidence from the manorial rights context points to the belief that the burden of proof currently falls too heavily on the owner, rather than on the beneficiary of the notice who is asserting an interest over the proprietor's land.⁷⁸

The recommendation will put the burden of proving the validity of the interest onto the person claiming the benefit of the interest. The owner will therefore not have to incur the costs to challenge the notice. This procedure will be fairer to owner, and will reflect who is best placed to meet the burden of proof.

⁷⁸

Justice Committee, *Manorial Rights* (HC 657, January 2015) pp 3 to 4, 10, and 13 to 14.

Summary of monetised costs and benefits

Table 5.5: Summary of costs and benefits for Problem 5.1 (in £millions)

		Best estimate
Cost		£0.09
Benefit	Discourage meritless applications	£0.06
	Rejection of more objections	£0.50
	Encourage earlier dispute resolution	£0.36
Annual net benefit		£0.83
NPV over 10 years		£6.85

Recommendation 5.2(a)

Costs of the reform

We expect that any transitional or ongoing costs for this recommendation will be negligible.

Benefits of the reform

The recommendation prevents repeat, meritless applications for adverse possession under schedule 6 of the LRA 2002.

As we noted above, HM Land Registry receive **695** applications for adverse possession in respect of registered land each year.

We estimated that that **17** applications each year are repeat, meritless applications, based on:

- the fact that between 1 June 2015 and 1 June 2018, in the Tribunal, **2** of the 80 adverse possession cases involved repeat, meritless applications, and
- the assumption that the proportion of Tribunal cases reflects the proportion of applications.

This estimate is conservative: the number of repeat, meritless applications could well be higher, as a meritless application is less likely to continue long enough to reach the Tribunal.

We do not expect the recommendation to result in cost savings; HM Land Registry already rejects these applications, and this practice will not change. The recommendation puts this practice on a firm statutory footing.

Without a statutory footing for this practice, HM Land Registry is at risk of Judicial Review. In the last ten years, there have been **8** Judicial Review proceedings in the High Court against HM Land Registry (including applications for permission to apply for Judicial Review), of which **2** went to the Court of Appeal.⁷⁹

The recommendation eliminates the risk (however low) of judicial review proceedings in the context of repeat, meritless applications, which would result in:

- cost to HM Land Registry to defend the proceedings, regardless of outcome, and
- if successful, distress caused to proprietors.

Recommendation 5.2(b)

Costs of the reform

We expect any transitional costs for this recommendation will be negligible.

⁷⁹

These figures reflect Judicial Review proceedings against HM Land Registry generally, and includes cases which had nothing to do with adverse possession.

In terms of ongoing cost, the recommendation will shift the focus in these adverse possession cases on whether a belief is “reasonable”. There is a risk that this shift will lead to increased litigation on whether and when a belief is reasonable.

Benefits of the reform

1. Monetised

Clarifying the time at which “reasonable belief” is required to be assessed will reduce the amount of lawyer time spent in cases where it is a relevant issue.

Table 5.6: Savings due to clarifying the law

	Low estimate	Best estimate	High estimate
A. Number of applications per year where “reasonable belief” is an issue	52		
B. Reduction in the time spent by a lawyer dealing with “reasonable belief” per party (hours)	2	3	4
C. Lawyer cost per hour	£41		
D. Costs saved due to clarifying “reasonable belief” (2ABC)	£8,600	£12,800	£17,000

Assumptions:

- There are **52** applications each year in which “reasonable belief” is a relevant issue, based on:
 - HM Land Registry receives **695** applications for adverse possession in respect of registered land each year,
 - the fact that between 1 June 2015 and 1 June 2018, in the Tribunal, 6 of the 80 adverse possession cases involved reasonable belief, and
 - the assumption that the proportion of Tribunal cases reflects the proportion of applications.
- In cases where “reasonable belief” is a relevant issue, the timing of that belief will also be a relevant issue.
- A lawyer for each party would save **3** hours (± 1 hour) advising on the issue, based on discussions with stakeholders.

2. Non-monetised

Certainty

The current law is unclear as to how long a person has to make an application based on adverse possession after his or her reasonable belief comes to an end. Two differing interpretations of the current law have support from academics and decisions of the Court of Appeal.⁸⁰ The recommendation provides a clear rule as to when a person is able to apply, which will avoid potential litigation arising from this uncertainty.

Finality

The LRA 2002 was intended to bring finality to claims of adverse possession, so that they are resolved as soon as possible. Recommendation 5.2(b) ensures that, once an adverse possessor’s reasonable belief comes to an end, the question of ownership is resolved quickly, bringing finality to the issue in the interests of all parties. In other words, it prevents a person from delaying making a claim for adverse possession in relation to a boundary after becoming aware that he or she is not in fact the proprietor of the land.⁸¹

⁸⁰ See Ch 17 of the Report for more detail.

⁸¹ Consultation Paper, paras 17.43 and 17.44.

Recommendation 5.3(a) to (c)

These three recommendations deal with the issue of jurisdiction of the First-tier Tribunal, and will have a similar effect on legal disputes in the Tribunal. Thus, we assess the costs and benefits of these recommendations together.

Costs of the reform

We expect any transitional or ongoing costs for this recommendation will be negligible.

Benefits of the reform

Lawyer costs

Expanding the jurisdiction of the Tribunal will reduce the amount of time lawyers need to spend considering the issue of jurisdiction. In particular, lawyers will spend less time considering the jurisdiction of the Tribunal, and explaining to their clients how the limits of jurisdiction will affect their case.

We expect this recommendation to affect approximately **48** cases in the Tribunal each year. This estimate is based on the following assumptions.

- There are 18 (± 6) determined boundary cases in the Tribunal each year, based on:
 - the assumption that HM Land Registry receive **234** applications for determined boundaries each year, based on the number of applications in the year from November 2016 to October 2017, and
 - HM Land Registry's estimate that approximately 7.5% ($\pm 2.5\%$) of applications are referred to the Tribunal.
- There are 30 (± 5) cases involving a beneficial interest or estoppel in the Tribunal each year, based on
 - the assumption that there are **20** Tribunal cases involving beneficial interests each year, based on the fact that there have been 61 cases between 1 June 2015 and 1 June 2018, and
 - the assumption that there are **10** (± 5) Tribunal cases involving proprietary estoppel each year, based on the assumption that there are a similar number of cases to those involving beneficial interests, but that many of these cases will overlap.

County court

The recommendation will also prevent the need for issuing subsequent proceedings in the county court where, for example, the Tribunal does not make a finding on the issue, or that finding does not bind the parties.⁸²

While this will only happen in the minority of cases, the costs involved could be significant with court fees and lawyer costs amounting to thousands of pounds.

Legal certainty

In relation to recommendations 5.3(a) and (b), the jurisdiction of the First-tier Tribunal is uncertain under the current law. For example, there are two decisions of the Upper Tribunal which show a gap in the case law as to how some cases should be decided, as the two decisions rely on differing interpretations of the law. Clarifying the law will avoid potential litigation over the exact scope of the Tribunal's jurisdiction, and allow parties to focus on the relevant dispute at hand.

Recommendation 5.4

Costs of the reform

We expect any transitional or ongoing costs for this recommendation will be negligible.

⁸²

A finding generally binds the parties involved under the doctrine of "issue estoppel". However, it may not apply in all cases, and will not apply against third-parties to the dispute (for example, a subsequent purchaser of the land).

HM Land Registry has indicated that the recommendation could result in the following costs.

- The number of applications for the cancellation of restrictions may increase.
- HM Land Registry may receive increased levels of correspondence about this type of application.

We are not able to provide monetised figures for these costs, but we expect that they will not exceed the savings resulting from this recommendation.

Benefits of the reform

1. Monetised

This recommendation will avoid the costs that HM Land Registry currently incur unnecessarily in relation to these notices. Currently, HM Land Registry incurs costs due to time spent by staff:

- preparing and sending notices to registered proprietors; and,
- considering and responding to groundless objections in response to a notice.

The cost savings following implementation of this reform was calculated by estimating how much time staff currently spend dealing with these notices.

See Tables A5.8 to A5.13 in the Appendix for a detailed assessment of caseworker and lawyer time spent dealing with these restrictions.

Table 5.7: Savings due to relaxation of the notification requirements

	Best estimate
A. Costs saved by not having to give notice	£43,000
B. Costs saved due to reduction of groundless objections	£88,000
C. Total savings (A + B)	£131,000

Assumptions:

- there are just over 1600 applications per month, based on a 7-month average from April 2017 to October 2017 inclusive;⁸³
- it takes a caseworker approximately 0.08 hours per application to serve notices of an application to enter a restriction in Form K, based on HM Land Registry's estimates;
- there are about 2,300 groundless objections to such applications per year;⁸⁴
- it takes a lawyer approximately 0.5 hours and a caseworker approximately 0.33 hours to process an objection to such an application; and
- HM Land Registry does not voluntarily serve notices in respect of such applications, despite no longer being required.⁸⁵

Although we do not give a range for these figures,⁸⁶ this absence is due to practicalities in our methodology, and is not intended to indicate a higher degree of confidence or certainty with our best estimate.⁸⁷

⁸³ We assume it takes a case-worker 0.1 hour to serve a notice.

