



Law
Commission
Reforming the law

Electronic execution of documents

Analysis of responses to consultation paper

This document analyses the responses to the Law Commission's consultation paper no 237 on electronic execution of documents

September 2019



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Glossary

advanced electronic signature: A signature which meets the requirements of article 26 of eIDAS.

asymmetric cryptography: The process of encrypting and decrypting data using public and private keys. This is also known as “public key cryptography”.

attestation: The process by which a witness records, on the document itself, that they have observed that document’s execution.

biometrics: Physical characteristics, such as fingerprints, which may be used to verify a signatory’s identity.

certificate: An electronic certificate issued by a certification authority which confirms the connection between a public key and an individual or entity.

consideration: In general terms, this is payment under a contract. A more technical definition is that consideration is an element of a valid contract, consisting of a right, interest, profit or benefit accruing to one party to an agreement, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other party (*Currie v Misa* (1875) LR 10 Exch 153 at 162).

consultation paper: Electronic Execution of Documents (2018) Law Commission Consultation Paper No 237, <https://www.lawcom.gov.uk/project/electronic-execution-of-documents/>.

deed: A document which is executed with a high degree of formality, and by which an interest, a right, or property passes or is confirmed, or an obligation binding on some person is created or confirmed.

delivery: A requirement for the valid execution of deeds in which the maker signifies that they intend the deed to become binding and effective.

digital signature: An electronic signature produced using asymmetric or public key cryptography (see Appendix {B}).

eIDAS: Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.

electronic signature: A signature in electronic form.

formalities: A formality is a procedure which a party must follow in order to give legal effect to a transaction. Formalities include requirements that certain transactions are made “in writing” or signed.

Intention to authenticate: By “intention to authenticate”, we mean an intention to sign and be bound by the document being signed

IP address: A number allocated to a device that connects to the internet.

Key (public or private): A cryptographic key is a very large number, usually represented by a long string of characters. A digital signature uses a “private key” to digitally sign a document, which can be verified using the signatory’s “public key”.

lasting power of attorney: A legal document used by an individual (“the donor”) to confer authority on another person to make decisions about the donor’s personal welfare, and/or property and affairs, made under the Mental Capacity Act 2005.

public key infrastructure: A system in which a person’s public key is the subject of a digitally-signed certificate provided by a certification authority. See “certificate” and “certification authority”.

qualified electronic signature: A signature which meets certain requirements under articles 26, 28, 29, and annexes I and II, of eIDAS.

signing platform: Software providing an interface through which people can both create and upload documents to be signed electronically and affix electronic signatures to those documents. Such platforms may also provide an “audit trail” of a particular electronic document, which includes data such as the time at which it was signed and the IP address through which it was accessed.

trust deed: A deed which creates an express trust.

trust service provider: An entity which provides services such as the creation, verification and validation of electronic signatures.

wet ink signature: A signature affixed to paper using, for example, a pen or pencil. In this consultation paper we use the terms “wet ink” and “handwritten” interchangeably, to refer to non-electronic signatures.

witness: An individual who observes a person sign a document. A witness may also “attest” a document.

List of Abbreviations

AI: Artificial Intelligence

BVCA: British Private Equity and Venture Capital Association

CILEx: Chartered Institute of Legal Executives

CLLS: The City of London Law Society

CMS LLP: CMS Cameron McKenna Nabarro Olswang LLP

CP 237: Electronic Execution of Documents (2018) Law Commission Consultation Paper No 237, <https://www.lawcom.gov.uk/project/electronic-execution-of-documents/>.

ECA 2000: Electronic Communications Act 2000

eIDAS: Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC

FCO: UK Foreign and Commonwealth Office Consular Document Policy Team

ICAEW: The Institute of Chartered Accountants in England and Wales.

ILAG: Investment and Life Insurance Group

LPA: Lasting power of attorney

PKI: Public Key Infrastructure

RBS: The Royal Bank of Scotland plc

SLC: The Society of Licensed Conveyancers

STEP: The Society of Trust and Estate Practitioners

UNCITRAL: United Nations Commission on International Trade Law

2016 Note: The Law Society Company Law Committee and The City of London Law Society Company Law and Financial Law Committees, “Note on the execution of a document using an electronic signature” (July 2016), <http://www.citysolicitors.org.uk/attachments/article/121/LSEW%20%20CLLS%20Joint%20Working%20Party%20-%20Note%20on%20the%20Execution%20of%20a%20Document%20Using%20an%20Electronic%20Signature.pdf>.

2009 Note: The Law Society Company Law Committee and The City of London Law Society Company Law and Financial Law Committees, “Note on execution of documents at a virtual signing or closing” (May 2009, with amendments February 2010),

<http://www.citysolicitors.org.uk/attachments/article/121/20100226-Advice-prepared-on-guidance-on-execution-of-documents-at-a-virtual-signing-or-closing.pdf>.

2001 Advice: Electronic commerce: formal requirements in commercial transactions – Advice from the Law Commission (2001), <https://www.lawcom.gov.uk/project/electronic-commerce-formal-requirements-in-commercial-transactions/>.

1985 Working Paper: Transfer of Land: Formalities for Deeds and Escrows (1985) Law Commission Working Paper No 93, <https://www.lawcom.gov.uk/project/transfer-of-land-formalities-for-deeds-and-escrows/>.

WEBSITES

All websites last visited 13 September 2019.

Chapter 1: Approach taken in this paper

Describing responses

- 1.1 This paper describes the responses we have received to the questions and proposals set out in our consultation paper, *Electronic Execution of Documents*, published in August 2018. This document aims to report the arguments raised by the consultees. It does not give the views of the Law Commission. Our final conclusions and recommendations and options for reform are set out in our report, published in September 2019.¹

Comments and Freedom of Information

- 1.2 We are not inviting comments as we have now published our final recommendations on this issue. However, if having read the paper you do wish to put additional points to the Commission, you can contact us:
- (1) By email at electronic-execution@lawcommission.gov.uk
 - (2) By post, addressed to Laura Burgoyne, Law Commission, 1st Floor, Tower, Post Point 1.52, 52 Queen Anne's Gate, London SW1H 9AG.
- 1.3 We will treat all responses as public documents. We may attribute comments and publish a list of respondents' names.
- 1.4 Information provided, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (such as the Freedom of Information Act 2000, the Freedom of Information (Scotland) Act 2002 and the Data Protection Act 1998). If you wish your information to be confidential please explain to us why and whilst we will take a full account of your explanation, we cannot give assurance that your confidentiality will be maintained in all circumstances.

¹ *Electronic Execution of Documents* (2019) Law Com No 386, <https://www.lawcom.gov.uk/project/electronic-execution-of-documents>.

Chapter 2: Introduction

- 2.1 Most agreements concluded under the law of England and Wales do not need to be recorded in any particular form. However, for those transactions which are subject to certain requirements, such as to be “in writing” or “signed”, some stakeholders have questioned whether these requirements can be satisfied electronically. Stakeholders highlighted particular concerns in relation to the electronic execution of deeds, which must be signed “in the presence of a witness” and “attested”.
- 2.2 In fact, a combination of legislation, case law and common law principles already provides for the legal validity of electronic signatures, and they are used effectively in transactions every day, including those which are required to be signed. However, it appears that doubts over legal certainty remain.
- 2.3 This summary of responses accompanies our report on this topic, presented to parliament on 3 September 2019. Our report aims to provide an accessible explanation of the law governing the electronic execution of documents, including the use of electronic signatures and electronic execution of deeds. Our report also sets out various recommendations and options for reform which might facilitate the use of electronic signatures in appropriate cases.
- 2.4 Background to this project This current project was suggested by stakeholders as part of our Thirteenth Programme of Law Reform and in June 2018 the Ministry of Justice asked the Law Commission:
 - (1) to consider whether there are problems with the law around the electronic execution of documents and deeds (including deeds of trust) which are inhibiting the use of electronic documents by commercial parties and, if appropriate, consumers, particularly with regard to:
 - (a) electronic signatures;
 - (b) witnessing;
 - (c) delivery; and
 - (d) the consequences of the decision in *R (on the application of Mercury Tax Group Ltd) v HMRC* [2008] EWHC 2721 (Admin).
 - (2) Following consultation with relevant stakeholders, to consider whether and, if so, what legislative reform or other measures are needed to address these issues.
 - (3) This consideration was not expected to extend to the electronic execution of:
 - (a) registered dispositions under the Land Registration Act 2002, which is being dealt with by HM Land Registry’s project on electronic conveyancing and registration; and

- (b) wills, which are being dealt with by the Law Commission’s project on “Making a Will”.

CONSULTATION EXERCISE

- 2.5 We published a consultation paper on 21 August 2018 (“the consultation paper”).² The consultation period closed on 23 November 2018.
- 2.6 The consultation paper reviewed the electronic execution of documents. It set out the formalities for various types of documents, and the current law on electronic execution and electronic signatures. It provisionally concluded that the existing law on electronic signatures was sufficient and did not require further legislation. However, it suggested that an industry working group could helpfully look at practical issues surrounding electronic execution, such as security and reliability considerations. It also set out various potential options to assist electronic execution of deeds.

Responses

- 2.7 We received 177 responses to our consultation, which can be broken down into the following categories:

Professional membership organisations	21
Law firms	32
Businesses	14
Government and public bodies	3
Individuals	102
Members of the judiciary	1
Other	2

- 2.8 A list of consultees is included at the end of this paper, excluding those consultees who requested that their name be kept confidential.
- 2.9 This paper provides a summary of responses to our consultation. Quotes are included to illustrate the views expressed by consultees.

THANKS

- 2.10 We would like to thank all the consultees who responded to the consultation, or met with us, or otherwise contacted us to express their views. Whilst we are unable to

² Electronic Execution of Documents (2018) Law Commission Consultation Paper No 237, (“CP 237”), <https://www.lawcom.gov.uk/project/electronic-execution-of-documents/>.

directly quote all consultees' responses in this paper, they have been very valuable to us as we put together our recommendations and options for reform for the report.

Chapter 3: Electronic signatures

- 3.1 In our consultation paper we asked a number of questions specifically about electronic signatures.

QUESTION 1: LEGAL VALIDITY OF ELECTRONIC SIGNATURES

- 3.2 In our consultation paper, we set out our analysis of the law and asked whether consultees agreed that an electronic signature is capable of satisfying a statutory requirement for a signature under the current law, where there is an intention to authenticate the document.³
- 3.3 We received 166 responses to this question. 142 consultees agreed (approximately 86% of responses), 23 disagreed (approximately 14% of responses) and 1 responded “other”.

Consultees who agreed

- 3.4 Out of 166 responses to this question, 142 consultees (approximately 86% of responses) agreed that an electronic signature is capable of satisfying a statutory requirement for a signature under the current law, where there is an intention to authenticate the document. As well as personal responses, this included responses from numerous City law firms, the City of London Law Society (“CLLS”), HM Land Registry and the Chancery Bar Association.

- 3.5 For example, Hogan Lovells International LLP said:

Yes. We agree with the Law Commission’s analysis in Chapter 3 of the Consultation Paper.

- 3.6 BVCA⁴ said:

We consider the current combination of statute and case law to mean that an electronic signature is capable of satisfying a statutory requirement for a signature. We believe current law on electronic execution of documents is sufficiently clear and would be concerned that if legislation were to be reformed there could be a risk that any resulting statute would be overly prescriptive or restrictive when compared to the current requirements. We would also be concerned about any period of uncertainty that might arise during any such legislative reform process

- 3.7 Richard Oliphant said:

There is ample case law that supports this view, irrespective of the type of electronic signature applied to the document...Section 7 of the Electronic Communications Act

³ Electronic Execution of Documents (2018) Law Commission Consultation Paper No 237 (“CP 237”), <https://www.lawcom.gov.uk/project/electronic-execution-of-documents/>, at para 3.87.

⁴ British Private Equity and Venture Capital Association.

2000 and Article 25 of Regulation (EU) No 910/2014 (eIDAS) also provide that an electronic signature is admissible as evidence in legal proceedings.

3.8 Yoti, a technology company, said:

Yoti supports the Law Commission's provisional conclusion that an electronic signature is capable of satisfying a statutory requirement under the current law, where there is an intention to authenticate the document.

3.9 DocuSign said:

As stated in Paragraphs 3.2 and 7.4, the conclusion of the 2001 Advice has been strengthened by eIDAS and various case law. Therefore we agree with the Law Commission's legal analysis on this matter.

3.10 OneSpan said:

Section 3 presents many facts and information that supports this conclusion. Based on our experience, we have always maintained that the digital world should mirror the paper world and that capturing a person's intent digitally is as meaningful as with pen/paper. There is no reason to believe that the intent of a person's signature differs between a well-designed e-signature system and a well-designed paper contract or form signed with a pen.

3.11 HM Land Registry said:

HM Land Registry agrees that this is provided for by the eIDAS Regulation, EU 910 of 2014, which will be incorporated into UK law by the European Union Withdrawal Act 2018.

3.12 However, many consultees who agreed with our conclusion on the current law also suggested other points for consideration. We have grouped these into themes below.

Exceptions

3.13 Some consultees agreed with our provisional conclusion, but provided instances where they felt an electronic signature may not be valid.⁵

3.14 STEP⁶ said:

We are concerned...that there may be other forms of document which might not be susceptible to execution by way of an electronic signature, an example of which would be the witnessing of documents by a notary for use overseas, which are usually required to physically bear the notary's seal.

3.15 Westminster and Holborn Law Society said "Yes in general, but that proposition cannot always be correct. There is at least one exception, and possibly more." They

⁵ Consultees who responded in this way include STEP (the Society of Trust and Estate Practitioners), Westminster and Holborn Law Society and Kennedys Law LLP.

⁶ The Society of Trust and Estate Practitioners.

suggested examples may be bills of exchange and documents of title to unregistered land.

3.16 Kennedys Law LLP said:

Some documents may still be subject to certain registration requirements where the relevant registry will only accept documents executed with 'wet ink' signatures. This will continue to be a barrier to executing those particular documents electronically. We appreciate that the Law Commission are currently looking into the position with a number of registries.

[Intention to authenticate](#)

3.17 Some consultees agreed with our provisional conclusion but queried the process of authentication.

3.18 CLLS questioned the choice of the words "an intention to authenticate the document":

The eIDAS Regulation defines "authentication" as an electronic process that enables the electronic identification of a natural or legal person, or the origin and integrity of data in electronic form to be confirmed ... Current law therefore has appropriated "authentication" to secondary verification of a primary signature.

We think in the light of those changes either the phrase "where there is an intention to authenticate the document" should be omitted completely or the word "authenticate" should be replaced by the word "sign".

3.19 ICAEW⁷ said:

We are concerned, however, as to how the "intention to authenticate" a document can be proved.

3.20 Mike Paley responded "other" to this question, but commented on "intention to authenticate". He said:

Take issue with 'where there is an intention to authenticate'. Feels that this makes forgery more likely. Electronic authentication is capable of satisfying the requirement provided it is traceable.

3.21 Peter Howes said he could:

See no reason why an electronic signature is an unreasonable means to authenticate a document; however, it must be recognised that different types of electronic signature have different levels of security and hence will lead to differential evidential weight of the signed document. The English common law system is quite suited to this whereas the civil law systems prevalent across Europe have led, quite understandably, to the more prescriptive approach of eIDAS.

⁷ Institute of Chartered Accountants in England and Wales.

- 3.22 Benjamin Elliott, the CEO of an online electronic signature and contract management software company, said:

I recommend the commission consider adding an element to the definition that regards the act of the signature in and of itself: that an electronic signature requires an act that expresses authenticating intent.

With the prospect of AI, automated workforces and decision-making by robots, the idea of an ‘act’ becomes more meaningful. A physical signature is inherently a performance, but this could be subsumed in a digital context. If a physical signature is necessarily an act, then perhaps a definition of electronic signature should include an expression of that ‘performative’ function, in addition to intention, if that function might otherwise be lost within a digital context (ideally without being restrictive about what expression that might take).

- 3.23 Lloyds Banking Group noted that some uncertainty still surrounds automatically generated text as to whether it can indicate a signatory’s intention to authenticate:

... query whether an automatically inserted signature at the foot of an email would also fail to demonstrate the signatory’s intention to authenticate? We note that it may also be difficult for the recipient to identify the difference between a name that is typed at the foot of an email and a name that has been added automatically to the same document.

Interpretation by the courts

- 3.24 Four consultees were concerned about the courts’ interpretation of the law on electronic signatures in particular circumstances.⁸

- 3.25 The General Council of the Bar of England and Wales said:

While the Court has adopted a practical approach, this has been in circumstances where the Court has been able: (i) to determine that the signature (in whatever form it might be) is easily attributable to the person purporting to enter into the agreement; and (ii) the party intended the signature to give authenticity to that document as a whole.

- 3.26 Bryan Cave Leighton Paisner LLP accepted that the courts’ general approach is to accept electronic signatures as satisfying statutory requirements, but thought there was still a risk that some courts might take a narrow view. They referred to a specific case to demonstrate this:

In *Cowthorpe Road 1-1A Freehold Limited v Wahedally CLCC* (Ch), 16 February 2016 (unreported), the judge inferred that a notice had to be a hard copy document because the relevant statutory provision stated that it may be served by post (as only a hard copy document is capable of being sent by post); he was also of the opinion that it was not possible to sign an electronic document with an original signature (‘in the ordinary sense of the word’). Decisions like this mean that caution

⁸ Bryan Cave Leighton Paisner LLP, the General Council of the Bar of England and Wales, Shoosmiths LLP and the Chancery Bar Association.

is currently required when considering whether an electronic signature will satisfy a particular statutory requirement or be acceptable to all parties in a commercial setting.

3.27 Shoosmiths LLP said:

The key point...is that an electronic signature is “capable” of satisfying a statutory requirement for a signature, not that it “does” satisfy it. To ensure confidence in the use of electronic signatures, businesses (and lawyers) need a definitive statement of validity because it remains open for the courts to take a different view.

3.28 The Chancery Bar Association:

Yes, but as per the Law Commission Advice in 2001, a statutory requirement for a signature must be interpreted in its own statutory context.

Further clarification

3.29 One of the main concerns was that despite the position of the law on the validity of electronic signatures, uncertainty still lingered amongst groups of consultees. These consultees generally suggested that the Law Commission should either clarify the current law further,⁹ recommend a legislative statement,¹⁰ or undertake a test case.¹¹

Safeguards

3.30 Several consultees suggested that safeguards need to be in place when electronic signatures are used.¹²

3.31 ICAEW stressed the need for “appropriate safeguards” and were concerned that a “desire for ease, speed and convenience should not override security and protection”. They added:

In particular we consider that as with wet signatures, there should be safeguards to ensure documents are signed by those who have the authority to sign and/or are not signing under duress. Key to this will be the need to prove identity. Practical guidance on how to prove identify and on the various technological options to facilitate this would be useful.