⁸⁴ Two-year average, 2012 – 2013 (most recent data available). We assume dealing with a groundless objection takes 0.5 hours lawyer time and 0.33 hours caseworker time.

⁸⁵ HM Land Registry has indicated that it may turn out in practice appropriate to still serve information notices (which do not invite objections) in some cases. The efficiency benefits of removing the requirement set out below do not reflect this possibility.

⁸⁶ We did not give a range because the data we received from HM Land Registry for the number of notices and objections was precise, but over a short period of time; we were not confident what an appropriate range would be.

⁸⁷ The reason that we did not give a range is that the data we used for the number of notices served and objections made was over a relatively short-period of time. Because of this, we were not confident in assessing the extent of the range, and an estimate range would not provide significant differences to the overall costs and benefits of our recommendations.

Annual savings = £0.13 million

Present value over 10 years = £1.1 million.

2. Non-monetised

There are no non-monetised benefits for this recommendation.

Recommendation 5.5

Costs of the reform

We expect any transitional or ongoing costs for this recommendation will be negligible.

Although HM Land Registry will be able to add additional factors through rules, HM Land Registry has indicated that any such rules would only be made as part of a wider rule change, and that the costs would be absorbed by the wider rule change.

Benefits of the reform

Efficient dispute resolution

Specifying the relevant factors in legislation will encourage parties and practitioners to focus on the more important issues in a dispute, allowing it to be resolved more quickly.

Accessibility of the law

The recommendation codifies the current law by putting the factors into primary legislation, and makes provision for the law to be kept up to date without further primary legislation. This will make it easier for people to understand the law before seeking legal advice, as well as making it easier for advisors to explain the law to clients.

Summary of monetised costs and benefits

Table 5.8: Summary of costs and benefits for Problem 5 (in £million)

		Best estimate
Cost		£0.09
Benefit	Recommendation 5.1	£0.92
	Recommendation 5.2(b)	£0.01
	Recommendation 5.4	£0.13
Annual net benefit		£0.97
NPV over 10 years		£8.05

Problem 6: potential unfairness in the land registration regime

(1) Summary of the problem and current law

6.1 Indemnity

HM Land Registry guarantees title to registered land. Under the “insurance principle”, it stands in the position of insurer of first resort, in defined circumstances, to compensate those who lose title to land through the operation of the LRA 2002. Like an insurer, HM Land Registry is able to exercise rights of recourse, namely any cause of action that the person indemnified is able to exercise; moreover, it can also reduce or refuse payment of an indemnity based on a claimant’s (or his or her agent’s) fraud or lack of property care.

Limitation period for indemnity claims: the limitation period for an indemnity claim runs from the date the claimant knows, or ought to know, of the existence of his or her claim. For indemnity claims in respect of rectification (or a mistake whose correction would amount to rectification), it is unclear what this means: the date of the mistake or the date of the rectification decision.

Limitation period for rights of recourse: the amount that HM Land Registry recovers from exercising rights of recourse is low. For example, in the year 2016/17, HM Land Registry paid a total of £7,000,000 of indemnity payments, but only recovered £310,000 under its right of recourse.

Part of the problem is that it is difficult to determine whether the limitation period for a subrogated right has expired, especially if there is a significant delay between the mistake and payment of indemnity.

A subrogated right is one type of HM Land Registry's rights of recourse: it is a right of action that an indemnity claimant had, and which after payment of indemnity HM Land Registry is entitled to exercise. It is understood that the limitation period for these rights begins to run from the date the rights accrued in the indemnity claimant, rather than the date at which HM Land Registry acquired them. HM Land Registry may not know the relevant facts which determine when the limitation period accrued in the indemnity claimant.

Valuation of indemnity claims: schedule 8, paragraph 6 provides a cap on the amount of indemnity payable, which is based on the value of the interest lost by reason of mistake or rectification. The date at which the value of the interest is assessed is different depending on whether the registrar decides to rectify the register. In the past, house prices were more stable so this difference was immaterial. House prices are now much less stable: for example, the average house prices went from £285,000 in January 2015 to £306,000 in January 2016.⁸⁸ There is a risk that indemnity claimants are not fairly compensated by indemnity in all cases.

6.2 Easements benefitting short leases

Parol leases are a sub-category of short lease; they are for a term of three years or less and do not need to be made by deed. Under the LRA 2002, the grant of a lease shorter than seven years (a "short lease") does not need to be registered.

An easement is a right of the proprietor of land to make limited use of someone else's land, such as a right of way. The grant of an easement needs to be made by deed under the general law. The LRA 2002 additionally requires easements to be registered to operate at law.

The formality and registration requirements for short leases and easements that benefit them are misaligned.

Short leases: if the grant of a short lease contains the grant of an easement, the lease will be valid at law, but the easement will not be valid at law unless it is registered.

Parol leases: the grant of an easement benefitting a parol lease needs to be made by deed and registered, even though the parol lease can be made informally.

It is not reasonable to expect parties to comply with stricter formality and registration requirements for an easement, when the lease that it benefits is not subject to those requirements.

6.3 Adverse possession and mistaken first registration

Section 11(4) of the LRA 2002 provides that a proprietor on first registration is vested with the estate subject only to three categories of interest: (a) interests which are the subject of an entry in the register; (b) unregistered interests which override first registration by virtue of schedule 1; and (c) "interests acquired under the Limitation Act 1980 ... of which the proprietor had notice". The latter two subsections, namely 4(b) and (c), are also relevant to this problem.

Based on section 11(4), it is not clear whether alteration of the register is available in one particular circumstance of adverse possession: the registered proprietor had no notice of the adverse possessor's claim and the adverse possessor was not in actual occupation of the land (because the adverse possessor ceased to occupy the land after the paper owner's title was extinguished). It appears from section 11(4) that the registered proprietor's title on first registration would not be subject to the superior estate of an adverse possessor, although the registered proprietor's title was extinguished as a matter of general property law. This outcome was the intention of the LRA 2002, but has been made untenable

⁸⁸

See Consultation Paper, para 14.151.

based on the interpretation courts have subsequently given to “mistake” in schedules 4 and 8 to the LRA 2002.

It is further unclear whether an alteration to correct the mistake would be considered to prejudicially affect the title of the registered proprietor, and so amount to a rectification for which indemnity was available.

(2) Options considered to solve the problem

Option 1: wide-ranging reform

Option 1 would address the deficiencies in the law through primary legislative reforms, namely by modifying existing provisions of the LRA 2002. The problems here stem from the legislation itself and can therefore only be addressed through primary legislative reform.

Option 1 would require implementation of the following 5 recommendations.

Indemnity

Recommendation 6.1(a): clarification of when the limitation period for indemnity claims starts to run

This recommendation will provide that the limitation period for an indemnity claim runs–

- if the register is rectified, from the date on which the register is rectified;
- if the register is not rectified but correction of the mistake would involve rectification, from the date of the decision not to rectify the register; and
- in all other cases of mistake, from the date the claimant knows, or ought to know, of the existence of the claim

Recommendation 6.1(b): limitation period for HM Land Registry to exercise the rights of action of a person paid an indemnity

This recommendation will provide that HM Land Registry has the longer of the remaining limitation period applicable to any cause of action, or 12 months from the date the register is either rectified or the indemnity is paid. It will ensure that HM Land Registry has a limitation period sufficient to pursue any cause of action.

Recommendation 6.1(c): valuation of indemnity to take into account changes in value between the mistake and rectification decision

This recommendation will ensure that indemnity claimants are adequately and fairly compensated by indemnity in all cases. It will provide that the date the value of the land is to be assessed is at the time of the rectification decision, so that any fluctuation in the property values between the time of the mistake and the time of the rectification decision is reflected in the indemnity that is paid.

Recommendation 6.2: rationalising the registration requirements for short leases and the easements that benefit them

This recommendation is deregulatory; it relaxes registration and formality requirements. It will (i) except easements benefitting short leases from the requirement of registration, and (ii) allow easements benefitting parol leases which are not created by deed to be overriding interests.

Recommendation 6.3: ensuring that an alteration of the register amounts to a rectification in certain cases of first registration

When a first registered proprietor is not aware that his or her title had been extinguished by the adverse possessor's title, and the adverse possessor is not in actual occupation of the land at the time of first registration, this recommendation will ensure that if the register is altered in favour of the adverse possessor, the alteration will amount to rectification. It will ensure that the registered proprietor will be entitled to an indemnity in these circumstances.

Option 2: limited reform

There is no Option 2 for this problem as there are no recommendations which do not require primary legislation.

(3) Costs and benefits analysis

Option 1

Recommendation 6.1(a) and (c):

Both of these recommendations clarify the law in relation to indemnity claims against HM Land Registry, and have similar benefits of allowing these claims to be solved more fairly and efficiently. As a result, we have assessed their costs and benefits together.

Costs of the reform

We expect any transitional or ongoing costs for this recommendation will be negligible.

HM Land Registry considered that, on balance, this recommendation would not have a significant impact on its indemnity fund. Further, in terms of the property market, we think that although the changes to valuation may result in higher indemnity payments in a rising property market, it will equally lead to lower indemnity payments in a falling property market.

Benefits of the reform

Fairness

In terms of limitation, recommendation 6.1(a) ensures that the limitation period does not expire against a person before he or she can actually claim indemnity. As a result, it avoids the possibility that a person's indemnity claim will be time-barred before he or she is even entitled to make that claim.

In terms of valuation, recommendation 6.1(c) ensures that indemnity payments compensate a claimant for his or her loss: the amount of indemnity paid will reflect the value of land under the current property market, but without any "windfall" due to, for example, improvements made to the land.

Legal costs

The issue of limitation and valuation are somewhat uncertain under the current law. In so far as they are relevant to issues in an indemnity claim, these recommendations will result in lower legal costs by reducing the amount of time spent by claimants and HM Land Registry's lawyers considering these issues.

Recommendation 6.1(b)

Costs of the reform

We expect any transitional or ongoing costs for this recommendation will be negligible.

Benefits of the reform

1. Monetised

This recommendation will ensure that HM Land Registry has at least 12 months to seek to recover sums paid as indemnity by exercising subrogated rights of recourse,⁸⁹ instead of relying on the limitation period of the indemnity claimant whose rights it is exercising. It will benefit HM Land Registry in two ways, as it will:

- save time considering whether the limitation period has expired in deciding whether to exercise its rights of recourse; and
- be able to exercise rights of recourse where otherwise the limitation period would have expired.

We estimate that this provision will save HM Land Registry **£24,800** (with a range of £8,500 to £52,700), based on the following assumptions.

⁸⁹

On paying an indemnity to someone, HM Land Registry can exercise that person's right of action related to the loss. These rights are "subrogated rights". For example, HM Land Registry may pay out an indemnity to a person, and then bring an action against that person's conveyancer. Our recommendation only affects these rights, and not HM Land Registry's own rights of recovery.

Table 6.1: Savings from increased recovery time for rights of recourse

	Low estimate	Best estimate	High estimate
A. Total annual indemnity recovered through rights of recourse	£130,000	£220,000	£310,000
B. Percentage recovered by use of subrogated rights, rather than direct rights	65%	75%	85%
C. Estimated percentage increase in indemnity recovered	10%	15%	20%
D. Additional indemnity recovered (ABC)	£8,500	£24,800	£52,700

Assumptions.

- The average annual amount recovered by exercise of rights of recourse is £220,000 (\pm £90,000), based on sums recovered between 2014 and 2017.
- In 75% (\pm 10%) of cases, HM Land Registry exercises a subrogated right, on the basis that parties are more likely to owe a duty to a customer than directly to HM Land Registry.
- The alternative limitation time would increase the amount recovered by rights of recourse by 15% (\pm 5%).

Annual savings = £0.025 million [best estimate]

Present value over 10 years = £0.21million [best estimate].

2. Non-monetised

Fairness

The recommendation will make it easier for HM Land Registry to exercise its rights of recourse in circumstances where, currently, the limitation period has, or may have, expired. As a result, it is more likely that the cost of indemnity payments will be shifted to someone who is at fault, rather than HM Land Registry (and consequently, its customers).

Recommendation 6.2

Costs of the reform

We expect any transitional or ongoing costs for this recommendation will be negligible.

In particular, we do not expect that increasing the number of easements which are overriding interests will affect conveyancing. The investigations that conveyancers currently undertake in order to determine if there are any short leases or rights being exercised across land will be sufficient to identify if there are any easements which benefit those leases.

Benefits of the reform

1. Monetised

Cost savings due to decrease in registered easements

Although an estimated **3 million** short leases are granted each year, the vast majority of easements benefiting those leases are not registered.

When our recommendation is enacted, it will no longer be necessary to register an easement which benefits a lease for it to take effect in law. Currently, an estimated **5,900** easements granted in such leases are registered (based on the number noted in the register between October 2016 and September 2017). We estimate this recommendation will save **£440,000** (with a range of £273,000 to £642,000) by saving the tenants of short leases and HM Land Registry the cost of registering the easement.

Table 6.2: Savings from exempting easements benefiting short leases from the requirement of registration

		Low estimate	Best estimate	High estimate
A. Number of easements registered		5,900		
B. Percentage of tenants who would no longer register their easement		60%	70%	80%
Cost to tenant	C. Lawyer time to register an easement	1	1.5	2
	D. Lawyer cost per hour	£41		
Cost to HMLR	E. Lawyer time to register an easement	0.2	0.25	0.3
	F. Lawyer cost per hour	£58		
	G. Caseworker time to register an easement	1	1.25	1.5
	H. Caseworker cost per hour ⁹⁰	£26		
I. Total savings (ABCD + ABEF + ABGH)		£279,000	£450,000	£655,000

Assumptions:

- A lawyer for the tenant would spend 1.5 hours (± 0.5 hours) to register the easement,
- HM Land Registry would spend 1.25 hours (± 0.25 hours) of caseworker time and 0.25 (± 0.05 hours) of lawyer time to register the easement, and
- 30% ($\pm 10\%$) of tenants of short leases would voluntarily register their easements, even though it is no longer required.

Annual savings = £ 0.45 million [best estimate]

Present value over 10 years= £3.47 million [best estimate].

2. Non-monetised

People in possession of land often assume that their possession is all that is needed to protect their interests. Such people, particularly if their interests are short term, do not tend to get legal advice in relation to their rights. The LRA 2002 recognises this by protecting tenants of short leases: short leases are overriding, so the tenant need not register the estate with HM Land Registry.

However, the LRA 2002 does not give overriding protection to interests which may benefit a short-term tenant. An easement which benefits a short lease is not protected against being lost to the priority of later created interests unless it is registered.

Rationalisation of formality requirements

This recommendation will have the benefit of rationalising formality requirements for short leases and the easements which benefit them. By rationalising the formality requirements, the law will be more coherent, understandable and efficient.

Protection for short-term tenants

By aligning the registration requirements, the recommendation recognises that it is unreasonable and unfair to expect someone to apply to register a more minor interest when they do not have to register the estate that it benefits. Because short-term tenants often do not have the benefit of legal advice, they will not be aware of the requirement to register an easement benefitting their lease. They will therefore risk losing the benefit of their easement. This recommendation will protect tenants of short leases by ensuring that easements which benefit their leases are not lost.

⁹⁰

Rounded to nearest £.

Recommendation 6.3

Costs of the reform

We expect any transitional or ongoing costs for this recommendation will be negligible.

Although HM Land Registry would have to pay out an indemnity in the case of mistaken first registration, it considers that situation rare enough that it does not amount to a significant increase in its liability. Moreover, any such risk will decrease with time, as more land is registered.

Benefits of the reform

Fairness

This recommendation will ensure that the outcome in altering the register to correct the mistake is fair.

If a first registered proprietor was not aware that his or her title had been extinguished by an adverse possessor's title, and the adverse possessor was not in actual occupation of the land at the time of first registration, the entry will be considered a mistake.

The decision to alter the register to correct a mistake usually results in the party who does not end up as the registered proprietor of the land being indemnified. However, if the registrar or court decides to alter the register, currently the first registered proprietor may be left without an indemnity. If the register were not altered (for example, because the first registered proprietor is in possession of the land), the first registered proprietor ends up with the land. The outcome for the decision about alteration therefore is a decision to give the first registered proprietor the land or nothing. This recommendation will ensure a fair outcome, so that whatever the alteration decision, the first registered proprietor will be compensated for his or her loss.

This recommendation will make the regime fair by ensuring that the estate of a first registered proprietor without notice of the adverse possessor's claim is not unfairly subject to it.

Certainty

This recommendation will give certainty to first registered proprietors that their estate is protected by the guarantee of title in section 58. It will make the register certain. Once registered, the recommendation will allow first registered proprietors to rely on the register as an accurate statement of the validity of their title, and certainty that it cannot be taken from them without compensation.

Summary of monetised costs and benefits

Table 6.3: Summary table for monetised cost benefits of Problem 6

		Best estimate
Cost		£0
Benefit	Recommendation 6.1(b)	£0.02
	Recommendation 6.2	£0.45
Annual net benefit		£0.47
NPV over 10 years		£3.95

Problem 7: uncertainty

(1) Summary of the problem and current law

There is evidence that the regime for registered land within the LRA 2002 is uncertain in areas. Because of this uncertainty, in some cases it is unclear whether one interest has priority over another, or whether a purchaser is protected from limitation on a seller's or chargee's power of disposition.

Uncertainty in the law makes the law inefficient. It makes it difficult for solicitors and conveyancers to advise clients, incentivises litigation, and ultimately increases costs for proprietors.