⁹ Consultees who responded in this way include ILAG (Investment and Life Assurance Group), UK Finance, Clifford Chance LLP, Smart Pension and RBS. RBS suggested this was done though a working group.

¹⁰ Consultees who responded in this way include CMS LLP (CMS Cameron McKenna Nabarro Olswang LLP), the Law Society, Eversheds Sutherland LLP, the Agricultural Law Association, GC100 and Kennedys Law LLP.

¹¹ Consultees who responded in this way include CMS LLP and Kennedys Law LLP.

¹² Consultees who responded in this way include ICAEW, Buckles Solicitors LLP, Kathryn Toomey (on behalf of second year law students at the University of Cumbria), the Agricultural Law Association, David Satchell (responding in a personal capacity and on behalf of AmicusLaw) and Solicitors for the Elderly.

3.32 Buckles Solicitors LLP said:

In certain circumstances, and with appropriate safeguards in place, this seems sensible in the modern world.

3.33 Kathryn Toomey (on behalf of second year law students at the University of Cumbria) suggested the need for:

1. A specialised authority with a respective committee; and 2. Strict legislation to regulate, scrutinise and authenticate the use of electronic signatures within legal-based practices.

3.34 The Agricultural Law Association said:

Any proposed reform in this area must provide for sufficient and robust protection against fraudulent actions to protect those who hold the title of the property asset where the impact of fraudulent activity could have very significant implications.

This concern is particularly acute where land is held by Trustee or Trustee companies and there is an increased risk of land being fraudulently transferred without notice to the beneficial owners.

3.35 David Satchell (responding in a personal capacity and on behalf of AmicusLaw) said:

It depends on the consequences arising from the document concerned and the equality or otherwise of the bargaining power of the parties. It also depends on what checks and balances will be in place to avoid signatures being obtained by duress - the signature of a credit agreement for £500 is a different scenario than signing a will or Lasting Power of Attorney...It is essential that there is some form of verification for documents that require to be witnessed to be valid to ensure that there is a separation of the personalities involved rather than one impersonating another to give the impression of different persons being involved.

3.36 Solicitors for the Elderly said:

We agree that an electronic signature is capable of satisfying a statutory requirement for a signature where there is an intention to authenticate the document. However, we do not agree that it should operate by default, and believe that there are certain categories of document where it might not be desirable for an electronic signature to automatically suffice, and where additional safeguards are required, e.g. on the transfer of property into trust and Lasting Powers of Attorney.

Consultees who disagreed

3.37 23 consultees disagreed with our provisional conclusion that an electronic signature is capable of satisfying a statutory requirement for a signature under the current law,

where there is an intention to authenticate the document.¹³ Those who disagreed included some law firms, CILEx¹⁴ and the Notaries Society.

- 3.38 11 consultees who disagreed with our provisional conclusion focused on how electronic signatures would increase the scope for fraud.¹⁵ For example, Craig Ward, Baron of Lundie said:

An electronic signature can open avenues for fraud and abuse of elderly individuals with mental capacity. An electronic signature would significantly increase the risk of abuse of vulnerable adults who lack mental capacity as completing an electronic signature can be made in private with no identifiable reference to that person's own original signature.

- 3.39 Richard Lane said:

It depends on the document concerned. Use of electronic signatures generally would increase the risk of fraud or undue influence. Obviously, a wet signature is not immune but there is more chance to detect fraud and a greater likelihood that the person who signed the document is aware of it.

- 3.40 Richard Bates (responding in a personal capacity and on behalf of Cognitive Law Ltd) said:

I am extremely concerned about the risks to persons at risk. By using wet signatures and in a formal fashion, there is already an obstacle to those seeking to encourage donors to sign under duress. I am also concerned about the electronic safeguards that can be put in place to reduce the risk of fraudulent or inappropriate instruments being increased.

- 3.41 Other consultees' provided other reasons for disagreeing with our provisional conclusion. For example, CILEx said:

Common law precedent has somewhat clarified the position of the law on electronic signatures and their validity. However, in the absence of an express provision entrenching the general approach within legislation, practitioners within multiple practice areas (commercial law, conveyancing, private client work) are hesitant to rely on electronic signatures to execute documents.

- 3.42 The Notaries Society said:

An electronic signature (in its many variants) may be a valid means of signature and admissible in evidence as an intention to be bound. However, so long as the relevant legislation omits to state that such a signature is legally binding or that an electronic signature is equivalent to a handwritten one, we submit that an electronic

¹³ 23 of 166 responses who responded to this question (approximately 14% of responses).

¹⁴ The Chartered Institute of Legal Executives.

¹⁵ Consultees who responded in this way include Sally Runnacles, Smith Partnership, Tom Sorby (responding in a personal capacity and on behalf of Ilet and Clark Solicitors), J Lewis, Steene Law Ltd, Jenny Watson, Carpenter & Co Solicitors, Richard Bates (responding in a personal capacity and on behalf of Cognitive Law Ltd), Richard Lane, CILEx and Craig Ward, Baron of Lundie.

signature cannot fulfil the statutory requirements for a signature. Confirmatory legislation may therefore help to increase confidence in the use of electronic signatures.

- 3.43 Jennifer Harris thought that the detail of what was legally valid was not sufficiently clear:

Whilst it may be possible to sign a document electronically, I am not sure that the law is sufficiently clear around different parties signing different documents. If one party has signed electronically and the other party prints it off and signs the physical copy and then scans that back in is that OK or must all parties sign electronically if it is to be signed electronically? Can a company seal be embossed electronically and then signed electronically also? The lack of an authoritative statement around the requirements creates confusion.

QUESTION 3: HOW HAVE OTHER JURISDICTIONS DEALT WITH THE CROSS-BORDER DIMENSION OF ELECTRONIC EXECUTION?

- 3.44 When economies become increasingly digital, they are faced with similar questions of law and policy regarding electronic signatures and electronic execution. In our consultation paper we acknowledged that, in reviewing whether reform is necessary in England and Wales, it is therefore instructive to examine the policy choices made in this area in other legal systems. We also noted, that, in the context of the execution of documents which may need to be enforced internationally, it is also clearly not appropriate to consider the domestic landscape in isolation.
- 3.45 In our consultation paper we asked for consultees' views and experiences on how other jurisdictions have dealt with the cross-border dimension of electronic execution.¹⁶
- 3.46 We received 35 responses to this question. Consultees made a number of observations about other jurisdictions and cross-border transactions generally. We have grouped these below by theme.

The existing EU legislative scheme: eIDAS

- 3.47 A number of consultees commented on the existing electronic signature regime under eIDAS. For example, Richard Oliphant commented that: "Continental Europe is still very wedded to advanced and qualified electronic signatures".
- 3.48 The Notaries Society said:
- In the context of the EU, e-IDAS is clearly intended to establish a trusted framework for use of electronic signatures between member states. Whilst the Regulation is intended to encourage the use of digital signatures, there appears to us to be little evidence of their use other than within individual member states.
- 3.49 Icon UK Limited said:

¹⁶ CP 237, para 6.19.

Europe has a regulatory framework in EIDAS that is not only fit for purpose, but represents the optimum balance of security and evidential auditability. It is something that can be relied upon in the UK currently and is fully compliant with the laws of our closest trading partner countries. As a broad generalisation, technologies developed and deployed in the Americas are too easy to fool.

3.50 CLLS said:

While the UK remains subject to EU law... or if the UK were to enter into a Treaty with the EU... then the possibility of use of qualified electronic signatures where a document has EU resident parties, will remain an important consideration to assist recognition in those jurisdictions.

3.51 Clifford Chance LLP said: "In European jurisdictions we have seen a preference that documents executed electronically are done so by way of a QES in accordance with the EU eIDAS Regulation".

The benefits of harmonisation across jurisdictions

3.52 The Notaries Society, the Society of Scrivener Notaries, BVCA and CMS LLP¹⁷ suggested that greater harmonisation across jurisdictions or mutual recognition of certain electronic signatures would be beneficial.

3.53 CMS LLP said:

we welcome consistency of approach on execution formalities across the UK and other jurisdictions. When managing transactions involving parties in multiple jurisdictions, dealing with a range of different process and formality requirements can add significantly to the signing complexities and costs. Any cross border initiatives aimed at streamlining these processes would be welcome.

3.54 The Notaries Society said:

The ultimate aim must be to encourage as many countries as possible to adopt internationally recognised norms such as those promoted through UNCITRAL and by e-IDAS.

3.55 The Society of Scrivener Notaries said:

Ultimately, the main barrier is the lack of a universally recognised signing/notarisation electronic protocol that is globally accepted which currently results in a default back to the more traditional methods involving paper, ink and embossed notarial seals.

3.56 BVCA said:

Our members report that US counterparties are becoming more comfortable with executing documents electronically, and would find it very beneficial if more jurisdictions could be harmonised.

¹⁷ CMS Cameron McKenna Nabarro Olswang LLP.

3.57 However, CLLS cautioned that this should not necessarily be the main driver for the development of electronic signatures in this jurisdiction. CLLS said:

We do not believe that the formality requirements that apply to a UK company should be overly influenced by the requirements of other jurisdictions.

The role of technology in cross-border transactions

3.58 Some consultees commented on the type of technology used in cross-border transactions or in other jurisdictions. For example, RO Legal Consulting Limited said:

The Law Commission has decided against prescribing the use of digital signatures. However, given the prevalence of digital signatures in civil law jurisdictions, it may be prudent for lawyers handling high value cross-border transactions to use digital signatures. This will help to mitigate the risk of repudiation by the other party to the transaction.

3.59 Matthew Wardle (on behalf of third year law students at the University of Cumbria) said: “In many civil law jurisdictions, the digital signature is considered to have a greater legal effect than a conventional written signature.”

3.60 Peter Howes suggested that use of electronic signatures in cross-border transactions “will typically lead to a reliance on the stronger, more robust forms of electronic signature rather than those that are simple but weak”.

3.61 SLC¹⁸ observed that:

if an electronic signature system incorporates sufficient proof of identity verification checks universally recognised as best practice and that the executing party has received and acknowledges that they have received and understood sufficient advice in order to enable them to make an informed decision as to whether to execute the document, this should be sufficient evidence to satisfy the requirements of any jurisdiction.

3.62 RBS¹⁹ said:

RBS understands that other jurisdictions have designated authorities who are responsible for certifying the validity of digital signatures, and setting conditions for which foreign certification would be accepted. This approach would not seem to be advantageous against the background of existing UK case law.

The challenges of cross-border transactions

3.63 Some consultees observed that, in their experience, the use of electronic signatures could add complexity to cross-border transactions. For example, BVCA said:

In our experience, the cross-border considerations surrounding electronic execution are one of the more significant deterrents to widespread use of electronic signatures for our members. In each transaction involving a non-England or Wales party or a

¹⁸ The Society of Licensed Conveyancers.

¹⁹ The Royal Bank of Scotland plc.

non-English law element, the time and cost involved in obtaining local legal advice for the relevant jurisdiction can deter adoption of electronic signatures. However, over time the market may become more comfortable with electronic execution, and we think that it is useful that England & Wales are leading in this respect.

3.64 Clifford Chance LLP observed that in many jurisdictions there is legislation in place that deals with electronic execution, however, “there is often reluctance to rely on the legislation in the types of transaction on which we usually advise”. They suggest that where there is legislation with strict criteria, there is uncertainty how courts will interpret this given lack of precedent. Where there is legislation without specific criteria, there is a concern that courts will accord lower evidential weight to electronic signatures compared with handwritten signatures.

3.65 The Law Society also made a similar comment that:

an ever-increasing number of jurisdictions have legislation in place... however... anecdotal feedback... from overseas practitioners suggests that there is still often uncertainty as to how the courts will interpret this legislation. This may be because the area is new and there is a lack of experience of how courts will view electronic execution.

3.66 GC100 observed that the use of electronic signatures in a number of jurisdictions is limited. They commented that “it would, however, seem reasonable to think that such acceptance [of electronic signatures] is more likely to be achieved with respect to cross-border electronic execution where the applicable legal regime is both statute-based and relatively simply.

3.67 Alison Devlin observed that:

Where the governing law of an agreement is English law, generally lawyers in other jurisdictions are more comfortable that electronic execution will be recognised and enforced.

3.68 RBS suggested that the industry working group could look at cross-border issues, in particular “both in recognition of how the UK’s common law approach (or proposed legislative changes) would be treated in foreign jurisdictions, and how the UK courts would treat foreign e-signatures”.

3.69 The Society of Scrivener Notaries said:

It is also possible for a UK notary to authenticate electronic signatures with an electronic notarial certificate but the willingness of overseas recipients to accept these is currently relatively low. One reason for this being that a large number of notarised documents sent abroad are ultimately destined for company and land registries which are not set up to receive electronic documents coming from overseas. Instead, they will insist on wet-ink originals being couriered to them.

3.70 They also added that:

The majority of notarial documents which leave the UK for use overseas must also be legalised by way of an ‘Apostille’ issued by the UK Foreign & Commonwealth

Office (for countries that have ratified the Hague Convention 1961) and further legalisation with the Consulate of the country where the document is to be used (for countries that have not ratified the Hague Convention 1961). The FCO is currently only able to issue Apostilles in paper format attached to an original physical document. Until the FCO can attach electronic Apostilles to electronically signed and notarised documents, there will continue to exist a disincentive for notarial documents emanating from the UK to be issued electronically.

3.71 The Notaries Society agreed that:

The longer term “success” of e-notarisation remains dependent not only on the acceptance of such electronic instruments in a wider cross-border scenario, but also on the implementation of the e-apostille by the Legalisation Department of the Foreign and Commonwealth Office.

3.72 In its own response to our consultation, the UK Foreign and Commonwealth Office Consular Document Policy Team (“FCO”) confirmed that the FCO supports the “digital by default” agenda and has already digitised some of its services. However, it emphasised that there are practical issues which prevent its legalisation services being provided electronically with regard to overseas recognition of electronic documents:

Those concerns are particularly acute for official documents, that record ‘life events’ or identity, these include: birth registrations, marriage registrations, death registrations, divorce decrees, adoption certificates, and, name/gender change. Digital copies are not accepted in many countries overseas. Wet ink signatures are still required by many national authorities. ...

Where documents are not recognised by overseas authorities or are unable to be legalised (because there is no written signature or stamp/seal to verify the document) this could in some cases deny British Nationals overseas basic civil rights. For example, the FCO is aware of a small number of cases where British Nationals resident overseas, have not been able to (re)marry where they reside. This is because they have not been able to prove to the local authority’s satisfaction that they are free to marry, because the local authorities do not accept the E-divorce decree from the family court in the U.K.

3.73 The FCO focused on the possibility of UK public bodies increasingly moving towards issuing only electronic documents. It stressed that the relevant authorities in the UK must bear in mind the documentary requirements for UK citizens overseas and suggested that there would need to be some flexibility around issuing documents with wet ink signatures upon request, even if the default was digital. It also said:

The FCO would need robust assurance that any electronically produced U.K. documents are genuine to a) prevent any reputational damage to both FCO and HMG, and b) mitigate against the risk of fraud. The FCO would require a higher level of assistance from the issuing authority when ascertaining the provenance of such documents.

3.74 The FCO’s response noted that leaving the EU may exacerbate some of the cross-border issues:

After the UK leaves the European Union, the authorities in EU Member States may impose additional documentary requirements upon resident British Citizens. This could affect as many as 1 million British Nationals resident in the EU, if e-documents, particularly those documenting life events and/or identity, are more widely rolled out in the U.K. placing additional burdens on the FCO's legalisation service in addition to the challenges mentioned above.

- 3.75 HM Land Registry provided their observations from the perspective of the requirements of a registry. They said:

For jurisdictions with a register of title, HM Land Registry would argue that the registration authority need to have control of the means of execution used for documents that must be registered, particularly where title guarantee is offered.

QUESTION 4: ANY SPECIFIC PROVISIONS SHOULD BE A MATTER FOR SPECIFIC LEGISLATION OR REGULATION

- 3.76 Our project covers the execution of a wide range of documents, from a contract for the sale of land between individuals, to multi-million-pound transactions between commercial parties. It also covers the execution of trust deeds, documents signed by consumers and lasting powers of attorney (LPAs). In our consultation paper we considered some of the protections in place under the current law for consumers and vulnerable parties when executing documents.²⁰

- 3.77 In our consultation paper we provisionally concluded that where specific provision is necessary in relation to certain types of documents (for example, to protect vulnerable parties, particularly for lasting powers of attorney), that is a matter for specific legislation or regulation, and not for the general law of execution of documents. We asked consultees if they agreed.²¹

- 3.78 We received 161 responses to this question. 146 agreed with our provisional proposal (approximately 91% of responses), 3 disagreed (approximately 2% of responses) and 12 responded "other" (approximately 8% of responses).

Consultees who agreed

- 3.79 The vast majority of those who responded to this question agreed with our provisional conclusion that any specific protections should be in specific legislation or regulation rather than the general law.²²

- 3.80 Some consultees suggested that this would be the most efficient approach to ensure that the general law on execution of documents did not become over complicated or unnecessarily prescriptive. For example, Stephen Bowman said:

²⁰ For example, the formalities for valid execution of a deed, a lasting power of attorney and a consumer credit agreement.

²¹ CP 237, para 6.41.

²² 146 of 161 people who responded to this question (approximately 91% of responses). Consultees who responded in this way included CMS LLP, CLLS, Westminster and Holborn Law Society, the Society of Scrivener Notaries, the Chancery Bar Association, the General Council of the Bar of England and Wales, the Law Society, Eversheds Sutherland LLP, Clifford Chance LLP, RBS and GC100.

The priority of the general law of execution should be to promote efficiency and simplicity in the execution of documents, with specific legislative checks and balances introduced to protect vulnerable parties.

3.81 DocuSign wanted to avoid “omnibus legislation for the execution of documents” and suggested that our proposed approach was “likely to minimize confusion, promote efficiency, and best address the nuanced needs of the specific use case under consideration”.

3.82 Eversheds Sutherland LLP said:

Provisions relating to areas that, for various reasons, need a particular specialist approach, should not impact on the general way we approach how documents should be executed.