The following are specific examples of current uncertainty in the law:

- The priority of interests created during the twilight period, the period of time between a disposition of unregistered land and its registration.
- The meaning of the requirement that a disposition must be for “valuable consideration” to benefit from the priority promise in the LRA 2002, and whether the exclusion of nominal consideration in money also excludes other forms of nominal consideration.
- Whether valuable consideration when used in relation to bankruptcy has the same meaning as the requirement under insolvency law that a disposition be for value.
- Whether a purchaser from a person who is entitled to be registered as proprietor is bound by any limitation on the seller’s powers of disposition.
- Whether the registration of a sub-charge limits the registered chargee’s powers to dispose of the charged property.
- Whether a person with the benefit of a derivative interest under a trust can apply for a caution against first registration of the estate to which the trust relates.

We consider three examples of the most significant uncertainties in more detail below. These uncertainties relate to the protection given to purchasers who rely on the information contained in the register.

7.1 Owner’s powers and purchaser protection

The LRA 2002 provides that registered proprietors have the power to make dispositions (“owner’s powers”), unless a limitation on the owner’s power of disposition is reflected by an entry in the register or imposed by the legislation. The aim is to allow purchasers to rely on the register to determine whether they will get good title.

The owner’s powers provisions in the LRA 2002 were intended to ensure that a purchaser is unaffected by limitations on a trustee’s powers of disposition which are not entered in the register. However, academics and subsequent case law⁹¹ has cast doubt on whether the provisions have this intended effect. The case law suggests that a purchaser or other disponee will be bound by limitations imposed under a trust. This suggestion creates significant uncertainty for purchasers and other disponees dealing with trustees, because they cannot be certain that they will obtain good title without going behind the register to assess the trust deeds.

7.2 The owner’s powers of persons entitled to be registered as proprietor

The owner’s powers provisions in the LRA 2002 enable a person who is *entitled* to be registered as proprietor to dispose of the registered estate or charge. The intent is to enable a purchaser to make a disposition of an estate before being registered as its proprietor. Such transactions are common, for example, purchase mortgages, which must be granted by the purchaser before he or she is registered as proprietor.

Recent case law has suggested that owner’s powers under the LRA 2002 are subject to the *nemo dat* rule: that a person cannot convey what he or she does not own. If applied, this interpretation of owner’s powers would mean that a person entitled to be registered cannot transfer or grant interests in the estate that can operate at law before registration.⁹²

7.3 Chargee’s powers and purchaser protection

The courts have interpreted owner’s powers as including a chargee’s powers to deal with the property subject to the charge. However, the LRA 2002 has a separate, different provision on chargee’s powers. Conflation with owner’s powers could be interpreted to extend chargee’s powers to chargees who are merely entitled to be registered as chargee, which was not intended under the LRA 2002.

⁹¹ *HSBC plc v Dyche* [2009] EWHC 2954 (Ch), [2010] BPIR 138.

⁹² See Ch 5, paras {5.19 to 5.22}, of the Report.

(2) Options considered to solve the problem

Option 1: wide-ranging reform

Option 1 would mainly address the deficiencies in the law through primary legislative reforms, namely by modifying existing provisions of the LRA 2002. Most of the problems here stem from the legislation itself and can therefore only be addressed through primary legislative reform.

Uncertainty arises from the wording of the provisions in the LRA 2002 or from court decisions that have interpreted the provisions in ways that defeat the policy underlying them. In each of the three problems, the law is uncertain. As a result, people cannot be certain, for example, whether their registered estate is subject to limitations or affected by others' interests.

By clarifying these provisions, and in some cases reversing case law, reform will make the law certain. Certainty will make the law more efficient by reducing the time spent by legal advisors in determining what the law is. It will prevent unnecessary delays, save costs to proprietors, and reduce the possibility of disputes and litigation between parties and the need for future court decisions to clarify the law.

We focus on three examples of uncertainty in the law in setting out our recommendations.

Recommendation 7.1: owner's powers and purchaser protection from limitations on trustees

This recommendation will clarify that the owner's powers provisions protect the validity of the title of a purchaser or mortgagee from limitations on an owner's powers that arise under a trust, if those limitations are not reflected in the register.

Recommendation 7.2: clarifying the owner's powers of persons entitled to be registered as proprietor

This recommendation will clarify the scope of owner's powers for a person entitled to be registered. It will reverse recent case law, from both the High Court and the Court of Appeal,⁹³ that suggests that such a person does not have full owner's powers.

Recommendation 7.3: clarifying the distinction between owner's powers and chargee's powers to deal with the underlying land

This recommendation will clarify (i) the distinction between owner's powers and chargee's powers, and (ii) that owner's powers do not extend to power to deal with the land itself. It will reverse recent case law,⁹⁴ which suggested that owner's powers of a chargee extend beyond powers to make a disposition of the registered estate or charge to include power to deal with the land itself.

Option 2: limited reform

There is no Option 2 for this problem as there are no recommendations to it which do not require primary legislation.

(3) Cost and benefits analysis

Option 1

Recommendation 7.1

Costs of the reform

We expect any transitional or ongoing costs for this recommendation will be negligible.

⁹³ *Scott v Southern Pacific Mortgages Ltd* [2010] EWHC 2991 (Ch); *Scott v Southern Pacific Mortgages Ltd* [2012] EWCA Civ 17, [2012] 1 WLR 1521.

⁹⁴ *Skelwith (Leisure) Ltd v Armstrong* [2015] EWHC 2830 (Ch), [2016] 2 WLR 144.

Benefits of the reform

The concern about whether purchasers and other disponees were bound by limitations on a trustee's powers of disposition was raised based on the previous legislation, the LRA 1925.⁹⁵ The owner's powers provisions in the LRA 2002 were intended to address this concern, by ensuring that such limitations would not affect the validity of a purchaser's title.

Case law⁹⁶ suggests that a purchaser or other disponee might be bound by limitations imposed under a trust. This case law creates significant uncertainty for purchasers and other disponees dealing with trustees, because they cannot be certain that they will obtain good title without going behind the register to assess the trust deeds.

The reform will prevent purchasers from having to look behind the register to consider the trust documents and otherwise undertake searches to discover limitations on a trustee's powers. This will save delay and expense in conveyances involving trustees. It will enable purchasers and other disponees to deal with trustees confidently based on the register of title.

Recommendation 7.2

Costs of the reform

We expect any transitional or ongoing costs for this recommendation will be negligible.

Benefits of the reform

This recommendation will ensure that persons entitled to be registered as the proprietor will be able to transfer or grant interests that can operate at law during the registration gap. This reform will enable sub-sales and purchase mortgages to operate at law when they are registered. It will ensure that the priority of registration gap dispositions can be protected, even if the person who transferred the estate or granted the charge is not subsequently registered as proprietor. It will therefore ensure that common conveyancing practices are able to continue to operate as they now do.

This reform resolves uncertainty created by case law.⁹⁷ The implications of this uncertainty have so far not been reflected within the conveyancing market. However, the problems caused to the conveyancing market could be significant.

Because the issue is significant, absent our legislative reform, it is highly likely that the matter would have to be determined by the Supreme Court. Our reform will therefore save the cost of litigation culminating in an appeal at the Supreme Court.

Recommendation 7.3

Costs of the reform

We expect any transitional or ongoing costs for this recommendation will be negligible.

Benefits of the reform

Our reform will clarify that a chargee's powers do not extend to power to deal with the land itself. This reform will reverse the suggestion in a recent case⁹⁸ that owner's powers allow an owner to exercise all of the powers of a legal owner during the registration gap. This recommendation will be significant because it will clarify that a chargee's powers relating to the underlying land itself are governed by section 52 of the LRA 2002, which are not conferred on chargees who are not yet registered as the proprietor.

The recommendation will promote coherence in the regime under the LRA 2002. It will ensure that owner's powers do not operate to undermine the importance registration, because the powers that come with legal ownership will not be conferred absent registration of the estate or charge.

⁹⁵ G Ferris and G Battersby, "The Impact of the Trusts of Land and Appointment of Trustees Act 1996 on Purchasers of Registered Land" [1998] *Conveyancer and Property Lawyer* 168.

⁹⁶ *HSBC Bank plc v Dyche* [2009] 2954 (Ch), [2010] BPIR 138.

⁹⁷ *Scott v Southern Pacific Mortgages Ltd* [2012] EWCA Civ 17, [2012] 1 WLR 1521, affirming *Scott v Southern Pacific Mortgages Ltd* [2010] EWHC 2991 (Ch).

⁹⁸ *Skelwith (Leisure) Ltd v Armstrong* [2015] EWHC 2830 (Ch), [2016] 2 WLR 144.

Summary tables

Table 8: Summary of Problems costs/benefits for Option 1

OPTION 1	Low estimate	Best estimate	High estimate
[Common to all]			
Transitional cost	£0.82	£0.93	£1.04
On-going cost	£0	£0	£0
Present value cost			
Transitional benefit	£0	£0	£0
On-going benefit	£0	£0	£0
Present value	£0	£0	£0
Net Present Value	- £0.80	- £0.91	- £1.02
Problem 1: Fraud			
Transitional cost	£0	£0	£0
On-going cost ⁹⁹	£0	£0	£0.01
Present value [Cost]	£0.03	£0.05	£0.08
Transitional benefit	£0	£0	£0
On-going benefit	£2.47	£3.95	£5.76
Present value [Benefit]	£20.54	£32.85	£47.88
Net Present value	£20.50	£32.80	£47.83
Problem 2: Electronic Conveyancing			
Transitional cost	£0	£0	£0
On-going cost	£0	£0	£0
Present value [Cost]	£0	£0	£0
Transitional benefit	£0	£0	£0
On-going benefit	£0.11	£0.21	£0.30
Present value [Benefit]	£0.88	£1.68	£2.47
Net Present value	£0.88	£1.68	£2.47
Problem 3: Transparency			
Transitional cost	£0	£0	£0
On-going cost	£0.21	£0.42	£0.81
Present value [Cost]	- £1.72	- £3.47	- £6.71
Transitional benefit	£0	£0	£0
On-going benefit	£0	£0	£0
Present value [Benefit]	£0	£0	£0
Net Present value	- £1.72	- £3.47	- £6.71
Problem 5: Disputes			
Transitional cost			
On-going cost	£0.03	£0.09	£0.16
Present value [Cost]	£0.23	£0.76	£1.35
Transitional benefit	£0	£0	£0
On-going benefit	£0.31	£1.06	£2.30
Present value [Benefit]	£2.57	£8.81	£19.11
Net Present value	£2.34	£8.05	£17.77
Problem 6: Fairness			
Transitional cost	£0	£0	£0

On-going cost	£0	£0	£0
Present value [Cost]	£0	£0	£0
Transitional benefit	£0	£0	£0
On-going benefit	£0.29	£0.47	£0.71
Present value [Benefit]	£2.39	£3.95	£5.89
Net Present value	£2.39	£3.95	£5.89

Problems 4 and 7 have been omitted because they have no monetised values

Table 9: Summary of Problems costs/benefits for Option 2

OPTION 2	Low estimate	Best estimate	High estimate
[Common to all]			
Transitional cost	£0.08	£0.09	£0.10
On-going cost	£0	£0	£0
Present value cost			
Transitional benefit	£0	£0	£0
On-going benefit	£0	£0	£0
Present value	£0	£0	£0
Net Present Value	- £0.08	- £0.09	- £0.10
Problem 3: Transparency			
Transitional cost	£0	£0	£0
On-going cost	£0.06	£0.13	£0.28
Present value [Cost]	- £0.46	- £1.06	- £2.33
Transitional benefit	£0	£0	£0
On-going benefit	£0	£0	£0
Present value [Benefit]	£0	£0	£0
Net Present value	- £0.46	- £1.06	- £2.33

General assumptions

Throughout this Impact Assessment, we have made the following assumptions in analysis of the costs and benefits of recommendations:

- parties involved in disputes will be legally represented, or otherwise will incur costs similar to the costs of representation; and
- the costs to HM Land Registry will be incurred either by HM Land Registry, or by its customers through fees.

The risk of these assumptions is that we may have over- or under-estimated the costs and benefits of our recommendations.

Specific impact assessments

Equality Impact Assessment

We have completed the screening questions required from an Equality Impact Assessment. There is no need for a Full Equality Impact Assessment because we do not anticipate our recommendations to have adverse consequences based on any of the protected characteristics.

Justice Impact Assessment

The impact on justice has been considered throughout and as part of this Impact Assessment.

SME Impact Assessment

Conveyancers will have to amend their procedures for verifying a client's identity as a consequence of Recommendation 1. Larger conveyancing firms may be better able to absorb the cost of amending their procedures than small or medium-sized conveyancing firms.

We note that conveyancers already have to update these procedures regularly to comply with other regulations, and that many firms have subscriptions to case management. We anticipate that these factors will minimise disparate impact between conveyancing firms.

Environmental Impact Assessment

We do not anticipate that our recommendations will have any environmental impact.

Health Impact Assessment

We do not anticipate that our recommendations will have any impact on health.

Appendix 1: detailed monetisation

Costs associated with Problem 1

We have calculated the average indemnity payment in respect of fraud based on HM Land Registry's data on indemnity payments from the last three years.

Table A1.1: Indemnity payments and claims

	No. of claims	Indemnity paid
2017 / 2016	53	£4,941,425
2016 / 2015	49	£5,923,358
2015 / 2014	54	£5,914,673
Average	52	£5,593,152
Average indemnity per claim	£107,560.6	

We note that figure may well be an underestimate; it does not include loss caused by fraud where the victim does not seek indemnity from HM Land Registry. For example, a victim of fraud may instead recover some or all of his or her loss from an insurance policy or negligent conveyancer.

It also does not include cases where HM Land Registry identify the fraud prior to registration of a disposition, and therefore refuse to register it. In these cases, the victim is not entitled to be indemnified by HM Land Registry. In its Annual Report 2016/2017, it indicates that it refused to register these sorts of fraudulent dispositions around 50 times.

On the basis that the loss for these cases is the same for cases where an indemnity is paid, we estimated the total loss due to fraud each year to be **£10.97 million** by multiplying the average indemnity per claim by 102 (the sum of the number of refusals to register fraudulent dispositions and the number of indemnity payments made in respect of fraud).

We understand that a common type of fraud, in the context of registered land, is identity fraud. In the absence of available data, we produced a range of estimates as to the proportion of fraud which constitutes identity fraud.

Table A1.2: Average annual losses due to identity fraud in registered land

	Low estimate	Best estimate	High estimate
A. Average losses due to registered land fraud	£10,971,183		
B. Estimated percentage of fraud which is identity fraud	45%	60%	75%
C. Estimated average annual loss due to identity fraud (AB)	£4,937,032	£6,582,710	£8,228,387

We expect the duty of care to have a significant impact on the extent of identity fraud. However, it is by its nature difficult to predict, especially before draft directions have been produced. We produced a large range of estimated reductions in fraud that the duty of care might lead to.

Table A1.3: The reduction in losses caused by fraud

The percentage reduction of fraud		Reduction in losses due to identity fraud		
		Low estimate	Best estimate	High estimate
Low estimate	50%	£2,468,516.12	£3,291,354.83	£4,114,193.54
Best estimate	60%	£2,962,219.35	£3,949,625.80	£4,937,032.25
High estimate	70%	£3,455,922.57	£4,607,896.76	£5,759,870.95

Costs associated with Problem 2

Recommendations 2.1 to 2.3

Table A2.1: Summary of estimated Impacts (£m, real 2017 prices) for digital mortgages only¹⁰⁰

		17/18	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27
Take up		2%	26%	29%	34%	44%	44%	44%	44%	44%	44%
HMLR	Requisitions	£0.00	£0.04	£0.04	£0.05	£0.06	£0.06	£0.06	£0.06	£0.06	£0.06
	Processing	£0.06	£0.31	£0.36	£0.41	£0.53	£0.53	£0.53	£0.53	£0.53	£0.53
Business	Requisitions	£0.00	£0.03	£0.03	£0.04	£0.05	£0.05	£0.05	£0.05	£0.05	£0.05
	Internal processes	£0.04	£0.21	£0.24	£0.29	£0.37	£0.37	£0.37	£0.37	£0.37	£0.37
Borrowers	Printing, postage & time	£0.04	£0.23	£0.26	£0.31	£0.40	£0.40	£0.40	£0.40	£0.40	£0.40

¹⁰⁰

Table A2.2: Estimated increased take up of digital mortgages

Year	No change	Low estimate	Best Estimate	High Estimate
18/19	26%	26%	28.5%	31%
19/20	29%	29%	31.5%	34%
20/21	34%	34%	36.5%	39%
21/22	44%	44%	46.5%	49%
22/23	44%	44%	46.5%	49%
23/24	44%	49%	51.5%	54%
24/25	44%	49%	51.5%	54%
25/26	44%	49%	51.5%	54%
26/27	44%	49%	51.5%	54%
27/28	44%	49%	51.5%	54%

Assumptions:

- The take up of digital mortgages (no change) in the year 2027 / 2028 would be 44%, on the basis that HM Land Registry's estimated annual rate of take up remains stable at 44% from the year 2021/2022 to the year 2026 / 2027.
- The rate of take up will increase by 2.5% ($\pm 2.5\%$) in the first five years, and 7.5% ($\pm 2.5\%$) in the second five years, as a result of the new powers in recommendation 2.1 and 2.2.