3.83 Some consultees thought that the use of specific legislation or regulation was the best way to ensure appropriate protections were in place for vulnerable people and that these protections could be easily identified and located. For example, Kennedys Law LLP said that specific provisions “will allow greater flexibility and protection”.

3.84 RBS said:

Special provision in both the general law of execution of documents and in the more specific legislation directed towards certain types of documents or customers has the potential for causing confusion. Provision within specific legislation or regulation is better able to target the specific risks or concerns presented.

3.85 RBS also noted that the FCA are considering some work in publishing guidance for vulnerable customers.

3.86 Westminster and Holborn Law Society said “It is important for the user of legislation on a particular topic to have all the statutory provisions in a single place.”

3.87 CMS LLP said:

Where additional protection is necessary to cater for particular situations or types of document, we consider that the best way to deal with this is through specific legislation or regulation, which can target the particular risk.

3.88 GC100 said:

Any such requirement ought to be adapted to the specific type of document concerned and the mischief that the legislation is seeking to avoid. We do not believe that it is possible to give this the proper treatment through the general law on the execution of documents.

Protections should be in place to protect consumers and vulnerable people

3.89 109 consultees who responded to this question not only agreed that specific legislation or regulation was appropriate but also went further and stated that such

legislation or regulation was required in order to protect vulnerable people.²³ For example, Judge Elizabeth Cooke said “The argument for specific provision in contexts where people are more likely to be vulnerable is obvious”.

3.90 The Chancery Bar Association said:

any reform in legislation expressly to allow documents to be executed electronically could possibly throw up more issues in terms of the protection of consumers and vulnerable individuals and it is important that reform in specific legislation or regulation to protect these vulnerable parties is undertaken in conjunction with any reform in the general law of electronic execution of documents.

3.91 The Notaries Society said:

There is certainly a need to protect elderly or vulnerable members of society from being disadvantaged by the use of digital methods of signing... As to how any legislation is implemented will depend on the conclusions the LC reaches as to the continuing need for the Deed and what, if anything, might replace it.

3.92 Some consultees provided suggestions about what protections should be put in place in specific legislation or regulation. For example, ICAEW suggested that legislation should specify:

the precise documents and situations covered to avoid doubt and help to minimise the risk of the exploitation of vulnerable parties.

3.93 Selwood Research said:

Where there is a heightened need for protection the detail of the signing ceremony (and therefore the need for evidence of it having been followed) may need to be more carefully codified - provided that this is capable of implementation in a technology-agnostic manner.

3.94 STEP said:

Consideration might be given to setting out specific procedures for the execution of pension fund nominations, which currently can be effected by a simple signature. Nowadays, a pension fund death in service benefit is likely to represent the major part of the value passing on death and the lack of any (robust) requirement as to the form of a nomination raises unlimited opportunity for mischief.

3.95 Catherine Phillips said that “consumer legislation should require bodies issuing consumer contracts to permit an alternative to electronic signature.”

3.96 Beth Rudolf, in a personal capacity and on behalf of the Conveyancing Association, suggested that a new reserved legal activity should be created requiring that an electronic signature for certain documents can only be initiated by a qualified person.

²³ 109 of 161 people who responded to the consultation (approximately 68% of responses). This number includes 104 consultees who explicitly mentioned LPAs.

3.97 Two consultees raised concerns about consumers' understanding of legally binding agreements. The General Council of the Bar of England and Wales observed that:

We think it would be worthwhile for the Law Commission to consider whether this project might afford an opportunity to remind those that are contracting with consumers that it is very important to bring home to them that they are entering into a binding commitment, on terms which they should be strongly encouraged to read, even when their signature does not involve a pen and paper.

3.98 Peter Howes said:

consumers do regularly sign consumer agreements both electronically and with hand written signatures without reading the terms and conditions (e.g. software licences) and, in the event of subsequent issues, rely upon the reputation of the other party or general consumer protection legislation.

3.99 The Law Society said:

We agree that such risks should be dealt with by specific regulators and legislation... the Law Commission could find it insightful to investigate the division between the use of electronic execution by business-to-business and business-to-consumer cases. These will deliver differing risk assessments and approaches.

Lasting powers of attorney (LPAs)

3.100 104 responses mentioned LPAs²⁴ and suggested that existing formalities needed to remain in place to protect people granting LPAs.²⁵

3.101 Solicitors for the Elderly said that both LPAs and trust deeds executed by private individuals should be subject to additional safeguards to ensure that they do indeed represent a voluntary act.

3.102 STEP said: "We agree that specific provisions should exist for certain types of document, such as (but not limited to) lasting powers of attorney and wills."

3.103 SLC said:

we agree that where specific provision is necessary in relation to certain types of documents (e.g. Lasting Powers of Attorney) the circumstances and significant impact that such documents have on the life and finances of a potentially vulnerable individual require the need for specific legislation or regulation.

²⁴ 104 of 161 responses to this question (approximately 65% of responses).

²⁵ Consultees who responded in this way include the Law Society, the Law Society Liverpool Law Society, the Society of Scrivener Notaries, the Alzheimer's Society, SLC, the Notaries Society, STEP, Solicitors for the Elderly, Wedlake Bell LLP, Weightmans LLP and Charles Russell Speechlys.

3.104 9 responses suggested that LPAs should not be permitted to be signed electronically.²⁶ For example, the Law Society said:

The Law Society's current position is that we are strongly against a fully digital lasting powers of attorney process without physical signatures. The removal of physical signatures removes an essential safeguard against abuse of a highly vulnerable sector of society.

3.105 We also received 58 identical responses relating to LPAs which highlighted the role that existing protections play in the granting of LPAs. These said:

The majority of Lasting Powers are made by older people, and with age comes situations which place the older person at risk, such as cognitive and/or physical impairment. In a professional capacity, it is extremely common for family of the donor to seek to 'get' a power of attorney over their older relative's financial affairs.

The bargaining position is very much weighted against the donor.

There is a separate requirement by an independent person to confirm at the time the donor executed the power he understood what he was signing and there was no fraud, undue pressure or anything else which would prevent the donor from making the power. Although the assessment is based in the time of execution, it is possible that it is signed sometime after the donor actually signed- potentially months afterwards. As such the role of the witness can be vital in ensuring the donor intends to make the power and it is his signature, at the point of execution.

Consultees who disagreed

3.106 Only three consultees who responded to this question disagreed with the provisional conclusion in the consultation paper. Of these, two provided comments.

3.107 Richard Oliphant said:

Where there is a greater risk of fraud, undue influence and duress (for example when signing a lasting power of attorney), it is worth considering whether to prescribe use of a digital signature ('advanced electronic signature'). Digital signatures afford more security, reliability and better identity assurance than a standard electronic signature.

3.108 David Wells said:

all documentation should remain the same. digital signature is open to abuse and a fraudsters paradise - all deeds should remain as requiring a wet signature properly witnessed.

²⁶ Consultees who responded in this way include the Law Society, Charles Russell Speechlys, Wedlake Bell LLP, Peter Hughes, Jenny Watson, Lesley Walker, Margaret Taylor, Kenneth Seakens and Katherine Melkerts (responding in a personal capacity and on behalf of Melkerts Solicitors).

Consultees who responded “other”

Protections should be in place to protect all signatories

3.109 3 consultees who responded “other” to this question commented that all documents should be subject to the same protections. Mike Paley said: “The situation is the same for all documents – no matter their worth, they should all be entitled to the same safeguards and proof of authentication.”

3.110 HM Land Registry said: “all deeds should be treated in the same way for the purposes of electronic execution”.

3.111 Jennifer Harris questioned why protections should be in place only in certain situations and observed:

You seem to be proposing that no legislative provision is required to deal with execution generally but legislative provision is required to deal with specific cases. This seems to be an unnecessary fudge. Either legislative provision is required or it isn't. If it isn't required then it shouldn't be required for anything. Why is a vulnerable individual any more or less able to sign electronically - and why should somebody trying to take advantage of them be any more or less able to sign electronically?

Drawbacks of protection in legislation

3.112 Two consultees who responded “other” to this question, suggested that there were drawbacks to having special protections in legislation. Adobe, Inc said:

The greater the recourse to specific legislation outside a general law on execution of documents, the greater the prospect of regulatory divergence between the UK and other jurisdictions, and the greater the legal uncertainty in the execution of cross-border legal transactions.

3.113 Benjamin Elliott, the CEO of an online electronic signature and contract management software company, suggested that, in the case of LPAs, “controls (albeit regulated, if necessary) operated by the Office of the Public Guardian at the point of document registration” were preferable to prescriptive legislation or regulation on method because:

Such controls enable protections on the one hand, while also retaining the flexibility to move with quickly change in technology (important, especially if it is compromised) and places a responsibility and accountability with a discrete body to seek and improve methods to protect the vulnerable, which may otherwise be lost if it went into a regulation.

QUESTION 5: LEGISLATIVE REFORM

3.114 In our consultation paper, we considered the current law relating to electronic signatures and reached the provisional conclusion that the law is already sufficiently flexible to accommodate electronic signatures.²⁷ However, we noted that we had

²⁷ CP 237, Chapter 3.

heard from some stakeholders that a perceived lack of clarity in the law is preventing some businesses from using electronic signatures.

3.115 We provisionally concluded that legislative reform is not necessary to confirm that an electronic signature is capable of satisfying a statutory requirement for a signature. We asked consultees if they agreed.²⁸

3.116 We received 166 responses to this question. 117 consultees agreed with our provisional conclusion that legislative reform is not necessary to confirm that an electronic signature is capable of satisfying a statutory requirement for a signature (approximately 71% of responses). 29 consultees disagreed (approximately 18% of responses) and 20 consultees responded “other” (approximately 12% of responses).

Consultees who thought legislative reform is not necessary

3.117 The vast majority of consultees agreed that legislative reform is not necessary,²⁹ including the General Council of the Bar of England and Wales, CLLS, SLC, the Society of Scrivener Notaries, BVCA, ICAEW, Lloyds Banking Group, RBS and HM Land Registry.

3.118 Some consultees commented favourably about the flexibility of the current law. For example, the Society of Scrivener Notaries said:

The current position under EIDAS, namely that an electronic signature must not be denied legal effect or validity solely because it is in electronic form, has the effect of being clear, not unduly prescriptive and allows the law to be flexible in a cross-border context.

3.119 BVCA said:

We believe current law on electronic execution of documents is sufficiently clear and would be concerned that if legislation were to be reformed there could be a risk that any resulting statute would be overly prescriptive or restrictive when compared to the current requirements.

3.120 Some consultees raised concerns that legislative reform could cause uncertainty for those using or considering using electronic signatures. For example, DocuSign said:

We are concerned that if legislation is formally considered, this may leave the use of electronic signatures in a possible state of flux as parties await the outcome of the proposed legislation, which clearly would not be beneficial.

3.121 RBS said:

Given the current legislative demands upon Parliament, the timing of such legislative reform may, in practice, lead to a lower take up of electronic execution of documents in the period before such clarification is received.

²⁸ CP 237, para 7.20.

²⁹ 117 of 166 consultees who responded to this question (approximately 71% of responses).

3.122 BVCA said:

We would also be concerned about any period of uncertainty that might arise during any such legislative reform process.

3.123 Charles Russell Speechlys said:

We concur that legislative reform is not necessary. We believe that the current practice is working and subsequent reform may call into question agreements already executed.

3.124 We also heard from consultees who use electronic signatures or commented on their use by others. For example, Iain Macfarlane said:

Electronic signatures are now very familiar to consumers in the Consumer Credit Act sphere and most people have encountered them in contexts such as new mobile phone contracts and personal loans.

3.125 Benjamin Elliott, the CEO of an online electronic signature and contract management software company, said:

In my experience with the electronic signing platform for which I work, society and the legal profession now widely accepts the validity of electronic signature, except in the context of a Deed or witnessed contract.

3.126 Alternatives to legislation or steps in addition to legislation were suggested by a few consultees, including guidance³⁰, a test case³¹, amendments to the Civil Procedure Rules and Family Procedure Rules³² and public statements by relevant authorities (such as Companies House, HM Land Registry and the Law Commission).³³

Consultees who thought legislative reform is necessary or desirable to provide clarity

3.127 A number of consultees who agreed that the current law permits the use of electronic signatures would nevertheless welcome legislative reform to provide clarity. There were only 17 stakeholders who took this view (a minority of the 166 responses we received in relation to this question). However, they included professional membership

³⁰ Four consultees, including ICAEW and RBS, commented that guidance would be helpful.

³¹ Including CMS LLP and Kennedys Law LLP.

³² Charles Russell Speechlys.

³³ The Law Society suggested that if quasi-governmental bodies, such as Companies House, adopted the use of electronic signatures then a more conducive environment for electronic execution would be created; The Conveyancing Association stated that legal regulators will need to make reference to the acceptability of electronic signatures within their codes and guidance including The Law Society Conveyancing Quality Scheme Protocol and the Conveyancing Association Technical Protocol and HM Land Registry would need to confirm that they accept documents executed digitally; Hogan Lovells International LLP suggested a statement from HM Land Registry, Companies House, the Intellectual Property Office and the Shipping Registry; Charles Russell Speechlys suggested a statement from the Law Commission; Icon UK Limited suggested a series of public statements, policies and positions made by the regulators in every UK regulated industry; UK Finance said that their members would appreciate a clear statement about esigs to remove all doubt; and Smart Pension requested clearer and more accessible statements as to the acceptability of electronic signatures from Government and/or the Law Commission.

organisations including the Law Society, the Chancery Bar Association, GC100, STEP, ILAG, the Agricultural Law Association and UK Finance.

3.128 The Law Society said:

Whilst we agree that legislative reform is not necessary, it would be desirable. There are some lawyers who do not (as we do) share the Law Commission's view that an electronic signature is capable of satisfying a statutory requirement for a signature, so if the Government wants to remove doubts, it will have to make the law clearer. This would likely lead to greater adoption of electronic execution processes.

3.129 The Chancery Bar Association said:

Legislative reform might not be necessary, but legislative reform may nonetheless be desirable to clarify the position.

3.130 GC100 said:

With the exception of scanned manuscript signatures (see paragraph 2.11 of the consultation paper), electronic signatures are not widely used in most commercial transactions. It is clear that the principal reason (and possibly the only reason) why parties avoid the use of electronic signatures, in favour of more cumbersome methods of execution, is the persistent uncertainty about their validity.

And concluded that:

In our view, the position is unlikely to change substantially, if at all, unless and until the validity of electronic signatures is put on a clear statutory footing.

3.131 STEP said:

Legislative reform could effectively be a consolidation of the relevant case law and legislation, which would improve both efficiency and confidence in the use of electronic signatures, thus helping to counter the reluctance of many parties to adopt electronic signatures, as identified within the consultation paper.

3.132 ILAG said:

There is lack of clarity surrounding the use of electronic signatures, despite the flexibility in law to accommodate such formats, which causes significant uncertainty for insurers.

The practical application for electronic signatures in the corporate business environment is a challenge. Internal processes and controls can often make it more onerous to use electronic signatures, as the validity and risk appetite for implementing such methods can vary from insurer to insurer.

And concluded that:

Although the law covering electronic signatures is already in place clarification of its application for the corporate environment is essential.

3.133 Clifford Chance LLP said:

...we agree that legislative reform is not necessary. However, we would welcome legislative reform to put this question beyond doubt. This would deal with the concerns of lawyers that do not agree with your conclusions, make the law of England and Wales clear and certain, ensure that the law of England and Wales is up to date with technological developments in the modern world and potentially assist more widespread use of electronic signatures.

Although they also noted that:

We would add the observation that other non-legal factors also come into play and clarifying the legal validity of electronic signatures is only one step in encouraging electronic signing on transactions. We noted in our covering remarks that there are concerns around the security and reliability of electronic signatures.

3.134 Eversheds Sutherland LLP said:

Whilst we agree that legislative reform is not strictly necessary, we think that it can only be helpful to facilitate the uptake of electronic signatures and the simplification of transactions for there to be a clear statement to this effect.

3.135 Catherine Phillips said that “Concerns are routinely raised that the ECA does not address the validity of electronic signatures”.

3.136 A number of consultees raised practical difficulties for companies associated with the lack of legislation. For example, ILAG said:

It should not be for the Courts to prove that the use of an electronic signature is satisfactory. Legal proceedings can be expensive and prohibitive for consumers as well as small and medium-sized businesses.

Additional assurance would particularly assist small and medium-sized business, reducing the need to seek outside legal counsel and potential risk of legal action.

3.137 Shoosmiths LLP said:

One particular concern that we have is that in the absence of a legislative statement of validity, lawyers may not be prepared to issue an unqualified legal opinion that a document has been validly executed when an electronic signature has been used. This may not be acceptable to overseas parties (in particular) and could adversely impact the competitiveness of England and Wales as a jurisdiction in which to do business.³⁴

3.138 Taylor Wessing LLP said:

Whilst it may not be strictly necessary to have any legislative reform, the Electronic Communications Act 2000 and subsequent execution provisions in the Companies

³⁴ The comment from Shoosmiths LLP about providing an unqualified legal opinion is consistent with what we have been told by other stakeholders (including CMS LLP and Clifford Chance LLP) in pre-consultation meetings.

Act 2006 are not entirely helpful in providing the clarity and certainty that signatories and legal advisers require, especially in the context of high value or critically important documents, or when lawyers are required to give legal opinions.

3.139 GC100 said:

In our opinion, absent legislative reform, parties – especially international parties who may be less familiar with English law – will continue to receive equivocal (or at least qualified) legal advice as to the validity of electronic signatures and, in light of that advice, will naturally default to what they perceive to be the ‘safe’ option of relying on traditional forms of execution. In maintaining the desirability of English law as a choice of law for international contracts, enhanced clarity over the validity of, and formalities for, electronic signatures should be communicated in a definitive, legislative form within an English statute.

3.140 Catherine Phillips said:

Clients often require clean legal opinions on the legality, validity and enforceability of electronic signatures. In our experience there are different views across City firms as to whether or not clean opinions can be provided where documents have been electronically signed... Legislative reform or a test case would avoid the need for opinions to be caveated to the extent that they become less valuable to clients.

3.141 Carpenter & Co Solicitors stressed the importance of open debate on the topic:

I think legislature reform is necessary for such a major change that might lead to abuse. It needs to be debated more openly.

[Suggestions from stakeholders about the form legislative reform could take](#)

3.142 Some consultees made suggestions about what the scope of any legislative reform. For example, the Law Society said:

If the legislation is too technical this could cause uncertainty in compliance, which could also put people off using electronic execution. It would also be important that any future legislation be technology neutral and future proofed, to remain relevant as technology advances.

It also added that:

If the Government decides to consider legislation, there would need to be a full and detailed consultation on how the new laws are drafted.

3.143 The Chancery Bar Association said:

Legislative reform might not be necessary, but legislative reform may nonetheless be desirable to clarify the position (and would require more than just restating any existing legislative provisions), although the comments at §6.12 of the Paper are noted and that “in general, legislation should be made when it is necessary, and not merely “for the avoidance of doubt”. Legislation may be necessary in connection with any issues raised by the working group covered by question 6.

3.144 The Notaries Society said:

Confirmatory legislation may therefore help to increase confidence in the use of electronic signatures.

The position is not however entirely straightforward because the subjects of "reliance" and "binding legal effect" can become blurred.

Note that the UNCITRAL Model Law on Electronic Signatures 2001 refers in Articles 10 and 11 to trustworthiness and the extent to which it is reasonable to place reliance on an electronic signature if the application of some due diligence on the part of the relying party would have disclosed that the signature was in fact not a reliable one.

A short sentence in a future statute confirming that an electronic signature has the same effect as a handwritten one would increase confidence in their use and reliability.

3.145 CMS LLP said:

We also take the view that it would be helpful to have a new, clear, legislative statement confirming that an electronic signature is as valid as a handwritten signature.

And added:

As Chapter 5 of the Consultation Paper points out, legislation confirming the validity or legal effect of an electronic signature has already been adopted in certain other jurisdictions. In our view any such legislation introduced in relation to England and Wales should be based not only on legal input but also on input from technical experts in the field to ensure that it is practical, workable, technology agnostic and future proofed.

3.146 GC100 said:

In maintaining the desirability of English law as a choice of law for international contracts, enhanced clarity over the validity of, and formalities for, electronic signatures should be communicated in a definitive, legislative form within an English statute.

3.147 STEP said:

Legislative reform could effectively be a consolidation of the relevant case law and legislation

And added that:

Legislation could also deal specifically with the default position (e.g. that all parties to a document must agree to the use of electronic signatures) and whether it would be permissible for a document to be executed in part electronically and in part by "wet ink".

3.148 Sussex Partnership NHS Foundation Trust suggested that legislation should:

confirm that an electronic signature (of various types) is acceptable.

3.149 Shoosmiths LLP said that “a definitive statement of validity” is required. They also noted that:

There is an objection that it might be difficult to keep up to date technologically, so that any legislation that governs electronic signatures today might not be wide enough to cover developments in how documents are authenticated in the future. We do not think that is a major issue. At the very least, any new legislation would put it beyond doubt that any documents signed electronically with today’s technology are valid, which would (in our view) be an improvement on the current position. New technology can be considered when it becomes available.

3.150 Icon UK Limited suggested that clarity around electronic signatures could be provided by either a series of public statements or legislative reform. If legislative reform were to be considered it should be:

a 'light-touch' legislative reform which was:

- “for the avoidance of doubt”
- was consistent with the position in other jurisdictions, especially EU eIDAS
- ensured that the concepts of 'higher standards required for higher value/risk transactions' should apply.

3.151 Jennifer Harris suggested that a legislative statement should address witnesses, specific types of documents (such as powers of attorney) and company seals, as these are areas which cause confusion.

3.152 Kennedys Law LLP noted that existing legislation and case law does not “address the practical or technical issues around the creation and evidence of an e-signature”.

3.153 Catherine Phillips raised a number of concerns about the scope of current legislation and areas for further clarification. She said:

If the law requires there to be an electronic signature plus evidence of the intention to authenticate in order to establish validity, it would be useful to be given clear criteria on what procedural steps satisfy the 'intention to authenticate'. Otherwise this creates an additional level of difficulty in the giving of a clean opinion.

5. The Law Society's guidance note on the use of electronic signatures and case law to date focuses on the use of electronic signatures by companies established under the Companies Acts. Could the Commission's recommendations address the position for other entities, including LLPS and unincorporated associations?

6. It would be useful to take the opportunity to clarify the law on the acceptability of counterparts. There is variation in market practice on:

a. the treatment of documents that have been signed in counterpart and subsequently collated. There are different views in that case on whether the document containing the signature pages from the various counterparts constitutes 'an original';

b. whether it is acceptable for two director signatories to a document being located in different places and countersigning different physical copies of the document. By extension, clarification would provide certainty that when this practice is carried out on a document signing platform that that this meets the relevant criteria.

3.154 Kathryn Toomey (on behalf of second year law students at the University of Cumbria) said:

Another issue that has arisen is the decision from *R v HMRC* [18]. As the defendant had no proof that the documents had been altered without the clients authorisation and there was, therefore, no reason to suspect dishonesty. Should there be a legal reform to set out more precise procedures regarding electronic signatures, it would help eliminate confusion and create clarity as to what could be perceived as dishonest or potentially illegal.

3.155 Selwood Research commented that:

Any requirement that a signatory must sign "in the space provided" (e.g. consumer credit agreements) should be removed as these speak to form rather than function, inhibiting the use of technologies that provide for cautionary effect, deliberation and protection that exceed that of the handwritten signature.

Consultees who thought legislative reform is necessary to permit the use of electronic signatures

3.156 A minority of consultees took the view that legislative reform is necessary to permit the use of electronic signatures.³⁵

3.157 The Notaries Society said:

An electronic signature (in its many variants) may be a valid means of signature and admissible in evidence as an intention to be bound. However, so long as the relevant legislation omits to state that such a signature is legally binding or that an electronic signature is equivalent to a handwritten one, we submit that an electronic signature cannot fulfil the statutory requirements for a signature. Confirmatory legislation may therefore help to increase confidence in the use of electronic signatures.

3.158 Some consultees who told us that legislative reform is necessary to permit the use of electronic signatures were opposed to such legislative reform. Twelve consultees raised concerns about the use of electronic signatures in LPAs and the potential for abuse and fraud. For example, Sally Runnacles said:

³⁵ 29 of 166 consultees who responded to this question (approximately 18% of responses).

With all the bank and internet fraud - no doubt fraudsters will either trick people or hack into documents and commit fraud.

3.159 Some consultees, including Liverpool Law Society and some law firms, took the view that reform is required but only in relation to certain documents. For example, Hogan Lovells International LLP commented:

In summary, whilst we agree that English law already allows for an electronic signature to satisfy a statutory requirement for a signature, we do think that legislative reform is required to state that the common law requirement for a deed to be in writing is satisfied even if a deed exists solely in electronic form.

3.160 Bird Wilford and Sale Solicitors said:

Some situations eg: Lasting Powers and Wills should get legislative authority

QUESTION 6: AN INDUSTRY WORKING GROUP

3.161 We explained in our consultation paper that in our initial discussions with stakeholders, we heard that it is not only legal uncertainty which is impeding the use of electronic signatures. Other factors may include the security and reliability of electronic signatures, as well as questions of trust and identity, the interoperability of electronic signature systems, and the archiving of information.

3.162 The joint working party of the Law Society Company Law Committee and the City of London Law Society Company Law and Financial Law Committees published two notes on the electronic execution of documents which deal with legal questions. Both of these have alleviated some uncertainty around execution. Consequently, we considered that similar guidance, from a technological and practical perspective, would be extremely valuable.

3.163 In our consultation paper, we provisionally proposed that an industry working group should be established, potentially convened by Government, to consider practical, technical issues. We asked consultees if they agreed.³⁶

3.164 We received 165 consultees responses to this question. 154 consultees agreed that a working group should be established (approximately 93% of responses). 8 consultees disagreed (approximately 5% of responses) and 3 consultees responded “other” (approximately 2% of responses).

Consultees who agreed

3.165 The vast majority of consultees agreed that an industry working group should be established.³⁷ As well as personal responses, these included a number of City law firms and professional membership organisations, such as the Law Society, CLLS and the Chancery Bar Association.

³⁶ CP 237, para 7.28.

³⁷ 154 of 165 responses to this question (approximately 93% of responses).

3.166 Consultees also commented on the membership of the industry working group and what topics it should consider. We have included these comments below, grouped by theme.

Membership of an industry working group

3.167 Several consultees explicitly affirmed that a working group should be Government led.³⁸ CMS LLP thought if the group was co-ordinated by Government, this would “give weight to the processes and outcomes”. UK Finance thought it would ensure “widespread engagement from all stakeholders, including public bodies”.

3.168 The majority of consultees who commented on the membership of the proposed industry working group wanted to ensure that the working group was made up of representatives who could consider the interests of individuals as well as commercial parties, particularly when concerning the needs of vulnerable people³⁹ and the execution of LPAs.⁴⁰ Weightmans LLP believed it would be an opportunity to discuss issues encountered on a “day-to-day” basis, and that it would particularly benefit the execution of wills or LPAs.

3.169 ICAEW suggested a wider consultation inclusive of “representative bodies of those with disabilities or other special needs” to ensure the needs of “as many potential users as possible” are met. Solicitors for the Elderly also did not want to exclude those “unfamiliar with, or unable to use digital technology”.

3.170 The Alzheimer’s Society thought that a working group should be convened, but it wanted to emphasise that its remit should include considering the needs of individuals and the execution of LPAs. It noted that the system for execution of an LPA is already partly digital and was concerned that LPAs should not become entirely digital as this would “exclude people who do not have access to the internet or are unable to use it”. Additionally, it said that there is an increased opportunity for “fraud and financial abuse” when those with dementia are at their most vulnerable. It concluded that the working group “should consider issues such as supported digital services, and how to ensure that there are effective safeguards”.⁴¹

3.171 59 consultees provided identical, or virtually identical responses, which noted a divergence between commercial and personal transactions. This took the form of the response below, some with minor adaptations:

It may be worthwhile in having a balance of representatives for both commercial and personal transactions. There is a much stronger argument commercially than personally for wider digitisation.

³⁸ Consultees who responded in this way include CILEx, STEP, CMS LLP, UK Finance, the Chancery Bar Association and Matthew Wardle (on behalf of third year law students at the University of Cumbria).

³⁹ Consultees who responded in this way include Solicitors for the Elderly, Buckles Solicitors LLP, Carolyn Bagley, Rachel Hawkins, ICAEW, Margaret Taylor, MLP Law Ltd, Elizabeth Foggin and Ian Macara.

⁴⁰ Consultees who responded in this way include the Alzheimer’s Society, Weightmans LLP and Angela Hickey.

⁴¹ The Alzheimer’s Society responded “other” in response to this question.

- 3.172 Other consultees who commented on the membership of the proposed industry working group emphasised that it should include those with legal, business and technical expertise.⁴² For example, CILEx thought that the “working group should comprise of both experts within technology and, crucially, experts within legal practice.”
- 3.173 ICAEW suggested that “business representatives...as well as technology experts” should be involved.
- 3.174 CMS LLP also thought the working group should be inter-disciplinary. It suggested including in-house lawyers, “with practical experience of managing signing procedures within their organisations”. Similarly, the Law Society suggested the involvement of “the legal profession, tech developers, businesses that use (or are interested in using) electronic signatures, and commercial providers of e-signing solutions”. Hogan Lovells International LLP suggested the working group membership should include “digital execution platform providers” as well as “law firms, corporates, banks... and technical experts”.
- 3.175 Kathryn Toomey (on behalf of second year law students at the University of Cumbria) and Beth Rudolf, in a personal capacity and on behalf of the Conveyancing Association, suggested that insurers should be on the working group.
- 3.176 The Society of Scrivener Notaries said it could see “the benefit of an inter-disciplinary industry working group” and suggested that “institutions such as the Land Registry and the Law Society” should be represented. UK Finance also suggested that public bodies should be represented.
- 3.177 Sussex Partnership NHS Foundation Trust wanted a working group to review the application of electronic signatures to “real life settings in mental health inpatient and community settings”. It wanted the involvement of stakeholders from “all relevant agencies such as health and social services” and IT management.
- 3.178 A number of consultees volunteered to be part of an industry working group.⁴³

Areas for an industry working group to consider

- 3.179 Some consultees suggested that the working group should consider the capabilities of existing signing platforms and the potential for technology to assist with the signing process and evidence and security of electronic signatures.⁴⁴ For example, Shoosmiths LLP said:

As well as setting out best practice for users of electronic signatures, it is also essential to establish clear industry standards to provide certainty for users of

⁴² Consultees who responded in this way include CILEx, Icon UK Limited, STEP, OneSpan, ICAEW, CLLS, the Law Society, UK Finance, the Chancery Bar Association, Richard Oliphant, the Society of Scrivener Notaries, Yoti, DocuSign and RBS.

⁴³ Consultees who responded in this way include the Alzheimer’s Society, Smart Pension, TheCityUK, SLC, ILAG, BVCA, the Society of Scrivener Notaries, Ian Macara and RBS and Adobe, Inc.

⁴⁴ Consultees who responded in this way include Shoosmiths LLP, Kennedys Law LLP, AmicusLaw, Liverpool Law Society, Robert Tozzi, Charles Russell Speechlys, Matthew Wardle (on behalf of third year law students at the University of Cumbria), Iain Macfarlane and RBS.

electronic signature applications and platforms. It is likely that we will see an increasing number of providers of this technology, and industry standards will be necessary to ensure that they are all adhering to the same levels of security, privacy, reliability, integrity and so on.

3.180 RBS said that they had noticed a “clash between market participants who use different e-signing solutions”, and suggested that the working group could create a list of “key features.”.

3.181 Kennedys Law LLP saw a working group as an opportunity to consider “issues such as data breaches and fraudulent activities”.

3.182 Selwood Research said:

Perhaps it would be valuable if, among other things, the Commission were to run mock trials in which electronic evidence of signing may be examined with testimony from technology suppliers, with a view to testing the probative value of the (digital) evidence in question to both civil and criminal standards of proof.

3.183 Benjamin Elliott, the CEO of an online electronic signature and contract management software company, said that there was:

scope for a high level group to consider the strategic risks and opportunities of developments in technology, in the context of contracts especially where they underpin significant elements of national economic and social life, for example, property record.

3.184 CMS LLP suggested that the industry working group could be involved in producing best practice guidance for using e-signing platforms in complex, lawyer-led transactions and even kite marks to show the level of security protections in place on different platforms. They also suggested that the functionality of platforms could be considered to ensure that they allow legal requirements to be satisfied in a user-friendly and efficient manner.

3.185 RBS noted that there were different signing solutions available and suggested that the industry working group could “work towards settling on a list of key (technology agnostic) features that e-signing solutions could address”. UK Finance suggested that technology experts could clarify the “capabilities ... [of] electronic audit trails, digital identification and digital certification”. ICAEW said “practical guidance on how to prove identify and on the various technological options to facilitate this would be useful”.

3.186 Some consultees wanted clarity about the procedural steps which need to be satisfied for electronic execution (or electronic witnessing), including an intention to authenticate.

3.187 TheCityUK thought that guidance from a working group “could give more confidence to stakeholders” who are “hesitant because of practical or technical concerns”. CLLS thought the focus of any working group should be on “technical rather than legal aspects” and should “seek to establish best practice guidelines in the use of signing

platforms”. Peter Howes agreed that guidance should be published, but was unsure if a working group was “absolutely necessary”.⁴⁵

- 3.188 The Law Society suggested that any working group could “dovetail” with the current Law Tech Delivery Panel established by the Ministry of Justice.
- 3.189 Stephen Bowman said that a working group could consider the removal of the requirement of witnessing for deeds in a commercial context. He also suggested that it should undertake a “costs/benefits analysis on the requirement for a witness when executing deeds”. However, he wanted to ensure it remained in place for vulnerable people.
- 3.190 Richard Oliphant and DocuSign saw a working group as an opportunity to deepen industry understanding on the scope and nature of electronic signatures. In particular, the eIDAS Regulation, the security features of digital signatures, the technical standards of leading signing platforms, the importance of due diligence in data privacy and cyber security, and the development of an e-signing policy for companies.
- 3.191 Lloyds Banking Group said that a working group could consider the revocation of an electronic signature by a signatory; and potential issues around obsolescence and accessibility of technology over the effective life of electronically executed documents.
- 3.192 Clifford Chance LLP said that a working group could be beneficial to law firms and businesses not able to trial the relevant electronic execution technology.
- 3.193 Icon UK Limited thought that a test case might stem from the work of an industry working group.

Timeframe for a working group

- 3.194 A few consultees approved of a working group but had some reservations about its efficacy. GC100 and Eversheds Sutherland LLP were concerned that it may delay legislative reform.
- 3.195 Icon UK Limited was concerned that it may not issue guidance quickly, becoming another “loop...which [would] delay certainty...further”. While euNetworks agreed “in theory” but was concerned it could lead to further debate and increasing delays.⁴⁶

Consultees who disagreed

- 3.196 There were 8 consultees who did not think that a working group should be established.⁴⁷ Jennifer Harris was not sure that a working group would add more value than a review of responses to our consultation. She said:

This is an issue that causes confusion among lawyers and the public generally and you run the risk of coming up with a solution after technology has moved on and your solution is already obsolete.

⁴⁵ Peter Howes responded “other” to this question.

⁴⁶ euNetworks selected “other” in response this question.

⁴⁷ 8 of 165 consultees who responded to this question (approximately 5% of responses).

- 3.197 J. Lewis thought that there was “not enough detail” about who would be part of a working group or “how it would work”.
- 3.198 Carpenter & Co Solicitors and Tom Sorby (responding in a personal capacity and on behalf of Ilet and Clark Solicitors) objected to a working group being set up because of their objections to the use of electronic signatures.
- 3.199 Other consultees were not convinced that a working group would be the best forum to discuss the practical and technical issues associated with electronic signatures. Mike Paley told us that he “could only approve of a National Debate on the matter to deal with electronic documents and authenticity”. While David Wells suggested that “the government has made up its mind regardless... [and that he] would question the impartiality and expertise of any such working group.”

Chapter 4: Electronic execution of deeds

INTRODUCTION

- 4.1 A deed is a document executed with a high degree of formality, and by which an interest, a right or property passes or is confirmed, or a binding obligation is created or confirmed. The formality requirements for a deed are more onerous than for a document that is required simply to be in writing or signed. A deed must be signed, in the presence of a witness who attests the signature, and delivered.
- 4.2 We discussed the current law of deeds in detail in Chapter 4 of our consultation paper, including witnessing, attestation, delivery and the decision in *Mercury*.⁴⁸ In Chapter 8 we considered how the requirements that a deed must be witnessed and attested and delivered may be met electronically. We also considered the implications of *Mercury* for electronic execution of documents. We set out potential options for reform and asked for consultees' views.