Table A2.3: Annual net present value for costing savings due to recommendations 2.1 and 2.2

Year	Low estimate	Best Estimate	High Estimate
18/19	£0.00	£79,994.60	£159,989.19
19/20	£0.00	£79,994.60	£159,989.19
20/21	£0.00	£79,994.60	£159,989.19
21/22	£0.00	£79,994.60	£159,989.19
22/23	£0.00	£79,994.60	£159,989.19
23/24	£159,989.19	£239,983.79	£319,978.39
24/25	£159,989.19	£239,983.79	£319,978.39
25/26	£159,989.19	£239,983.79	£319,978.39
26/27	£159,989.19	£239,983.79	£319,978.39
27/28	£159,989.19	£239,983.79	£319,978.39
Total	£799,945.97	£1,599,891.93	£2,399,837.90

Table A2.4: Annual net present value for costing savings due to recommendation 2.3

Year	Low estimate	Best Estimate	High Estimate
18/19	£31,997.84	£47,996.76	£63,995.68
19/20	£31,997.84	£47,996.76	£63,995.68
20/21	£31,997.84	£47,996.76	£63,995.68
21/22	£31,997.84	£47,996.76	£63,995.68
22/23	£31,997.84	£47,996.76	£63,995.68
23/24	£31,997.84	£47,996.76	£63,995.68
24/25	£31,997.84	£47,996.76	£63,995.68
25/26	£31,997.84	£47,996.76	£63,995.68
26/27	£31,997.84	£47,996.76	£63,995.68
27/28	£31,997.84	£47,996.76	£63,995.68
Total	£319,978.39	£479,967.58	£639,956.77

Costs associated with Problem 3

Recommendation 3.1(a)

Number of dispositions

The recommendations will trigger compulsory registration of estates in mines and minerals when they are granted or transferred in circumstances where they are likely to be exploited or are already being exploited. Such a disposition is likely to occur where a person buys an existing mineral working site, or opens a new one.

The British Geological Survey estimated that there are **1,565**¹⁰¹ mineral working sites in England and Wales (excluding state-owned minerals).¹⁰² It provided estimates of the number of new sites per year, and the number of sites each year which have a change of operator.

Table A3.1: Estimated annual number of new sites and change of operators

	Low estimate	Best estimate	High estimate
A. Number of sites per year which change operator	28	35	42
B. Number of new sites per year	12	18	24
C. Total number of “new operators” (A + B)	40	53	66

We note that the change of operator for an existing site does not necessarily involve a transfer or grant of an estate in mines and minerals. An operator of a mineral working site does not necessarily own an estate in the mines and minerals at that site. For example, some operators simply obtain permission from the proprietor in exchange for payment of a royalty.

Even where there is a transfer or grant of an estate in mines and minerals in these cases, the disposition may not be affected by the new triggers for compulsory registration following the disposition anyway. In these cases, there is no additional cost.

¹⁰¹ This figure consists of 1,147 active sites and 418 inactive (or “mothballed”) sites, which are sites where there is planning permission to exploit the mines and minerals, but they are not currently being exploited.

¹⁰² Gold, silver, oil, gas and coal are owned by the Crown or the state. These minerals are unaffected by our recommendations.

Therefore, in order to estimate the number of new operator scenarios that will be affected by compulsory registration, we multiplied the number of new operator scenarios by our estimates for the proportion of these cases where:

- there is a disposition of an estate in mines and minerals,
- the estate is unregistered, and
- the parties would not have voluntarily registered the estate.

Table A3.2: Estimate for annual number of dispositions which will trigger compulsory first registration

	Low estimate	Best estimate	High estimate
A. Estimated proportion of new operator scenarios which involve a transfer or grant of an estate in land	80%		
B. Estimated proportion of mineral workings where the estate in mines and minerals is unregistered	80%		
C. Estimated proportion of site openings / operator changes where the estate in mines and minerals is not voluntarily registered	80%	90%	100%
D. Total number of new operator scenarios per year	40	53	66
E. Estimated number of dispositions which will trigger compulsory registration per year (ABCD)	20.5	30.5	42.2

Assumptions

- Operators own estates in the mines and minerals at 80% of sites, on the basis that operators usually acquire such an estate to ensure they have the legal right to exploit the minerals.
- 80% of those estates are unregistered, on the basis that (i) most estates in mines and minerals are unregistered, but (ii) some operators prefer to voluntarily register in order to be certain on legal issues.
- Voluntary registration would not take place following 90% ($\pm 10\%$) of these dispositions.

Cost per disposition

Based on estimates HM Land Registry provided based on the registration of manorial interests, we estimate that an application for first registration of an estate in mines and minerals costs approximately **£8,500**. HM Land Registry noted that it is extremely difficult to estimate the cost of this recommendation due to the fact that applications are relatively unusual, and vary based on location and year on year. On that basis, we have estimated a range for the costs for such applications with a low estimate of **£7,000** and a high estimate of **£10,000** to reflect the uncertainty in that figure.

Table A3.3: Estimated cost to HM Land Registry (in £million)

	Low estimate	Best estimate	High estimate
A. HMLR cost per application	£7,000	£8,500	£10,000
Proprietor cost per application	B. Lawyer time per application (hours)	2	4
	C. Lawyer cost per hour	£41	
D. Total cost per application (A + BC)	£7,080	£8,660	£10,250

Assumptions

- It costs HM Land Registry £8,500 (\pm £1,500) to register an estate in mines and minerals, based on its estimate that it takes 35 days to process the application with 80% of the work done by a caseworker and 20% of the work done by a lawyer, with a range to indicate uncertainty.
- It takes a lawyer **4 hours** (\pm 2 hours) to apply for registration of an estate of mines and minerals, on the basis that most of the evidence will have already been prepared for the purpose of the transaction and discussions with stakeholders.

Annual cost

Each year, more estates in mines and minerals will be registered; as a result, there will be fewer unregistered estates which are affected by the compulsory triggers for first registration.

The rate at which the number of unregistered estates in mines and minerals decrease each year depends on how many are registered that year; on that basis, we have assumed that higher the estimate for the number of dispositions each year, the more quickly the number of dispositions affected each year will decrease.

- Low estimate: reduction of 0.25 dispositions each year.
- Best estimate: a reduction of 0.5 dispositions each year.
- High estimate: a reduction of 0.75 disposition each year.

Table A3.4: Number of dispositions triggering compulsory first registration each year

Year	Low estimate	Best estimate	High estimate
1	20.5	30.5	42.2
2	20.2	30.0	41.5
3	20.0	29.5	40.7
4	19.7	29.0	40.0
5	19.5	28.5	39.2
6	19.2	28.0	38.5
7	19.0	27.5	37.7
8	18.7	27.0	37.0
9	18.5	26.5	36.2
10	18.2	26.0	35.5
Average	19	28	39

On that basis, we have calculated the total annual cost (including to HM Land Registry and lawyers) by multiplying that figure by the cost per application (see Tables A3.2 and A3.4) and the appropriate reductions (see Table A3.3) to arrive at the following figures.

Table A3.5: Total cost of compulsory registration of mines and minerals over the next ten years

Year	Low estimate	Best estimate	High estimate
0	£0.145	£0.264	£0.433
1	£0.143	£0.260	£0.425
2	£0.141	£0.256	£0.417
3	£0.140	£0.251	£0.410
4	£0.138	£0.247	£0.402
5	£0.136	£0.243	£0.394
6	£0.134	£0.238	£0.387
7	£0.133	£0.234	£0.379
8	£0.131	£0.230	£0.371
9	£0.129	£0.226	£0.364
Total	£1.370	£2.450	£3.980
Average	£0.137	£0.245	£0.398

Recommendation 3.1(b)

Based on information from the years 2012 to 2017, HM Land Registry estimated that, on average, it receives 100 applications for voluntary registration of estates in mines and minerals each year, and assumed that it serves between 6,500 and 11,000 notices each year in respect of these applications.¹⁰³

Table A3.6: Average number of notices served per application for first registration

	Low estimate	Best estimate	High estimate
A. Notices served per year	6,500	8,750	11,000
B. Applications for registration of an estate in mines and minerals per year	100		
C. Notices served per application (A / B)	65	87.5	110

Table A3.7 estimates the number of additional notices which will be served as a result of this recommendation. The number of notices served takes into account the following two factors.

- The number of applications per year will increase by virtue of recommendation 3.1(a).
- The number of notices served will increase by between 100% and 150%, on the basis that HM Land Registry estimates that between 40% and 50% of estates are registered with absolute title.

¹⁰³ This assumption was based on an estimate for the number of notices served between 2012 and 2017, with adjustment for the changing trends to take into account the considerable variance in these estimates due to the change in the proportion of manorial estates which are registered.

Table A3.7: Additional notices

	Low estimate	Best estimate	High estimate
A. Notices served per application	65	87.5	110
B. Applications for registration of an estate in mines and minerals per year.	119	128	139
C. The increase in notices served for qualified titles	100%	125%	150%
D. The total number of additional notices served (ABC)	7,800	14,000	23,000

We note that, as explained above, B would decrease each year; the more estates become registered, the fewer are subject to compulsory registration.

Table A3.8: Cost per notice

		Low estimate	Best estimate	High estimate
Service of notice	A. Case worker time (hours)	0.25	0.33	0.5
	B. Case worker cost per hour	£26		
	C. Cost per notice (AB)	£6.62	£8.82	£13.23
Enquiries	D. Percentage of notices which lead to enquiries	15%		
	E. Caseworker time dealing with enquiries (hours)	0.25		
	F. Average cost per notice (BDE)	£0.99		
Objections	G. Percentage of notices which result in an objection	2.5%	5%	7.5%
	H. Lawyer time per objection (hours)	0.5		
	I. Lawyer cost per hour	£58.00		
	J. Caseworker time per objection (hours)	0.33		
	K. Average cost per application (GHI + BGJ)	£0.95	£1.89	£2.84
L. Total average cost per application (K + F + C)		£8.6	£11.7	£17.1

Costs associated with Problem 5

Recommendation 5.1

Reduced number of applications to enter unilateral notices

For the purposes of assessing the costs and benefits of this recommendation, it is necessary to identify the number of objections to applications to cancel unilateral notices following its implementation.