QUESTION 2: WHETHER “IN THE PRESENCE OF A WITNESS” REQUIRES PHYSICAL PRESENCE

- 4.3 In our consultation paper, we provisionally concluded that the requirement under the current law that a deed must be signed “in the presence of a witness” requires the physical presence of that witness. We asked whether consultees agreed.⁴⁹
- 4.4 We received 162 consultees responded to this question. 147 consultees agreed with our provisional conclusion (approximately 90% of responses), 9 disagreed (approximately 6% of responses) and six responded “other” (approximately 4% of responses).

Consultees who agreed

- 4.5 The vast majority of consultees strongly agreed with our provisional conclusion that the requirement under the current law that a deed must be signed “in the presence of a witness” requires the physical presence of that witness.⁵⁰ For example, GC100 said:

We agree that the natural meaning of this requirement is that the witness must be physically present when the deed is signed (although we have encountered arguments to the contrary).

- 4.6 A response from CMS LLP⁵¹ said:

⁴⁸ *R (Mercury Tax Group Ltd) v Her Majesty's Commissioners of Revenue and Customs* [2008] EWHC 2721 (Admin), [2009] STC 743.

⁴⁹ Electronic Execution of Documents (2018) Law Commission Consultation Paper No 237 (“CP 237”), <https://www.lawcom.gov.uk/project/electronic-execution-of-documents/>, para 4.57.

⁵⁰ 147 of 162 consultees who responded to question (approximately 90% of responses).

⁵¹ CMS Cameron McKenna Nabarro Olswang LLP.

We agree with the Law Commission’s provisional conclusion that the requirement under the current law that a deed must be signed “in the presence of a witness” requires the physical contemporaneous presence of that witness. In the absence of authoritative case law or legislation that specifically addresses and approves “virtual” witnessing, there will be concerns about its effectiveness in the electronic execution of deeds.

- 4.7 The General Council of the Bar of England and Wales also agreed with our provisional conclusion, pointing out that it is “more definitive” than the view taken in the 2016 Note,⁵² which concluded that physical presence was “best practice”.
- 4.8 Some consultees, including the City of London Law Society (“CLLS”) and the BVCA,⁵³ agreed with our provisional conclusion, but said that they expected that the courts of England and Wales would take a practical, flexible approach in relation to witnessing without physical presence. For example, CLLS said:

We expect, however, that the English courts would adopt a flexible approach should this question come before them and would be willing to interpret “in the presence of a witness” to include a person witnessing a signature by a remote technology such as a video link, Skype call or FaceTime. We would also note that the Law Society/CLLS⁵⁴ 2016 Practice Note specifies best practice as ensuring the physical presence of a witness because the position is not free from doubt, but this does not derogate from the view expressed in this response. We note that there are order-making powers in the ECA 2000, s8, which may be used to facilitate the use of electronic communications. These powers have not been used to date, which is consistent with the Law Commission’s view of the current situation. These do carry the possibility of amending primary legislation and allow for provisions relating to deeds, so might be useful to facilitate the use of video-link as well as physically present witnessing in a manner which would give confidence and encourage the use of electronic execution for deeds.

- 4.9 Lloyds Banking Group also suggested it would be possible to argue that a witness would be present if the witness viewed the signing of the deed remotely. Others, including Eversheds Sutherland LLP, GC100 and Bryan Cave Leighton Paisner LLP, did not think that parties could be confident that a court would accept witnessing without physical presence.

⁵² The Law Society Company Law Committee and the City of London Law Society Company Law and Financial Law Committees, “Note on the execution of a document using an electronic signature” (July 2016), <http://www.citysolicitors.org.uk/attachments/article/121/LSEW%20%20CLLS%20Joint%20Working%20Party%20-%20Note%20on%20the%20Execution%20of%20a%20Document%20Using%20an%20Electronic%20Signature.pdf>

⁵³ British Private Equity and Venture Capital Association.

⁵⁴ The City of London Law Society (“CLLS”).

Consultees who disagreed

- 4.10 A small number of consultees⁵⁵ did not agree with our provisional conclusion that under the current statutes, a witness must be physically present when the document is signed. Matthew Wardle (on behalf of third year law students at the University of Cumbria) pointed out that there is no explicit reference to what “presence of a witness” means and suggested that the legislation is open to broad interpretation. Clifford Chance LLP also said that the law is unclear. The Law Society of England and Wales agreed that the law is “not free from doubt”, saying:

There is a debate over whether a witness' presence means being physically present in the room, or watching the signature being applied live. Some lawyers believe that there must be a physical presence while others believe that it may be sufficient for a witness to visually see the hand move. There is no case law or legislation to confirm either interpretation. However, it is generally agreed that it is best practice for the witness to be physically present when the document is signed. This is not just because of doubt over the legal position, but also to minimise any evidentiary risk that the person genuinely saw the signature being applied.

QUESTION 7: SHOULD IT BE POSSIBLE TO WITNESS AN ELECTRONIC SIGNATURE BY VIDEO LINK?

- 4.11 In our consultation paper, we provisionally proposed that it should be possible to witness an electronic signature via video link and then attest the document. We asked whether consultees agreed.⁵⁶
- 4.12 We received 165 responses to this question. 114 consultees agreed with our provisional proposal (approximately 70% of responses), 37 disagreed (approximately 22% of responses) and 14 responded “other” (approximately 9% of responses). A large number of responses (approximately 60 responses) were identical responses which simply said “yes”, adding no further detail.
- 4.13 Consultees responded positively to this proposal but also raised several practical challenges. A clear majority of consultees, including CLLS, the Law Society and law firms agreed that it should be possible to witness an electronic signature via video link and then attest the document. For example, Eversheds Sutherland LLP said:

We feel that the key elements of witnessing require both visual and audible confirmation that something is being done. Both these elements can be achieved by using video link. Inclusion of sound makes it harder for a situation to be manipulated, eg for possible duress on the signatory to be concealed. Quality and speed of video technology will only improve over time which makes the argument for permitting attendance by video stronger.

- 4.14 However, most consultees who supported the proposal did not do so unconditionally. There were a range of issues raised by consultees, including:

⁵⁵ 9 of 162 consultees who responded to this question (approximately 6% of responses). A further six consultees (approximately 4% of responses) responded “other”.

⁵⁶ CP 237, para 8.32.

- (1) whether an electronic signature can be witnessed at all;
- (2) whether the proposal for video witnessing is a viable and practical option;
- (3) whether it would raise an unacceptable risk of fraud; and
- (4) the need for careful legislation.

Can an electronic signature be witnessed?

4.15 In the consultation paper, we noted that there is an argument that even a witness who is physically present may not be able to witness an electronic signature.⁵⁷ In their consultation responses, this point was reiterated by two consultees.

4.16 HM Land Registry said:

It is the view of HM Land Registry that it is not possible for an electronic signature to be physically witnessed in the way that a pen and ink signature can. An electronic document is a collection of data in a computer system, and the electronic signature is another data string that is attached to it. The e-signature is applied to the data within a software system, or in a hardware security module, or some other computing device. A person cannot witness that process. Any witness could not be sure that the signatory had electronically signed the data that the screen purports to represent, or that the screen represents the data that is intended to be signed. This will apply equally if a witness tries to view the signing by video link. Also, the screen is unlikely to show the whole document, perhaps just a small section where the signature is to be shown. If there were a subsequent challenge it may not be possible for the witness to confirm that they witnessed the signing of the whole of an electronic document.

4.17 GC100 said:

In order for the act of “witnessing” a signature to serve its intended function, it is essential that the witness understand the process that he or she has witnessed ... If the witness does not understand what he or she has purportedly witnessed, any subsequent attestation is at best pointless and at worst misleading (in the sense that it may give an inaccurate impression to other parties to the document, and to third parties, that certain formal requirements have been met and can be relied upon). This is not an issue in the case of a ‘wet ink’ signature, since there can be no difficulty in the witness understanding what has taken place. However, in the case of an electronic signature, much will depend on the method used to apply that signature to the document ... our concern here is not that there is no visible representation of the digital information but rather that the witness cannot be certain what instructions have been issued to the computer and how the computer has operated in response to those instructions. We query whether a witness without that knowledge can in fact attest to any particular signature actually having been applied to the document.

⁵⁷ CP 237, para 8.12.

Is the proposal for video witnessing a viable and practical option?

- 4.18 Some consultees raised the question of whether witnessing of deeds is causing a genuine problem which could be solved by video witnessing.⁵⁸ For example, CLLS said:

We agree that it would be useful to extend the concept of what is meant by the "presence of a witness" to include a witness being present and watching the signatory sign by video link or other types of remote technology ... We are not aware that having the witness physically present with the signatory is currently proving a constraint on the use of electronic execution for a document requiring one or more signatures to be witnessed. There are some technical limitations with the witnessing functionality provided by electronic signing platforms, for example where there are issues of commercial confidentiality which mean that the parties do not want a witness unrelated to the deal to have the full document sent to them, or where the identity of the witness will not be known until very close to the time when signing needs to take place. These are not problems related to the physical presence of a witness.

- 4.19 In a similar vein, the Law Society, agreed with our provisional proposal but said:

Although it is true that existing electronic signature platforms do not satisfactorily address witnessing, this is due to the existing functionality of those platforms, rather than any difficulty in locating a physical witness.

- 4.20 Some consultees also noted that there were important practical considerations which would need to be addressed before any move to remote video witnessing.⁵⁹ For example, CMS LLP said:

In our view it is important that the law adapts where appropriate to reflect advances in technology. However, we note that parties adopting this method of witnessing may run into practical difficulties when using today's technology. The witness may need to make qualitative judgments about their ability to see the signatory applying their signature on the particular document through the video link. If the witness subsequently receives the document for attestation, they would need to satisfy themselves that this was the same document that they had observed being signed earlier. There may also be confidentiality concerns if the witness was able to see the content of the document and this may not be acceptable in all cases.

- 4.21 GC100, agreeing that in principle it should be possible for an electronic signature to be witnessed via video link, also highlighted practical issues:

[W]e consider that there may be significant problems in practice that would not arise if the witness were physically present at the signing, particularly with regard to exactly what the witness must be able to see via the video link. We do not, for

⁵⁸ Consultees who responded in this way include the Law Society, CLLS, Clifford Chance LLP, Shoosmiths LLP, the Chancery Bar Association, the BVCA, ILAG (Investment and Life Assurance Group) and Nicholas Bohm, a member of the project's advisory panel.

⁵⁹ Consultees who responded in this way include CMS LLP, GC100, Francesca Tubb, Charles Russell Speechlys, Peter Howes, ICAEW and the Society of Estate and Trust Practitioners (STEP).

example, consider that it should be sufficient that a video link is established between the location where the signing takes place and the location of the witness – in order for witnessing to perform its essential function, and in order for the witness to attest the document, the witness should be able to see the signature being applied to the document over the video link. This may present significant practical difficulties, particularly in signing ceremonies involving large numbers of documents and/or large numbers of parties, not least because video conferencing facilities usually involve cameras located at fixed points designed to facilitate views of the entire proceeding. That being said, we do not think that these practical considerations should preclude the possibility of an electronic signature being witnessed via video link.

- 4.22 The Law Society and Clifford Chance LLP suggested that the focus should be on removing the requirement for a witness for certain documents, rather than on enabling witnessing of deeds through electronic means. Similarly, consultees involved in the conveyancing process advocated a new regime. Documents should not require traditional witnessing and instead should be subject to a system where parties are required to prove their identity prior to signing the document digitally.⁶⁰

Risk of fraud

- 4.23 Many consultees raised concerns about whether the use of remote witnessing would increase the risk of fraud, particularly where documents were executed by older or vulnerable individuals.⁶¹
- 4.24 Several consultees expressed concern about the risks of fraud, but accepted that video witnessing could be used as long as appropriate safeguards were in place. For example, Weightmans LLP said:

Whilst there is an argument to say the law should be more flexible as it is “out of touch” with the modern world and outdated (1989), there is a risk without physical presence that you diminish the protective function mentioned above (protecting against any allegations of undue influence, duress or fraud). There may be issues with video link – bad signal or the signatory may have no facilities to access a platform via video link. The elderly or vulnerable may struggle with this option.

Whilst the safer option may be to insist upon physical presence, this approach would fail to take advantage of the technology now available to us, which was not available when the laws were initially introduced. On balance, with the correct safeguards in place we consider that this option should be available to those who would like to use it, but it should by no means be compulsory.

⁶⁰ Consultees who responded in this way include Beth Rudolf (in a personal capacity and on behalf of the Conveyancing Association) and SLC.

⁶¹ Consultees who responded in this way include Westminster and Holborn Law Society, Weightmans LLP, Francesca Tubb, Elizabeth Foggin, Ian Macara, STEP, Peter Facey, Liverpool Law Society, the Chancery Bar Association, ICAEW, Lucy Samy, Steene Law Ltd, Lesley Walker, Margaret Taylor, Andrea Godfrey, Richard Lane, Robert Tozzi, David Wells, Richard Bates (responding in a personal capacity and on behalf of Cognitive Law Ltd), David Satchell (responding in a personal capacity and on behalf of AmicusLaw), Edward Popham, Catherine Phillips, the Society of Scrivener Notaries, Craig Ward and the Alzheimers Society.

4.25 Westminster and Holborn Law Society, agreeing with our provisional proposal, said:

There is nothing conceptually distinct in witnessing a signature in person as compared with doing so by video link. However, the risk of fraud in using video links is arguably higher. Therefore, if effective safeguards can be put in place to address the potential for fraud to a satisfactory degree, then it should be possible to witness an e-signature by video link and attest it thereafter.

4.26 The Alzheimer's Society said:

Whichever way it is done, it is important that safeguards are put in place to ensure the person with dementia is protected and ensured that they are not under duress when signing a document. For example, the witness must be able to actually see the person with dementia sign a document and be able to attest to this to ensure that they are signing the contract willingly and are not under duress.

4.27 Some consultees considered that the risk of fraud is too great. For example, STEP said:

Despite the appeal of the proposal, there is the question of fraud. The sophistication of modern technology can quite easily be used to dupe participants, for instance, into believing that they are seeing something that is not actually happening. Secure systems would need to be developed to guard against such action.

4.28 Similarly, the Chancery Bar Association said that "without proper safeguards, it may be easy to fool a witness, e.g. into attesting a completely different document from the one just signed".

4.29 One consultee, Michael O'Brien, suggested that video witnessing could be used for commercial parties only.

4.30 Neil Singer, CEO of clicktopurchase®, highlighted the limitations of witnessing an electronic signature via video link and suggested that:

There will be far better technical ways. The most obvious is Blockchain. By using smart contract technology, a party could digitally sign something, this is then passed to the witness who is provided with data to authenticate the signing, and by the actions of the witness the deed will be executed. Plus, technology will provide an electronic audit trail which cannot be established by watching on a video.

Careful legislation

4.31 Some consultees agreed with our provisional proposal, but suggested that any move to remote witnessing would require careful, considered legislation. The General Council of the Bar of England and Wales, Solicitors for the Elderly, the Agricultural Law Association and Peter Hughes each thought that legislation should set out the precise requirements for satisfying witnessing and attestation. It should also deal with issues of identity, the consequences of a technology failure and the extent to which the witness should have sight of the signatory. Icon UK, acknowledging that video witnessing was "technically possible" and should be permitted, said that there would need to be "controls in technical, process and legal matters according to the quantum of gain or risk".

- 4.32 OneSpan noted that there is a comparative aspect to this issue, with state legislatures in the United States enacting legislation which allows for remote witnessing for notaries.
- 4.33 Consultees including the Chancery Bar Association, Yoti, DocuSign, and RBS⁶² cautioned against recommending any solution which is not technology neutral and may become outdated.

QUESTION 8: HOW SHOULD VIDEO WITNESSING BE ATTESTED?

- 4.34 In our consultation paper, we asked consultees in Question 7 about whether the law should be changed to allow for video witnessing of deeds. Question 8 addressed some of the mechanics of video witnessing, to be considered in the event that we recommended it as an option for reform. We asked:

If witnessing by video link is to be permitted, how do consultees consider the witness should complete the attestation:

(1) Via a signing platform which the signatory and witness both log into?

(2) With the document being emailed to the witness by the signatory immediately after signing?⁶³

- 4.35 We received 165 responses to this question. A majority of consultees (118 responses, including identical responses) said that the attestation should be completed by a signing platform. 19 responses agreed that attestation could be completed by the signatory emailing the document directly to the witness immediately after signing. 28 consultees responded “other”.
- 4.36 Most consultees who said that attestation should be completed by a signing platform, rather than by email, considered that email was not sufficiently secure. For example, Margaret Taylor said:

Surely security/privacy is very important, there are enough examples of failure of supposedly secure systems so I cannot think email alone is acceptable or secure enough.

- 4.37 Similarly, Solicitors for the Elderly said:

We would anticipate that the signing platform would give greater security and freedom from technical glitches (e.g. failed delivery of an email, problems in accessing attachments). We also consider it to be the more optimal structure to encourage the prompt completion of the formalities, and therefore reduce the risk that further problems arise, e.g. because of an intervening event such as the death/incapacity of the witness.

⁶² The Royal Bank of Scotland plc.

⁶³ CP 237, para 8.33.

- 4.38 52 consultees submitted an identical response, saying that a signing platform was to be preferred (but only if video witnessing was used – a signing platform alone was not sufficient):

Attachments by email can be insecure and there is a risk of failure to attach, systems refusing to accept, and witnesses seeing the document, which they are not required to presently see the detail of. The example at 8.37,⁶⁴ appears not to be a video link. Video link is acceptable as the witness can see the signatory, but merely an online platform is not acceptable as it fails to fulfil the protective function.

- 4.39 In contrast, Nicholas Bohm, a member of the project’s advisory panel, raised concerns about signing platforms, particularly around the assessment of their reliability:

Even a platform which gives a sufficient explanation of what it does, and how, will leave almost all prospective users with no idea whether the claims it makes, even if accepted, are sufficient to justify reliance on them, nor any idea of how to obtain advice on the point if they need it. And those few users who understand the claims and can decide that they are sufficient to justify reliance will have very little chance in practice of verifying whether the claims are justified in fact.

- 4.40 19 consultees said that either option would be viable for attestation. 11 consultees, including Clifford Chance LLP, CLLS and the Law Society warned against prescribing a technological solution and suggested that any method of attestation should be technology neutral. For example, Peter Howes said:

A signing platform is a technology based solution that does offer significant advantages; however, there are other ways to achieve the same ends and therefore I believe that the guidance and legislation need to be more technology neutral and not specifically reference “signing platforms”.

- 4.41 Clifford Chance LLP said:

We do not consider that it is necessary to prescribe the mode of attestation, provided that the purpose of attestation is met. Attestation is a confirmation that the witness watched the signatory sign the document. Both options (1) and (2) fulfil this purpose. We can see no basis for distinguishing between them, particularly in view of the Law Commission’s stated aim to remain technology neutral. Flexibility in the mode of attestation is also conducive to developments in technology. Any proposals should also be technologically feasible and not too complex so as to prevent uptake.

- 4.42 A minority of consultees said that neither method was a viable option for attestation.⁶⁵ Most of these responses focused on security concerns. For example, Naomi Bowie (responding in a personal capacity and on behalf of Darwin Bowie Ltd) said:

⁶⁴ In this paragraph of the consultation paper, we explored a potential option of departing from the requirement that a signature must be witnessed and attested by replacing it with a use of a signing platform (without a video link). Question 9 deals with this option.

⁶⁵ Consultees who responded in this way include David Satchell (responding in a personal capacity and on behalf of AmicusLaw), Tom Sorby (responding in a personal capacity and on behalf of Ilet and Clark

There is a high risk of fraud with emails, which can be intercepted and altered. If there is to be a video link all parties must be able to see each other. An online platform which merely allows for signing does not provide sufficient protection.

4.43 HM Land Registry said that it believed that certification would be a better method of authenticating a digital signature, rather than an electronic form of witnessing and attestation.

4.44 Judge Elizabeth Cooke suggested that there was a fundamental problem which could undermine the premise of remote witnessing:

How does the witness know that the document he or she is attesting is the one whose execution he or she has witnessed. Alice executes a mortgage. The document sent to Bob from her email address is a transfer, but Bob doesn't know that that is not the document that Alice executed (because the video did not show him the text of the document). Unless you can find an answer to this problem, witnessing by video won't work.

4.45 SLC⁶⁶ indicated that the requirement of witnessing itself should be reconsidered, saying:

In addition to the fact that consider that the witnessing requirement causes unnecessary delays to the conveyancing process, we also consider that the witnessing requirement offers limited benefit or protection as, apart from certain exceptions, the law allows anyone to witness a document.

4.46 Craig Ward, Baron of Lundie and textbook author, pointed out that the personal data of the participants would need to be stored suitably, in line with the law around data protection.

QUESTION 9: WITNESSING THROUGH A SIGNING PLATFORM

4.47 In our consultation paper, we asked consultees whether they considered that it should be possible to witness an electronic signature using a signing platform without a video link or direct communication between the signatory and the witness.⁶⁷

4.48 We received 162 responses to this question. 18 consultees (approximately 11% of responses) agreed that it should be possible to witness an electronic signature using a signing platform without a video link or direct communication between the signatory and the witness. 126 consultees disagreed (approximately 78% of responses) and 18 consultees responded "other" (approximately 11% of responses).

4.49 The majority of consultees said that it should not be possible to "witness" an electronic signature through an online signing platform without a video link or any direct communication between the signatory and the witness. Specifically, most consultees pointed out that the use of a signing platform in this way could undermine the

Solicitors), Lesley Walker, Naomi Bowie (responding in a personal capacity and on behalf of Darwin Bowie Ltd), Richard Lane, Lesley Kemp, CILEx, Shoosmiths LLP.

⁶⁶ The Society of Licensed Conveyancers.

⁶⁷ CP 237, para 8.42.

evidential and protective functions of formalities for deeds. For example, Buckles Solicitors LLP said:

This leaves open the risk of the “signing” being made by someone who is either not the individual (i.e. fraud) or is the individual but they are subject to undue influence or lack the mental capacity to agree to the document in question.

- 4.50 Some consultees were concerned about the execution of lasting powers of attorney (“LPAs”).⁶⁸ For example, 58 consultees said:

It undermines the protective function of the witness. This is vital execution of lasting powers of attorney. It would increase the opportunity for fraud, as the family who seek a power of attorney, often have easy access to the donor’s computer and personal data and can create a power without the donor’s full knowledge.

- 4.51 The Society of Scrivener Notaries noted that:

... the removal of the requirement for a witness to observe and communicate with the signatory to a deed would represent too far a departure from the law. The ability to witness an electronic signature without a video link or direct communication may give rise to a duality of standards in the attesting of deeds: why may a witness not be required to observe and communicate with the signatory to a deed in a digital environment while he or she must do so when a deed is executed on paper?

- 4.52 STEP and Westminster and Holborn Law Society acknowledged that it might be technically possible to witness an electronic signature through an online signing platform but were concerned that the absence of direct communication would increase the potential for fraud.

- 4.53 Three consultees added that the option of using a signing platform in this way offers limited additional benefits and complicates the requirement to “witness” an electronic signature.⁶⁹ For example, SLC said:

Whilst we accept that the ability to witness an electronic signature through an online signing platform in real time is a significant step forward to facilitate an electronic signature system, we would reiterate our belief that this offers very limited additional benefit if the electronic signature system already incorporates sufficient proof of identity verification checks for the conveyancer to prove, beyond all doubt, that the person executing the document is, indeed, the person that they are purporting to be.

- 4.54 The Law Society and Clifford Chance LLP noted that there may be some practical issues with this option, including that it is not (at least currently) possible to log onto a platform simultaneously.⁷⁰

⁶⁸ 72 of 126 consultees who responded to this question raised this point.

⁶⁹ Consultees who responded in this way include Beth Rudolf (in a personal capacity and on behalf of the Conveyancing Association), and SLC.

⁷⁰ Nicholas Bohm, a member of the project’s advisory panel, also raised this point.

- 4.55 GC100 and Lloyds Banking Group said that the online signing platform verifies the identity of the signatory through the authentication process and that the signatory was present and signed the document. GC100 said:

We are also of the view that, if the online signing platform requires the signatory to authenticate himself or herself in order to access the platform, and also deals with the application of an electronic signature to a document, there should be no need for a separate witness to attest to the signing of the document, since this confirmation can be provided by the platform itself. Indeed, if the signatory and witness are merely logged into the signing platform simultaneously, whilst the witness will be able to attest to the output that has been presented on his or her screen, he or she will not be able to attest to what the signatory has actually done or how the platform has actually operated. The witnessing function could more effectively be served by the platform simply keeping a record of the transaction (which would be more accurate and less prone to error, provided that the platform can provide sufficient guarantees that the data has not been tampered with). In these circumstances, it is difficult to see what value is added by the witness attesting to a fact that could readily be confirmed by the platform itself.

- 4.56 Lloyds Banking Group said:

In the circumstances described, the witness would arguably be relying on the technology to ensure that the signatory is in fact the correct individual, that the signatory was present, and that the signatory did in fact sign the document. Accordingly, the witness may not be seen as adding value to the process, particularly as a digital certificate could potentially perform the same function as the witness in these circumstances.

- 4.57 A small number of consultees said that it should be possible to “witness” an electronic signature through an online signing platform in real time, without a video link or any direct communication between the signatory and the witness. However, among those who commented, some consultees raised concerns such as the security of the platform, the value, if any, of the witness in this case and the need to ensure that the person logged onto the platform is indeed the person named in the document.⁷¹

QUESTION 10: REPLACING WITNESSING AND ATTESTATION WITH A FORM OF TECHNOLOGY

- 4.58 In our consultation paper, we expressed the view that the witnessing and attestation requirement for electronic signatures on deeds should not be replaced with a requirement for a particular type of technology, such as a digital signature using Public Key Infrastructure. We asked whether consultees agreed.⁷²
- 4.59 We received 159 responses to this question. 138 consultees agreed with our view (approximately 86% of responses) that the witnessing and attestation requirement for electronic signatures on deeds should not be replaced with a requirement for a

⁷¹ Consultees who raised some of these concerns were AliasLab UK Limited, Stephen Bowman, the Chancery Bar Association, Iain Macfarlane and DocuSign.

⁷² CP 237, para 8.50.

particular type of technology, such as a digital signature using Public Key Infrastructure. 11 consultees disagreed (approximately 7% of responses) and 10 consultees responded “other” (approximately 6% of responses).

Consultees who agreed

4.60 A significant majority of consultees strongly agreed with our view that there should be no requirement for a particular type of technology.⁷³

4.61 Several consultees, including the Conveyancing Association, DocuSign, GC100 and RBS, agreed with our view, pointing out that mandating a particular type of technology would stifle innovation or undermine the flexibility of the common law.⁷⁴ For example, DocuSign said:

We agree with the Law Commission that flexibility is valuable for the range of agreements under consideration, and that requiring a particular type of technology would be counterproductive to continued innovation and the emergence of best practices.

4.62 Other consultees, including Taylor Wessing LLP and ICAEW,⁷⁵ considered that any legislative requirement to use a particular type of technology is likely to become outdated.⁷⁶ For example, GC100 said:

Legislation in this area should be technology neutral. Any requirement for a particular type of technology may preclude the use of alternative types of technology that are functionally equivalent or better, and is also likely to become obsolete over time.

4.63 Peter Howes noted that:

The key learning element from any understanding of security is that yesterday’s security approaches have been compromised (to some degree), today’s are being attacked and compromised; therefore, there will always be a need to replace or supplement current security tools and techniques with improved security tools, techniques and processes.

4.64 Some consultees noted the possibility that different types of documents could require different types of signatures.⁷⁷ A one-size-fits-all approach may not be appropriate. For example, the Chancery Bar Association explained that:

⁷³ 138 of 159 consultees who responded to this question (approximately 86% of responses).

⁷⁴ Consultees who responded in this way include Beth Rudolf (in a personal capacity and on behalf of the Conveyancing Association), Stephen Bowman, Benjamin Elliott, DocuSign, Lloyds Banking Group, RBS and Adobe, Inc.

⁷⁵ Institute of Chartered Accountants in England and Wales.

⁷⁶ Consultees who responded in this way include Iain Macfarlane, GC100, ICAEW, Taylor Wessing LLP, Clifford Chance LLP, Peter Howes and Adobe, Inc.

⁷⁷ Consultees who responded in this way include Weightmans LLP, the Chancery Bar Association, Clifford Chance LLP, DocuSign, Kathryn Toomey (on behalf of second year law students at the University of Cumbria) and STEP.

The technology to be used needs to satisfy the signing requirements of the document to be signed. In some cases a simple electronic signature, made by typing a name into a Word document, might be sufficient, while other cases might need the security of a public key infrastructure.

- 4.65 Consultees including CLLS, Taylor Wessing LLP, OneSpan and the Society of Scrivener Notaries said that technology such as Public Key Infrastructure may be costly and cumbersome to use, especially in a private context. The Society of Scrivener Notaries said that they:

encounter a broad range of deeds on a daily basis, many of which are both prepared, and for use, in overseas jurisdictions. We, therefore, share the view that a technological solution run by a single “trust service provider” or a network of such providers would be unmanageable, confusing and, potentially, cost-prohibitive.

- 4.66 Clifford Chance LLP and Hogan Lovells International LLP also noted that there is a need for a consistent approach between the electronic execution of registrable instruments and other documents.

Consultees who disagreed

- 4.67 Eleven consultees did not agree with our view.⁷⁸ HM Land Registry and the Notaries Society referred to eIDAS to indicate that the law already includes provisions on certain types of signatures such as digital signatures. Replacing the witnessing and attestation requirement for electronic signatures with a requirement for a digital signature, with a certificate, would be consistent with the current law. The Notaries Society noted that:

It is essential to differentiate between the different types of digital technology and to understand what is appropriate to meet the needs of the particular transaction.

- 4.68 ICAEW, whilst agreeing with our view, said:

We do question, however, why the Law Commission does not consider the use of digital signatures, rather than e-signatures. We understand this is the case in Scotland and we are not aware that this has caused any problems or has acted as disincentive to the use of technology to sign and execute documents. Digital signatures are commonly used (even prescribed) in many other jurisdictions (eg, Scotland) and are inherently more secure than e-signatures as they are produced by public key cryptography which has built-in security measures.

- 4.69 In relation to our general approach to deeds in the consultation paper, HM Land Registry sounded a note of caution, saying:

HMLR is of the view that it is not appropriate to try to replicate the paper process in the digital world. The existing law on e-signatures recognises this, and introduces provisions for trust services. A trust certificate is provided with an electronic signature, which links the signature to a person, and also protects the integrity of the data once signed. Certification takes the place of witnessing, transposing a notarial

⁷⁸ 11 of 159 consultees who responded to this question (approximately 7% of responses).

model into the digital environment ... HM Land Registry is concerned about the confusion that will be caused by the Law Commission's proposals. The proposal will result in two different regimes for digital deeds.

- 4.70 Three consultees did not agree, in principle, with electronic signatures or, more specifically, with deeds being executed electronically.⁷⁹ David Satchell (responding in a personal capacity and on behalf of Amicus Law) was concerned about the potential of risks to vulnerable users.

QUESTION 11: A NEW CONCEPT OF ELECTRONIC ACKNOWLEDGEMENT?

- 4.71 The final option for witnessing and attestation which we considered in the consultation paper was that of electronic acknowledgement. We provided the following example:

Alice signs a deed with her electronic signature. Alice phones or emails Bob to tell him that she has signed the document, then sends the document to Bob. Bob sees the document with Alice's signature. Bob signs the document with his electronic signature and includes a statement on the document that Alice has acknowledged her signature to him.

- 4.72 In the consultation paper, we asked:⁸⁰

Do consultees think that there is a case for moving away from the traditional concepts of witnessing and attestation in the context of deeds executed electronically, allowing for electronic acknowledgement? If so:

- (1) How should electronic acknowledgement be effected (for example, by email, telephone, text message, in person)?
- (2) Do consultees consider that there should be a prescribed period of time (for example, 24 hours) within which:
 - (a) acknowledgement must occur after signing; and
 - (b) acknowledgement and witnessing must take place?
- (3) How should the witness record the signatory's acknowledgement?

Is there a case for electronic acknowledgement?

- 4.73 We received 164 responses to this question. 27 consultees thought there is a case for moving away from the traditional concepts of witnessing and attestation in the context of deeds executed electronically, allowing for electronic acknowledgement (approximately 17% of responses). 124 consultees disagreed (approximately 76% of responses) and 13 consultees responded "other" (approximately 7% of responses).
- 4.74 The following paragraphs deal with the principal question, which is whether consultees think that there is a case for moving away from the traditional concepts of witnessing

⁷⁹ Consultees who responded in this way were David Wells, Carpenter & Co Solicitors and Tom Sorby (responding in a personal capacity and on behalf of Ilet and Clark Solicitors).

⁸⁰ CP 237, para 8.60.

and attestation in the context of deeds executed electronically, allowing for electronic acknowledgement.

Consultees who agreed

4.75 27 consultees⁸¹ agreed with our statement that there is a case for moving away from the traditional concepts of witnessing and attestation in the context of deeds executed electronically, allowing for electronic acknowledgement.⁸²

4.76 Among these consultees, there was support for a move to a different type of system. For example, Stephen Bowman said:

Absolutely (other than specific exceptions for vulnerable persons / special contracts). As mentioned in a number of responses above, a witness adds very little value to the contracting process but does introduce inconvenience, complexity (as demonstrated by the need for this consultation) and cost. In my view, this project would be a huge success if the general law changed to allow documents to be executed as deeds by the execution blocks clearly stating this, rather than having the find a witness to also execute the document.

4.77 Beth Rudolf said:

Yes we should move away from traditional witnessing.

The electronic acknowledgement however we would propose another option so that the fact that the signatory is intending on entering into the transaction should be through the initiation of a signing process by a qualified person where there is a potential for vulnerability issues.

So if the signatory says that they wish to be bound to the deed, the qualified person initiates the digital/electronic signing process. The signatory then confirms their identity and signs the document. The technology performs the 'witnessing role' and the qualified person has acknowledged the signatories intention to be bound upon delivery.

4.78 euNetworks said:

The purpose of witnessing is really evidential - there is someone else who can confirm that they saw someone sign the document. This could be managed through technology with ID verification. This would ultimately be far better evidence and easier to find and prove than trying to track down a secretary, neighbour or acquaintance who may have been handy to witness a signature at the time.

⁸¹ 27 of 164 consultees who responded to this question (approximately 17% of responses).

⁸² Consultees who responded in this way include OneSpan, Chris Carr, AliasLab UK Limited, Stephen Bowman, David Satchell (responding in a personal capacity and on behalf of AmicusLaw), Beth Rudolf, euNetworks, Gabriella Cuoghi (for commercial deeds only), Caroline Carter (for commercial deeds only), Charles Russell Speechlys, Matthew Wardle (on behalf of third year law students at the University of Cumbria), Clifford Chance LLP, Eversheds Sutherland LLP, Benjamin Elliott, Yoti, DocuSign, Catherine Phillips, Taylor Wessing LLP and GC100.

- 4.79 As pointed out by consultees, a new system could include features which help protect individuals against abuse and fraud. For example, UK Finance said:

The concept of an ‘electronic acknowledgement’ merits further discussion but could, in principle, be a useful tool, although the Law Commission highlights some of the potential problems that could arise with its use. The possibility of fraud or other illegal activity would need to be carefully considered. Where email is used it should be to drive a signatory or witness to a secure and auditable service.

- 4.80 Eversheds Sutherland LLP noted the practical benefits of the concept of acknowledgement and argued that it should be allowed for both paper and electronic documents:

We think the law should allow for electronic signatures to be later acknowledged. However, we do not believe that there should be any divergence in the rules just because a document has been signed electronically. Any change in the law should therefore treat physically and electronically signed documents in the same way.

It is not currently possible for a signatory to acknowledge a document that he or she has previously signed using a wet ink signature, other than a will. If electronic signatures are to be permitted to be acknowledged rather than witnessed, the same should apply for traditional, wet-ink signatures.

The purpose of an acknowledgement is to verify a signature. Witnessing plays a similar role – the witness verifies that he or she has seen a signature physically applied to a document. But acknowledgement would avoid the need for signature and verification to occur concurrently. This would be a relaxation of the current rules around executing deeds without losing all the benefits of the witnessing process.

Allowing electronic signatures to be later acknowledged would avoid signing being frustrated, for example by a broken video link preventing a remote witness from witnessing the original signature and so would have practical application in the context of modern business transactions.