Table A5.1: Number of objections to applications to cancel unilateral notices per year

	Low estimate	Best estimate	High estimate
A. Current annual number of applications to cancel a unilateral notice	13,750	14,500	15,250
B. Estimated proportion of applications to which an objection is made	5%	15%	25%
C. Estimated annual number of objections per year under the current law (AB)	690	2,180	3,810
D. Estimated percentage decrease of such applications following the recommendation	5%	10%	15%
E. Estimated annual number of objections per year following our recommendations (AD – ABD)	650	1,850	2,860

Assumptions:

- there are 14,500 (± 750) applications to cancel a unilateral notice each year, based on an estimate based on HM Land Registry's data for the number of such applications over a three-year period;
- there will be a 10% ($\pm 5\%$) decrease in the number of applications for unilateral notices following our recommendation, on the assumption that the new procedure will discourage spurious applications; and
- objections are raised in respect of applications to cancel unilateral notices in 15% ($\pm 10\%$) of applications, based on HM Land Registry's estimates.

Reduction in the number of applications to enter unilateral notices

Further, in order to calculate the savings to HM Land Registry from reducing the number of applications to enter a unilateral notice, we have estimated the current annual cost of processing applications to enter, and to cancel, a unilateral notice under the current law. These figures are used to calculate the costs saved from reducing the number of applications.

Table A5.2: Current cost to HM Land Registry of dealing with applications to enter unilateral notices

	Low estimate	Best estimate	High estimate
A. Number of UN1 applications per year	50,000	53,000	56,000
B. Caseworker time considering an application (whether interest capable of protection by UN) (hours)	0.17	0.33	0.42
C. Caseworker cost per hour	£26		
D. Total cost per year	£221,000	£467,000	£617,000

Assumptions:

- there are 53,000 ($\pm 3,000$) applications to enter a unilateral notice each year, an estimate based on HM Land Registry's data for such applications over a three-year period;
- it takes a caseworker 0.33 hours (with a range from 0.17 hours to 0.42 hours) to process an application to enter a unilateral notice, based on HM Land Registry's estimates for the time to process applications for notices generally (both agreed and unilateral notices).

If there are fewer applications for the entry of a unilateral notice, there will consequently be fewer applications to cancel those notices. Again, we estimated the annual cost to HM Land Registry processing these applications.

Table A5.3: Cost to HM Land Registry of dealing with applications to cancel unilateral notices.

	Low estimate	Best estimate	High estimate
A. Number of UN4 applications per year	13,750	14,500	15,250
B. Caseworker time considering an application (whether entitled to apply) (hours)	0.17	0.25	0.33
C. Caseworker cost per hour		£26	
D. Total cost per year	£61,000	£96,000	£135,000

Assumptions:

- there are 14,500 (± 750) applications to cancel a unilateral notice each year, based on HM Land Registry's estimates on applications to cancel generally;¹⁰⁴ and
- it takes a caseworker 0.25 hours (± 0.08 hours) to process an application to cancel a unilateral notice, namely whether applicant is entitled to make the application.

Increased rejection of objections

We estimated the number of additional objections to applications to cancel a unilateral notice that HM Land Registry would reject following the implementation of our recommendations in two stages:

- we calculated the estimated number of objections to applications to cancel by multiplying the number of applications to cancel by HM Land Registry's estimated rate of objection; then
- we calculated the estimated increase in objections rejected by HM Land Registry by finding the difference between the estimated proportion of those objections which are groundless, and the estimate proportion of objections which would fail to satisfy the registrar as to the validity of the beneficiary's claim.

Table A5.4: Annual savings due to increased rate of rejected objections

	Low estimate	Best estimate	High estimate
A. Estimated annual number of objections to applications to cancel unilateral notices (see Table A5.1)	650	1,850	2860
B. Percentage of non-groundless objections rejected under the new test	20%	25%	30%
C. The number of objections rejected due to the new test	130	460	860

Assumptions:

- there are 1,850 (with a range of 650 to 2,860) objections to applications to cancel unilateral notices per year based on the number of applications per year¹⁰⁵ and HM Land Registry's provisional estimated objection rate (see Table A5.1);¹⁰⁶ and
- an additional 25% ($\pm 5\%$) of objections to an application to cancel a unilateral notice would be rejected under our reform.

¹⁰⁴ This estimate covered applications to cancel restrictions and cautions, as well as notices.

¹⁰⁵ Taking into account our assumption that the recommendation would lead to a decrease in the number of UN1 application, by discouraging meritless applications for unilateral notices: see monetised benefits below.

¹⁰⁶ This figure takes into account the fact that we think that overall the recommendation will *decrease* the total number of such applications per year – see further below.

We note that this rejection rate does not indicate that 25% of unilateral notices would be cancelled. It means that where there is unilateral notice, an application to cancel that notice, and an objection to that application to cancel, 25% of those objections would be unsuccessful based on the recommendation. This would reflect less than 1% of the number of applications to enter unilateral notices each year.

If an application is rejected by HM Land Registry, the parties will not incur costs negotiating or going to the Tribunal. We estimate the costs saved by the increased number of rejected objections in the two tables below.

Table A5.5: negotiating costs saved before any referral to the Tribunal

	Low estimate	Best estimate	High estimate
A. Estimated annual number of objections rejected under the new test	130	460	860
B. Lawyer time negotiating (per party)	6	12	18
C. Lawyer cost per hour	£41		
D. Total saved per year (2ABC)	£64,000	£450,000	£1,270,000

Even if an objection is not rejected by HM Land Registry, only some of those objections will be referred to the Tribunal. If an objection under the current law would be referred to the Tribunal (having not been rejected by HM Land Registry), but would be rejected under the new test, the parties and the Tribunal will not incur post-referral costs.

HM Land Registry were able to estimate that approximately **110** applications to cancel a unilateral notice are referred to the Tribunal. We assumed that our estimate for the increase in number of objections by HM Land Registry under the new test would equally apply to referral, in order to estimate the number of applications which are referred under the current law, but will not be under the new test.

A5.6: Costs saved in respect of cases referred to the Tribunal

		Low estimate	Best estimate	High estimate
A. Annual number of applications to cancel a unilateral notice referred to the Tribunal		110		
B. Estimated number of objections referred to the Tribunal under the current law, which would instead be rejected by HMLR under the new test		22	28	33
Cost of negotiation after referral	C. Lawyer time negotiating (per party)	6	12	18
	D. Lawyer cost per hour	£41		
	E. Total annual lawyer cost (2BCD)	£10,800	£27,000	£48,700
Cost of Tribunal hearing	F. Proportion to Tribunal	5%	10%	15%
	G. Cost per Tribunal hearing	£5,000		
	H. Total annual cost of Tribunal hearings (BFG)	£5,500	£13,750	£24,800

Assumptions:

- HM Land Registry refer approximately **110** applications to cancel unilateral notices to the Tribunal each year, based on its estimates;
- following the implementation of our recommendations, 25% (\pm 5%) of applications which are referred to the Tribunal under the current law which will instead be rejected;

- each party spend 12 hours (\pm 6 hours) negotiating following referral;
- 10% (\pm 5%) of referrals result in a Tribunal hearing; and
- a Tribunal hearing costs £5,000.

Easier dispute resolution

In order to estimate the number of cases which would benefit from easier dispute resolution, we calculated the proportion of objections which either (i) relate to meritless applications that would be discouraged due to our recommendations, or (ii) would be rejected by the registrar on the basis of the new test, and calculated the difference by taking it from the total annual number of objections.

Table A5.7: cases benefiting from easier dispute resolution.

	Low estimate	Best estimate	High estimate
A. Annual number of objections (see Table A5.1)	650	1,850	2,860
B. Percentage of objections which would be referred to the Tribunal by HMLR	30%	40%	50%
C. Number of cases which require dispute resolution (A – AB)	457	1110	1430

Assumptions

- 15% (\pm 5%) of groundless objections are rejected by HM Land Registry under the current law;
- 25% (\pm 5%) of non-groundless objections would fail to satisfy the register of the validity of the objector's claim.

Recommendation 5.3: Charging orders

HM Land Registry provided data over a seven-month period (from April 2017 to October 2017 inclusive) on Form K restrictions in respect of charging orders.