Consultees who disagreed

- 4.81 A significant majority of consultees disagreed with this provisional proposal.⁸³ Of the consultees who disagreed, a majority were concerned about protections for individuals executing deeds. Identical responses were provided by 64 consultees. These acknowledged that there may be a case for moving away from traditional concepts in limited circumstances:

Whilst they may work for commercial deeds, the protective function is not sufficient for personal deeds.

- 4.82 24 respondents provided other responses which highlighted the protective nature of deeds, particularly for those documents executed by individuals.

⁸³ 124 of 164 consultees who responded to this question (approximately 76% of responses).

4.83 Other consultees rejected the notion entirely.⁸⁴ For example, the Society of Scrivener Notaries said:

While the reasons behind the proposal are well considered, it is our conclusion that there is no material advantage to a system of electronic acknowledgments over one of electronic witnessing. The act of witnessing is well engrained in the public conscience, and we believe that this will remain true irrespective of whether a witness attests an electronic signature or one on paper. It is submitted that any legal concept of electronic acknowledgment would fail to find suitable traction in the public domain and, as a result, it would prove to be an inadequate alternative to witnessing.

4.84 CILEx⁸⁵ said:

With specific regard to the Law Commission's suggestion of 'electronic acknowledgement'; the new concept was recognised as an innovative approach. However, member opinion remained highly sceptical that this would work in practice, at least not in a manner that would provide benefit to the current system of witnessing/attestation.

4.85 Jennifer Harris said:

Having a witness is a long standing requirement to ensure that the person signing the document is actually there doing it. This can be updated to ensure that they are witnessing the electronic signature but whether or not to move away from the traditional concept of witnesses is to my mind a completely separate question to whether or not documents can be executed electronically.

4.86 The Hogan Lovells International LLP said:

We do not agree that the use of electronic acknowledgement is helpful or useful.

As demonstrated in our previous responses, we believe that (with little change) the existing law allows documents to be signed and witnessed in various methods electronically.

If a signatory only has access to paper and pen they can still witness in the traditional way; if signature is to be electronic then we deal with this as outlined in earlier questions both using "low tech" methods such as scanning emails and video link witnessing, to more high tech methods such as digital signing platforms facilitating witnessing. If we were also as a nation to work towards the development of PKI Infrastructure so that we can be certain as to the identity of the signatory, we would no longer even need a witness in those circumstances.

⁸⁴ Consultees who responded in this way include Bryan Cave Leighton Paisner LLP, Peter Howes, Icon UK Limited, Naomi Bowie (responding in a personal capacity and on behalf of Darwin Bowie Ltd), David Wells, Judge Elizabeth Cooke, Michael O'Brien, Tom Sorby (responding in a personal capacity and on behalf of Ilet and Clark Solicitors), Peter Hughes, Jennifer Harris and the Society of Scrivener Notaries.

⁸⁵ The Chartered Institute of Legal Executives.

A “halfway house” of electronic acknowledgment is unnecessary, cumbersome and would not fulfil the evidential purposes of witnessing.

- 4.87 The Chancery Bar Association, CLLS and the General Council of the Bar of England and Wales did not consider that this proposal would have real, practical benefits. The General Council of the Bar of England and Wales said:

The circumstances in which deeds are required are limited and, ordinarily, involve some significant act on the part of the maker. It would appear sensible that such acts are accompanied by some measure of attendant formality. Given the limited use made of deeds, we do not anticipate that there will be any significant commercial benefits in departing from traditional concepts.

- 4.88 The Chancery Bar Association said:

[W]e think this is trying to solve a problem that does not really exist, given the ready availability of a live witness, either physically or (if the reforms above proceed) digitally present.

Other responses

- 4.89 Other consultees, regardless of how they classified their response, suggested that a further review of the law of deeds could consider the purpose of witnessing and the circumstances in which it is necessary. For example, STEP said:

STEP supports the suggestion that the Law Commission undertakes a review of the law of deeds, which should include detailed consideration of the issues raised by this question. Any electronic programming should provide for acknowledgment in a manner that gives comfort to the parties and is specifically audited to ensure that it is secure and authentic. Consideration also needs to be given to the position of third parties in the event that a deed is held to be void or voidable, and the appropriate protection incorporated.

- 4.90 Nicholas Bohm, a member of the project’s advisory panel, said:

I think that the Paper’s proposal for an acknowledgement procedure would provide a welcome improvement in the convenience and flexibility with which the execution of Deeds can be arranged, in whatever form. I therefore think that a review of the law of Deeds should be a future Law Commission project, and that the use of an acknowledgement should be considered within it.

- 4.91 Both Shoosmiths LLP and HM Land Registry suggested that an approach similar to that of HM Land Registry might be the way forward. Shoosmiths LLP said:

We believe that this consultation is not the appropriate place for these issues to be raised. We think that they should be addressed in the context of a project that considers whether there is still a need for deeds in the first place. Having said that, perhaps one solution could be similar to the solution being considered by the Land Registry in the context of electronic conveyancing.

How should electronic acknowledgement be effected?

4.92 We asked consultees how electronic acknowledgement should be effected (for example, by email, telephone, text message, in person).⁸⁶

4.93 We received 140 responses to this question. 76 consultees (approximately 54% of responses) said that electronic acknowledgement should be effected in writing or in person. 68 of those consultees (approximately 89% of responses) highlighted that a telephone call would not be sufficient from an evidential perspective. We received identical responses from 58 consultees which said:

Commercially it would have to be in writing or in person. A telephone call is too insecure, as it is not recorded and could be subject to challenge in the courts.

4.94 Similarly, Solicitors for the Elderly and GC100 raised concerns about electronic acknowledgement by telephone as it does not provide sufficient certainty and/or security. GC100 said:

We have some reservations about whether acknowledgement by telephone should be permitted, but acknowledgement through a system of communication that allows the signatory to be traced should be allowed. We would stress that this is not the same as a requirement for the signatory to verify his or her identity – the signatory may not be who they claim to be. However, this would then satisfy the requirement that, to use the phrase adopted by the Law Commission, the witness can say, “that is the person who acknowledged their signature to me”.

4.95 Selwood Research said that electronic acknowledgement should be effected “over a two-way voice or video link that delivers rich evidence, not by email, text message, etc.” Lloyds Banking Group said that if the acknowledgement is made by email, telephone or text message, additional controls need to be in place for evidential purposes. UK Finance said that “where email is used it should be to drive a signatory or witness to a secure and auditable service.”

4.96 A small number of consultees referred to the importance of the flexibility of the law. They suggested that a number of different approaches could be used, provided there is a record of the acknowledgement in case of a future dispute.⁸⁷ For example, Eversheds Sutherland LLP said:

Electronic acknowledgement would be best effected in person or using video or photographic or recorded audio so that there is an actual connection between the signatory and the document being signed. Text message or email could in our view too easily be manipulated.

⁸⁶ Consultation question 11(1); CP 237, para 8.60.

⁸⁷ Consultees who responded in this way include OneSpan, AliasLab UK Limited, David Satchell (responding in a personal capacity and on behalf of AmicusLaw), Charles Russel Speechlys, euNetworks, Matthew Wardle (on behalf of third year law students at the University of Cumbria), Eversheds Sutherland LLP, Yoti, Nicholas Bohm (a member of the project’s advisory panel), the Society of Scrivener Notaries and Catherine Phillips. Elizabeth Foggin and Peter Howes also emphasised that there must be a record of the acknowledgement.

The implementing legislation should refer to requirements in principle rather than trying to specify any particular technology as that will change too quickly over time. The requirement should be for evidence that can be heard and/or seen.

4.97 OneSpan said:

As with witnessing in general, different approaches are possible but each may provide different levels of proof. Email, text messages and recorded phone calls generate audit trails that can be referred to at a later date. Using a signing platform can be even stronger since the platform can prompt the signatory with a separate message to acknowledge, which can then be verified by the witness separately. In addition, the audit trails in signing platforms are usually more detailed.

4.98 Six consultees said that electronic acknowledgement should be effected in person only.⁸⁸ Four consultees chose email as a method to effect electronic acknowledgement.⁸⁹ Other consultees mentioned more than one option.⁹⁰ For example, the Conveyancing Association said:

Text, email, a platform which submits a token to enable the signatory to log in to execute the document. This could be done in person if there are additional concerns around duress or capacity.

4.99 TLT LLP, Solicitors and Richard Oliphant did not agree with electronic acknowledgement in principle. Likewise, HM Land Registry said:

While acknowledgment might seem attractive, HM Land Registry believe that this could be logistically complex and potentially open to risk due to the inherent vulnerabilities in use of e-mail and telephone.

4.100 Clifford Chance LLP and BVCA highlighted that electronic acknowledgement does not make the execution of a deed any easier than witnessing in person. For example, Clifford Chance LLP said:

...The witness does not see the signatory signing. If the signatory acknowledges the signature to the witness in person, it could just as easily sign in front of the witness which would be preferable from an evidential perspective.

⁸⁸ Consultees who responded in this way include STEP, Jennifer Harris, Smith Partnership, Lesley Kemp and David Wells (although he pointed out that there should not be electronic acknowledgement).

⁸⁹ Consultees who responded in this way include Steene Law Ltd, Kayleigh Brown, Caroline Carter and Kennedys Law LLP. Caroline Carter and Kennedys Law LLP preferred email but raised security concerns and the potential risk of fraudulent activity.

⁹⁰ Consultees who mentioned more than one option include DocuSign (by email or the DocuSign platform), John Breeze (in writing, email or text), the General Council of the Bar of England and Wales (in person or video link), the Chancery Bar Association (audio, video link or in person), ILAG (email, telephone or in person) and Chris Carr (Government Gateway, Blockchain or public keys).

Prescribed time periods

4.101 We asked consultees whether they thought there should be a prescribed period of time (for example, 24 hours) within which:

- (1) acknowledgement must occur after signing; and
- (2) acknowledgement and witnessing must take place?⁹¹

4.102 We received 134 responses to this question. 107 consultees agreed that there should be a prescribed period of time (approximately 80% of responses). 9 consultees disagreed (approximately 7% of responses) and 18 consultees responded “other” (approximately 13% of responses).

Consultees who agreed

4.103 The majority of consultees agreed that there should be a prescribed period of time within which acknowledgement must take place.⁹² Among those who agreed, 76 consultees said that there should be a prescribed period of time in relation to commercial deeds only.⁹³

4.104 Six consultees⁹⁴ said that the prescribed period of time should be within 24 hours, four consultees⁹⁵ said that it should be longer than 24 hours, and one consultee⁹⁶ said that it should be “3 hours”.

4.105 Three consultees highlighted that the prescribed period of time should depend on the type of document.⁹⁷ For example, Icon UK Limited said:

Yes - We would encourage a shorter time window of acknowledgment and witnessing for UK only signing for deeds, but would understand 24 hours where signatures occur outside UK/EU.

For any more trivial documents, not needing witnessing if these are being considered, the time period could be relaxed (e.g. 2-3 days).

⁹¹ Consultation question 11(2); CP 237, para 8.602.

⁹² 107 of 134 consultees who responded to this question (approximately 80% of responses).

⁹³ These consultees generally also said, in response to question 11, that the concept of electronic acknowledgement should only be used commercial deeds because it provides insufficient protection for deeds executed by individuals.

⁹⁴ ILAG, Steene Law Ltd, Ian Macara, Catherine Phillips, GC100 and Matthew Wardle (on behalf of third year law students at the University of Cumbria) (although he noted that acknowledgement and witnessing should take place within three months).

⁹⁵ The Chancery Bar Association, Mike Paley, Chris Carr and Kerry Bates.

⁹⁶ Kayleigh Brown.

⁹⁷ Icon UK Limited, GC100 and Caroline Carter.

Consultees who disagreed

4.106 A small number of consultees said that a period of time should not be prescribed.⁹⁸ The Law Society and Eversheds Sutherland LLP noted that prescribing a period of time could lead to unnecessary complications if it was not met. The Law Society said:

We are against introducing a window for acknowledgment to take place as we cannot see any benefit to doing so. In reality the 24 hour time limit could become a contentious point, with parties arguing about the validity of witnessing if there is dispute over whether the time frame has been met. It would be unfortunate if documents could be found invalid simply because a technicality, such as a 24 hour time limit on witnessing, had not been met.

4.107 Eversheds Sutherland LLP added:

If the rules stated that the document would not take effect until such time as the signature was acknowledged there is no reason to have a time limit. There is no current time limit on acknowledging wills and so there is no reason, if acknowledgement is to be permitted, to have a different approach for documents other than wills.

4.108 OneSpan and Charles Russell Speechlys said that acknowledgement should occur as soon as practicable. The Society of Scrivener Notaries and ICAEW emphasised that the law should remain flexible.

Other responses

4.109 Some consultees considered other factors in relation to the question. For example, Peter Howes said:

A simple statement that is very difficult to implement; a time limit on the period between signing and acknowledgement is not simple to enforce as the signer may delay for an indeterminant time and also it is common practice for deeds to be signed un-dated.

4.110 STEP emphasised that:

If there is a prescribed period, clear evidence of compliance will need to appear on the face of the deed. If the period is designated in hours, rather than days, the actual time will need to be shown on the deed, otherwise third parties may need further evidence of compliance before they might be willing to act in reliance upon the validity of the deed.

It will also be necessary to identify the effect of a signature being witnessed outside of the prescribed period – will the deed be void or voidable?

4.111 Selwood Research and Richard Lane noted that witnessing should take place in real time. Richard Oliphant did not agree with electronic acknowledgement in general. Tom Sorby (responding in a personal capacity and on behalf of Ilet and Clark Solicitors) did

⁹⁸ Consultees who responded in this way include Eversheds Sutherland LLP, Yoti, OneSpan, ICAEW, Charles Russell Speechlys, the Society of Scrivener Notaries, the Law Society and Adobe, Inc.

not agree with electronic signatures and witnessing while Peter Hughes raised concerns about the potential for fraud and abuse when executing deeds electronically.

Recording the signatory's acknowledgement

4.112 We asked in the consultation paper how the witness should record the signatory's acknowledgement.⁹⁹

4.113 We received 130 responses to this question. A large number of consultees said that the witness should record the signatory's acknowledgement in writing, by email or text message.¹⁰⁰ 18 consultees said that it should be in writing only¹⁰¹ while four consultees¹⁰² said that it should be in writing or in an email. Eight consultees agreed with our view in the consultation paper that the record of the acknowledgement could appear on the document itself.¹⁰³ For example, Catherine Phillips said:

The record should appear on the document and include details of the witness and the method by which the acknowledgement was delivered.

4.114 OneSpan said:

This could be stored in the document itself if it is practical. Otherwise it should be stored as part of a reasonably secure audit trail that corresponds to the transaction.

4.115 Similarly, Icon UK Limited, euNetworks, DocuSign, Ian Macara, Mike Paley and Adobe, Inc noted that the witness should record the signatory's acknowledgement via an audit trail. For instance, Icon UK Limited said:

In a manner that is bound to the evidential audit trail in a sufficiently secure and robust manner that can prove beyond reasonable doubt that the parties are who they claim to be and that the communication is genuine. It should be noted that there are technologies available which means that the process is no more onerous than organising a video meeting.

⁹⁹ Consultation question 11(3); CP 237, para 8.60

¹⁰⁰ 59 consultees (approximately 45% of responses) submitted an identical response, saying that the acknowledgement should be recorded "In writing, email or text".

¹⁰¹ Consultees who responded in this way include Sarah White, Weightmans LLP, Steene Law Ltd ("a written note"), Gabriella Cuoghi, Rosemary Alison Wyeth, MLP Law Ltd, Buckles Solicitors LLP ("which could be electronic"), Naomi Bowie, Bana Vaid and Associates, Kerry Bates, Arnison Heelis, Margaret Taylor, Maria Goodacre, Kenneth Seakens, Ella Lewis, John Breeze ("Electronic or printed copy of written acknowledgement"), Caroline Carter ("in handwriting (timed) for their own record, with an email to confirm") and Solicitors for the Elderly.

¹⁰² Consultees who responded in this way include Michael O'Brien, Edward Popham, Elizabeth Foggin and Michael Parr.

¹⁰³ Consultees who responded in this way include OneSpan, Weightmans LLP, ILAG, Peter Howes, Kathryn Toomey (on behalf of second year law students at the University of Cumbria), Catherine Phillips, Richard Lane ("By a wet signature on the document..."), and Nicholas Bohm (a member of the project's advisory panel) ("...but it is just one example of the forms of good practice...").

4.116 David Satchell (responding in a personal capacity and on behalf of AmicusLaw) and STEP highlighted that the signatory's acknowledgement should be recorded in a manner that ensures it could be used for future evidential purposes. STEP said:

This again raises the concern as to the preservation and access to any such evidence in the future, conscious that with, trusts for example, the deed and the evidence that it was validly executed may need to be accessible for up to 125 years from the date of execution.

4.117 The Society of Scrivener Notaries, Yoti, the Law Society and ICAEW emphasised that the law should remain flexible and/or technology neutral. The Society of Scrivener Notaries said:

The Society holds the opinion that both the signatory to a deed and the witness must have flexibility when it comes to how the acknowledgment is recorded. While it is natural to assume that the record of the acknowledgment and the witness's electronic signature ought to feature on the deed itself, it should not be the sole option. We understand that there may be circumstances in which it is more convenient to sign a discrete document of acknowledgment, especially if doing so avoids any "unreasonable delay" in obtaining the witness's electronic signature.

4.118 Other consultees mentioned other ways to record the signatory's acknowledgement. For example, Kennedys Law LLP said that it should be "via video link up", Selwood Research said that there should be a "recording of a video or audio declaration" while Chris Carr said it should be "via an electronic portal".

4.119 Charles Russell Speechlys raised concerns about the risk of fraud and said that:

Confirmation of the subject signing should be verbal (by telephone/ skype) to confirm that it hasn't been signed by someone else.

4.120 The Law Society and Clifford Chance LLP noted that the circumstances when witnessing is required for both wet ink and electronically signed documents should be reviewed and potentially reduced. Both organisations said that any specific requirements for alternative options for witnessing should be considered by the industry working group.

QUESTION 12: DELIVERY

4.121 In our consultation paper, we set out our view that the requirement that deeds must be delivered does not impede the electronic execution of deeds in practice. We asked consultees whether they agree.¹⁰⁴

4.122 We received 162 responses to this question. 138 consultees agreed with our view that the requirement that deeds must be delivered does not impede the electronic execution of deeds in practice (approximately 85% of responses). 13 consultees disagreed (approximately 8% of responses) and 11 consultees responded "other" (approximately 7% of responses).

¹⁰⁴ CP 237, para 8.70.