Table A5.8: number of applications and notices served in respect of restrictions reflecting charging orders

Notices served per application	Number of applications							Total applications	Total notices
	April	May	June	July	Aug	Sep	Oct		
1	108	161	164	152	169	187	194	1,135	1,135
2	1,262	1,418	1,255	1,417	1,289	1,660	1,478	9,779	19,558
3	24	33	28	34	30	34	34	217	651
4	22	30	23	22	26	36	36	195	780
5	0	0	0	0	0	1	0	1	5
6	3	1	2	3	3	2	5	19	114
7	0	0	0	0	0	0	0	0	0
8	0	0	0	3	0	1	0	4	32
9	0	1	0	0	0	0	1	2	18
10	0	0	0	0	0	0	0	0	0
11	0	0	0	0	0	0	0	0	0
12	0	0	0	2	0	0	1	3	36
Total	1419	1644	1472	1633	1517	1921	1749	11,355	22,329

We used the above data provided by HM Land Registry to estimate the average number of applications made and notices served per month. The average numbers have been rounded to four significant figures in the table below; the precise figures are used in calculations.

Table A5.9: average monthly totals

	Applications	Notices served
A. Raw total (7 months)	11,355	22,329
B. Average monthly total (A/7)	1622	3190

We used data and estimates received from HM Land Registry to calculate the current cost of serving notices to HM Land Registry.

Table A5.10: cost to HM Land Registry in giving notice

Hours worked	A. Number of applications	1,622
	B. Caseworker hours per application	0.083
	C. Total hours worked (AB)	135
Cost	D. Cost per hour	£26
	E. Monthly cost (CD)	£3,600
	F. Yearly cost (12E)	£43,000

HM Land Registry currently receives numerous groundless objections to the entry of the restriction. HM Land Registry's most recent estimates on the number of groundless objections it receives as set out below.¹⁰⁷

Table A5.11: groundless objections

Year	Number of groundless objections
2012	2,425
2013	2,241
Average per year	2,333

We obtained data from HM land Registry on the estimated cost to it in dealing with groundless objections to the entry of a standard Form K restriction. HM Land Registry are not expected to receive these objections where no notice or a mere information notice is given to the registered proprietor.

Table A5.12: cost to deal with groundless objections

Cost per groundless objection	Lawyer	A. Cost per hour	£58
		B. Hours worked per objection	0.5
		C. Cost per objection	£29
	Case worker	D. Cost per hour	£26
		E. Hours worked per objection	0.33
		F. Cost per objection	£8.82
Total	G. Total cost per objection		£37.80
	H. Number of objections		2,333
	I. Total cost per year		£88,200

¹⁰⁷

Based on the number of letters sent out using a particular template for groundless objections.

Appendix 2: Glossary

Terminology used in this Impact Assessment

Absolute title	A title in the register is given one of four grades of title. Absolute title is the best class of title which can be awarded by HM Land Registry. See also possessory title and qualified title.
Adverse possession	Possession of land without the permission of the owner. An adverse possessor acquires a freehold estate in the land from the time he or she enters adverse possession. This estate is inferior to the true owner's superior estate. Where title is not registered, over time adverse possession extinguishes the true owner's estate. In registered land, title is not extinguished, and instead over time the adverse possessor can apply to be registered as the proprietor of the title.
Agreed notice	A type of notice which is entered in the register in respect of an interest affecting a registered estate or charge. An agreed notice may only be entered if the applicant is the registered proprietor, the registered proprietor has consented to the entry, or the registrar is satisfied as to the validity of the applicant's claim. See also unilateral notice.
Chancel repair liability	An owner of land subject to chancel repair liability is liable to pay for or contribute to repairs of the chancel of a church.
Chargee	A person with the benefit of a charge over a property. In registered land law a chargee is also known as a mortgagee as the pre-eminent form of legal mortgage in registered land is called a charge by way of legal mortgage.
Charging order	An order of the court which imposes a charge upon the property of a debtor with the purpose of securing a debt owed as a result of a judgment or order of the court.
Chief Land Registrar / registrar	The head of HM Land Registry, who is appointed by the Secretary of State to be both Chief Land Registrar and Chief Executive of HM Land Registry.
Derivative interest	An <i>estate</i> or <i>interest</i> in land that is derived from another. For example, a <i>lease</i> is derived from a <i>freehold</i> or superior lease.
Donee	A person to whom an interest or estate in land is granted or conveyed. For example, a purchaser of a <i>freehold</i> or <i>leasehold estate</i> , a tenant under a lease, a <i>chargee</i> , or a person who is granted an <i>easement</i> . For ease, we frequently simply refer to a donee as a purchaser. See also <i>disponor</i> .
Easement	A proprietary right which enables a proprietor of an estate to make some limited use of land belonging to someone else. Examples include rights of way or rights to light or support.
Electronic conveyancing	We use the term electronic conveyancing to describe a process of dealing with land whereby all or part of the disposition occurs online.
Estate in land	A right to land that confers use or possession of the land for a period of time. There are <i>freehold estates</i> (of potentially indefinite maximum duration) and <i>leasehold estates</i> (which last for a fixed duration). Those who hold a freehold estate or long leasehold are colloquially known as owners of land.
Freehold	An <i>estate in land</i> which lasts forever. A freehold estate is one of the two legal <i>estates in land</i> which can be registered with its own title (the other being certain <i>leasehold estates</i>).
Grant	The express creation of an estate or interest in land, for example, a lease or an easement.

Interest in land:	Interests confer a right over land that the person with the benefit of the interest does not own. For example, a right of way.
Lease / Leasehold estate	An estate in land of a fixed duration, arising when a person with a more extensive estate in the land (the landlord or lessor) grants a right to exclusive possession of the land for a term to another person (the tenant or lessee). Legal leases are one of two estates in land which can be registered with their own title (the other being the freehold estate).
Legal interest in land	One of the limited number of rights affecting land (listed in section 1(2) of the Law of Property Act 1925) that are recognised by the common law jurisdiction of the courts. Interests confer a right over land that the person with the benefit of the interest does not own. For example, a right of way.
LRA 1925	Land Registration Act 1925.
LRA 2002	Land Registration Act 2002.
Manorial rights	Rights held by lords of former copyhold land, such as the right to fish, hunt or shoot or the right to hold fairs and markets. Manorial rights can also include rights to mines and minerals, although not all rights to mines and minerals are manorial in origin. Manorial rights were retained by the lord of the manor when copyhold land was enfranchised.
Nemo dat quod non habet (Nemo dat)	A common law principle that no one can convey what he or she does not own. The principle is commonly referred to by lawyers in the abbreviated form of its Latin name: nemo dat.
Overreaching	The doctrine of overreaching is a means by which some interests in land, particularly beneficial interests under a trust, are removed from the land on a disposition and attach to the proceeds of sale.
Overriding interest	An interest which is binding on a first registered proprietor following first registration of an estate in land, or on a disponee following a registered disposition of a registered estate or charge, notwithstanding that the interest has not been noted in the register.
Possessory title	One of the classes of title with which a proprietor may be registered (see also absolute title and qualified title). Registration with possessory title 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.
Priority	Priority refers to the order in which interests are enforceable and which interests prevail over others. The priority rules for unregistered land and for registered land are different.
Proprietary estoppel	An equitable principle through which a person obtains a claim against an owner of an estate in land, which may lead to the creation of rights in the land in that person's favour. Proprietary estoppel arises where the owner of land assures a person that he or she has or will acquire rights in the land and that person acts to his or her detriment in reliance on the assurance.
Qualified title	One of the classes of title with which a proprietor may be registered (see also absolute title and possessory title). Registration with qualified title does not affect the enforcement of any estate, right or interest which appears from the register to be excepted from the effect of registration.
Registrable disposition	A disposition which is required to be completed by registration under section 27 of the Land Registration Act 2002. A registrable disposition does not operate at law until the relevant registration requirements are met. Registrable dispositions include transfers, the grant of a lease for a term of more than seven years and the grant of a legal charge.
Registrar	See Chief Land Registrar.

Registration gap	The period between completion of a disposition and its registration. It is made of up two distinct periods: first, the gap between completion of the disposition and the application for registration being submitted to HM Land Registry; and secondly, the gap between the time the application for registration of the disposition is submitted and the time the application is completed by HM Land Registry.
Requisition	An enquiry raised by HM Land Registry of an applicant for registration. The requisition may require the applicant to provide information or additional documentation before the application can be completed. Failure to comply with a requisition within the time frame laid down to respond may result in the application being rejected.
Restriction	An entry in the register that regulates the circumstances in which a disposition of a registered estate or charge can be the subject of an entry in the register.
Tribunal	A judicial body that performs some of the same functions as courts in specialist areas. We use Tribunal as shorthand for the Land Registration Division of the First-tier Tribunal (Property Chamber). The Tribunal operates primarily to determine disputes arising out of applications made to HM Land Registry.
Trust of land	A legal relationship by which land is held in law by up to four persons (known as trustees) for the benefit of themselves or others (those with the benefit are called beneficiaries). The trustees have powers of management and sale, while the beneficiaries have the right to enjoy the land, either through occupation or receipt of profits and the proceeds of sale.
Unilateral notice	A type of notice which is entered in the register in respect of an interest affecting a registered estate or charge. A unilateral notice may be entered without the consent of the relevant proprietor. The applicant is not required to satisfy the registrar that his or her claim is valid and does not need to support the claim to the interest with any evidence. Contrast an agreed notice.