Consultees who agreed

4.123 A strong majority of consultees agreed that the requirement that deeds must be delivered does not impede the electronic execution of deeds.¹⁰⁵ For example, Lloyd's Banking Group said:

We agree that the requirement that deeds must be delivered does not impede the electronic execution of deeds as the delivery process could be conducted electronically.

4.124 Some consultees, including the Law Society and RBS, agreed that the requirement for delivery does not impede the electronic execution of deeds but suggested that the Law Commission could review the concept of delivery in a future project.¹⁰⁶ For example, the Law Society said:

We think that the Commission, as a future project, should revisit the concept of delivery and that the provisions for delivery should be brought up-to-date. There is a good argument that the law of delivery is antiquated and has little effective use in the modern world. If the concept of "delivery" is to be retained as a constituent of the execution of deeds, it should at least be modernised (e.g. be used to set the "effective date of the deed").

4.125 Similarly, the Chancery Bar Association suggested that reform of delivery to reflect modern practices would be beneficial. GC100 said that there is a "general misunderstanding about what the requirement for delivery actually entails". Weightmans LLP said that it could be useful to clarify the definition of "delivered" in the context of electronic signatures. Peter Howes agreed that the term "delivery" is inappropriate but said that it is not necessary to change it at the moment.

4.126 The Conveyancing Association noted that:

'Delivered' can take a variety of forms and is a necessary and convenient part of the process of execution as it means that documents can be executed in preparation without taking effect until they have been delivered.

4.127 Other consultees said that in practice they include provisions on delivery in their documents. Such provisions may state, for example, that delivery is not effective until the document is dated.¹⁰⁷ They agreed with our view that delivery does not impede the electronic execution of deeds. For example, Eversheds Sutherland LLP said:

We agree that the requirement for deeds to be delivered as well as executed is not impeded by electronic execution. Provisions around delivery are usually dealt with in the body of the document anyway (ie the document will contain a statement along

¹⁰⁵ 138 of 162 consultees who responded to this question (approximately 85% of responses).

¹⁰⁶ Consultees who responded in this way include the Law Society, RBS, the Chancery Bar Association and CMS LLP.

¹⁰⁷ Consultees who responded in this way include Catherine Phillips, Hogan Lovells International LLP, Eversheds Sutherland LLP, Clifford Chance LLP and Adobe, Inc.

the lines of “executed as a deed and delivered on the date set out above”). As such, delivery is achieved at the point when the date is inserted.

Consultees who disagreed

4.128 A small number of consultees¹⁰⁸ did not agree with our view that the requirement that deeds must be delivered does not impede the electronic execution of deeds. Yoti, a technology company, agreed with the Law Commission’s 1985 Working Paper¹⁰⁹ that there are evidential difficulties with the concept of delivery and suggested that we should recommend a presumption of delivery in our final report or suggest the abolition of delivery entirely. CILEx told us that a majority of its members considered that physical delivery of a deed was necessary to satisfy the requirement for delivery. Similarly, David Wells queried whether a deed could be delivered in electronic form. Three consultees also raised issues about fraud and security risks.¹¹⁰

QUESTION 13: THE DECISION IN MERCURY

4.129 In the consultation paper, we said that we considered that legislative reform is unnecessary and inappropriate to address the implications of the *Mercury*¹¹¹ decision. We asked consultees whether they agreed.¹¹²

4.130 This question was met with a mixed response from consultees. We received 149 responses. 31 consultees agreed that legislative reform is unnecessary and inappropriate to address the implications of *Mercury* (approximately 21% of responses). 14 consultees disagreed (approximately 9%). The majority of consultees responded “other” (104 consultees, or approximately 70% of responses).

Concerns about lasting powers of attorney (LPAs)

4.131 The majority of consultees replied with reference to LPAs. We received 71 identical responses, which said:

In relation to lasting powers of attorney, if an attorney failed to have their part of the prescribed form witnessed properly, such as the witness failed to include their full name, the power will be rejected by the Office of the Public Guardian at registration as not complying with the underpinning regulations. However, it is common for the attorneys only to have to resign a separate part of the LPA and do not see the whole form when they sign. Whilst the comments in *Mercury* may be *Obiter*, they represent good practice. No one should sign a deed without seeing what the final deed looks like.

¹⁰⁸ 13 of 162 consultees who responded to this question (approximately 8% of responses).

¹⁰⁹ Transfer of Land: Formalities for Deeds and Escrows (1985) Law Commission Working Paper No 93, <https://www.lawcom.gov.uk/project/transfer-of-land-formalities-for-deeds-and-escrows/>, para 8.2(iv).

¹¹⁰ Peter Hughes, Smith Partnership and Kathryn Toomey (on behalf of second year law students at the University of Cumbria).

¹¹¹ *R (Mercury Tax Group Ltd) v Her Majesty’s Commissioners of Revenue and Customs* [2008] EWHC 2721 (Admin), [2009] STC 743.

¹¹² CP 237, para 8.83.

4.132 Solicitors for the Elderly were similarly concerned:

We note that where there are deficiencies with LPAs (e.g. the failure of a witness to provide their full name), the Office of the Public Guardian will reject the LPA when registration is attempted and part of the document will be returned for the party to re-execute. We are uncomfortable with this, and as a matter of principle believe that no one should sign a deed without seeing what the final deed looks like.

4.133 Some consultees simply repeated the last line from the form response that “no one should be able to sign a deed without seeing what the final deed looks like”.¹¹³ Other consultees agreed with that sentiment.¹¹⁴

Consultees who agreed

4.134 Outside the context of LPAs, some consultees agreed that it would be unnecessary and inappropriate to introduce legislative reform to address the issues raised by *Mercury*.¹¹⁵ These consultees agreed generally that the 2009 Note¹¹⁶ had provided assurance to lawyers and businesses. For example, CMS LLP said:

We agree that legislative reform is unnecessary and inappropriate to address the implications of *Mercury*. Projects involving the Law Society and the City of London Law Society culminated in the joint practice note in 2009 on the execution of documents by virtual means which includes different protocols for various types of document. These protocols have provided assurance to the legal profession as to the efficacy of virtual signings. Assurance has also been obtained through a number of City firms jointly obtaining Counsels’ opinions on aspects of the process. Virtual signings are widely used and accepted by the legal profession and their efficacy is considered extremely helpful where, as often happens, it is difficult to obtain a wet-ink signature. We are pleased that the Law Commission agrees with and endorses the conclusions of the 2009 practice note and we do not consider that any further legislation is required to address *Mercury*.

4.135 GC100 said:

We agree with the Law Commission’s reasoning in this regard. We would note in passing that different law firms have different approaches to how *Mercury* should be implemented, which means that clients are often given similar, but not quite the same, instructions when signing remotely. Whilst this is hardly good advertising for

¹¹³ Consultees who responded in this way include Ken McRae, MLP Law Ltd, Buckles Solicitors LLP, Elizabeth Foggin and Arnison Heelis Solicitors.

¹¹⁴ Consultees who responded in this way include Naomi Bowie (responding in a personal capacity and on behalf of Darwin Bowie Ltd), Angela Hickey, Caroline Carter (although noting that it might be appropriate for commercial documents), Bird Wilford and Sale Solicitors, Kenneth Seakens and Ella Lewis.

¹¹⁵ Consultees who responded in this way include CMS LLP, SLC, CLLS, Peter Howes, Weightmans LLP, the Chancery Bar Association, Deniece Lines, Charles Russell Speechlys, the Society of Scrivener Notaries, Iain Macfarlane, DocuSign and GC100.

¹¹⁶ The Law Society Company Law Committee and The City of London Law Society Company Law and Financial Law Committees, “Note on execution of documents at a virtual signing or closing” (May 2009, with amendments February 2010), <http://www.citysolicitors.org.uk/attachments/article/121/20100226-Advice-prepared-on-guidance-on-execution-of-documents-at-a-virtual-signing-or-closing.pdf>.

the use of English law, we do not believe that it has an impact on parties' choice of governing law in international contracts.

4.136 Responding "other", Taylor Wessing LLP also raised the issue of an inconsistency in approach:

We suspect that practice varies depending on areas of use. For example, our corporate law practice experiences substantial uniformity in practice in the application of the guidelines of the joint working party of the Law Society Company Law Committee and the City of London Law Society Company Law and Financial Law Committees but in other some areas more variety is seen. For example, in real estate, a range of disparate approaches on Mercury suggests that transactional efficiency and standardisation would be enhanced if there was legislative clarification.

4.137 Iain Macfarlane said:

Practitioners have absorbed the implications and work with them.

Consultees who disagreed

4.138 In contrast, a few consultees said that legislation was necessary.¹¹⁷ Shoosmiths LLP said that legislation could clarify certain issues:

We believe that legislation would be very helpful as there are still too many loose ends, particularly on the question of whether it is legally possible to make manuscript amendments to a deed that has been executed but not yet delivered. Views within the legal profession differ.

4.139 Stephen Bowman agreed and made a strong case for legislation:

My fear is that without legislative reform, developing the existing law to incorporate electronic signatures and witnessing, alongside the principles set out in Mercury, will become a technical minefield and this is not helpful to ordinary parties wishing to efficiently enter into contracts. No matter how clearly Mercury compliant instructions are given to parties wishing to remotely execute documents, we regularly receive documents that have not been executed properly and waste a lot of time in rectifying this. It would be a missed opportunity to not tackle and update this whole area of law, using legislation to set out the results in a clear and concise manner.

4.140 Several consultees who responded "other" said that although legislation is not necessary, it may be desirable to maintain certainty of the law.¹¹⁸ For example, STEP said:

As the 2009 Note appears to be widely accepted, legislative reform might not be necessary. However, if the content of the Note has not effectively been endorsed by

¹¹⁷ Consultees who responded in this way include Matthew Wardle (on behalf of third year law students at the University of Cumbria), Shoosmiths LLP, Stephen Bowman and Jennifer Harris.

¹¹⁸ Consultees who responded in this way include included Bryan Cave Leighton Paisner LLP, BVCA, the Law Society, Hogan Lovells International LLP, Catherine Phillips, Eversheds Sutherland LLP, Clifford Chance LLP, Taylor Wessing LLP and STEP.

the courts, it remains merely an "opinion". Should the Note be tested in court and found to be wanting, this could undermine the many transactions relying upon the efficacy of the note. Accordingly, we advocate legislation to ensure clarity and confidence in the situation.

4.141 The Law Society said:

The advice published by the Law Society and City of London Law Society in response to the Mercury judgement has been accepted across the profession and there has been no challenge to that advice. If, as we suggest in our answer to question 5, the Government did look at updating legislation to enable technological solutions, then it may be a good opportunity to consider codifying the post-Mercury arrangements. The legislation would have to be carefully drafted to ensure that the current certainty of procedures is not lost. It would be preferable not to change the current (settled) position than to reintroduce uncertainty in this area.

4.142 Hogan Lovells International LLP said that legislation may be useful, but were of the view that "the *Mercury* problem" would become less relevant:

Whilst *Mercury* does complicate the logistics of virtual signings where documents have to be emailed, signed and returned, legal advisers have adopted a market standard practice following the helpful guidance contained in the 2009 JWP paper. The Law Commission's endorsement of the 2009 JWP paper in this Consultation paper is helpful.

We agree that legislative change regarding this issue is not essential but it would still be helpful to alleviate the current complexities of a virtual email signing process. However, once the use of technologies such as digital signing platforms and, in the longer term, PKI Infrastructure become mainstream the Mercury problem issue will become less relevant as the legal issue addressed in Mercury does not exist when a document is held solely in digital form and is signed digitally.

QUESTION 14: A FUTURE REVIEW OF THE LAW OF DEEDS

4.143 In the consultation paper, we asked consultees whether a review of the law of deeds should be a future Law Commission project.¹¹⁹

4.144 We received 157 responses to this question. 100 consultees thought that there did not need to be a review the law of deeds (approximately 64% of responses). 44 consultees thought there should be a review (approximately 28% of responses) and 13 consultees responded "other" (approximately 8% of responses).

Consultees who agreed

4.145 44 consultees agreed that the law of deeds should be reviewed.¹²⁰ Several professional membership organisations, including the General Council of the Bar

¹¹⁹ CP 237, para 8.88

¹²⁰ 44 of 157 consultees who responded to this question (approximately 28% of responses).

of England and Wales, the Notaries Society, CLLS, the Chancery Bar Association and GC100, agreed that the law of deeds should be reviewed.

4.146 Most responses suggested that deeds, and their current formalities, may no longer be appropriate. SLC queried whether deeds are “fit for purpose in today’s day and age”. Other consultees, including CLLS, Weightmans LLP, the Chancery Bar Association and the Conveyancing Association, reflected this sentiment.

4.147 For example, Clifford Chance LLP explained:

Technology developments and changes in practice suggest that a re-assessment of the law of deeds would be welcomed, for reasons of certainty, flexibility and competitiveness.

4.148 Some consultees raised the possibility of abolishing deeds altogether, whilst Matthew Wardle (on behalf of third year law students at the University of Cumbria) suggested that there should be a “broad” review of their use. Iain Macfarlane agreed with a review of the law of deeds “reluctantly” because of a perceived anomaly as to the documents which are required to be deeds:

We require some documents to be executed as deeds because they are important and require a further level of formality. However, things are not quite in balance. The fact that a simple, low value and relatively short-term lease requires a higher level of formality than a multimillion pound contract for the permanent sale of property is peculiar.

4.149 Several consultees were particularly concerned with whether the formalities of a deed were either necessary or replaceable through technological methods. Richard Oliphant said that the current formalities of deeds seem “anachronistic”. The Chancery Bar Association said:

The law of deeds arose out of the limitations of its time. Modern technology should be able to capture the solemnity of the act, proof of identity and delivery without the need for a written document executed with the formality currently required of deeds.

4.150 Several consultees pointed especially to the concept of witnessing as requiring review. CLLS suggested that if “deeds [were] needed”, whether they “should be the subject of witnessing” should be explored too.

4.151 Both the Notaries Society and Catherine Phillips highlighted the important protective function of witnessing. The Notaries Society warned that any new regime must not “undermine the free will of the signatory”. Catherine Phillips pointed out that if a “secure key or biometric identification device” was used to execute a document, “then it may be that the requirement to witness becomes redundant”.

Potential issues to consider in any review of the law of deeds

4.152 Apart from the question of witnessing, some consultees made suggestions as to what should be considered in any future review of the law of deeds. These

suggestions included the role that deeds play in relation to limitation periods and agreements for which there is no consideration. Hogan Lovells International LLP pointed out that “many large corporate and structured finance transactions turn to deeds” where there are agreements which are not for consideration.

4.153 The General Council of the Bar of England and Wales and CLLS each raised the issue of electronic company seals. The General Council of the Bar of England and Wales said:

At present, s.45(2) Companies Act 2006 requires the company name to be “engraved” upon the company seal, which would appear to preclude an electronic form of company seal. While company seals have fallen out of use, given the authorised signatory options in s.44 Companies Act 2006, it would seem appropriate to examine whether the rules attached to the company seal are appropriately aligned with the rules attached to electronic signatories.

4.154 HM Land Registry suggested that a review of the law of deeds should include identity assurance and fraud within its scope.

4.155 Liverpool Law Society said that “if electronic execution is to take place, there needs to be a review of the law”. DocuSign thought that both witnessing and attestation were “no longer fit for purpose”, but questioned whether a “substantial legal overhaul” would be more beneficial than “an evolutionary approach”.

4.156 In his response to our provisional proposal that an industry working group should be established, Stephen Bowman suggested that the working group should consider the removal of the requirement of witnessing for deeds, but only in a commercial context. He also suggested that it should undertake a “costs/benefits analysis on the requirement for a witness when executing deeds”. Referencing how overseas companies can execute a UK deed without a witness, he thought that witnessing “did not reconcile neatly with... electronic signatures”.

Consultees who disagreed

4.157 The majority of consultees did not think there was a need for a general review of the law of deeds.¹²¹ Most consultees who opposed such a review did not provide any reasons.¹²²

4.158 Some consultees considered the current law of deeds to be adequate and not in need of reform. For example, the Society of Scrivener Notaries said that there is not “sufficient uncertainty” around the formalities of deeds to warrant a review of the law. They said that in necessitating a document to be executed as a deed, the current formalities safeguard the parties involved.

4.159 Other consultees were cautious, and felt that a change in the law of deeds would aid fraud. MLP Law was concerned that the current legal protections would be weakened, saying that they provide “effective ... although not fool proof”

¹²¹ 100 of 157 consultees who responded to this question (approximately 64% of responses).

¹²² 93 consultees did not think that there should be a review of the law of deeds but did not provide any further comments.

safeguards, particularly in relation to deeds executed by individuals. Westminster and Holborn Law Society said that a review should only take place “if the present study should show significant defects in the way they operate at present”.

4.160 Bryan Cave Leighton Paisner LLP anticipated that “clarification” of the position of electronic signatures in relation to deeds would be resolved by this report. It identified this issue as the “root cause for most calls for reform” and expected “certainty” in this regard to negate the need for a further review. Yoti, a technology company, said that there would be no need for a review of the law of deeds: the Law Commission should instead make a recommendation that deeds can be executed validly using an electronic signature.

Chapter 5: Impact of reform

- 5.1 In Chapter 6 of our consultation paper we explained that a move to increase the number of electronic transactions has the potential to reap significant benefits for business and individuals. Increasingly efficient transactions could deliver substantial savings in costs and time and allow resources to be directed to other activities.
- 5.2 We acknowledged that despite our discussions with stakeholders it had been difficult to put a figure on the benefits or costs associated with our proposed reforms. Therefore, we asked consultees for quantitative and qualitative evidence as to what they believe to be the consequences of our proposals.

QUESTION 15: EFFECT ON CONFIDENCE IN THE LEGALITY OF ELECTRONIC SIGNATURES

- 5.3 In our consultation paper we provisionally concluded that an electronic signature is capable of satisfying a statutory requirement for a signature, provided there is an intention to authenticate a document. We asked consultees whether they believed that this would result in increased confidence in the legality of electronic execution in England and Wales and whether any more is needed.¹²³
- 5.4 We received 144 responses to this question.

Nothing further needed

- 5.5 Only seven consultees who responded to this question commented that no further action was needed to increase confidence in the legality of electronic execution in England and Wales.¹²⁴
- 5.6 For example, OneSpan told us that our consultation paper had “already had an impact in the market” and Richard Oliphant said: “Yes, this will add weight to the conclusions of the Law Society in 2016 in its paper on electronic signatures”.
- 5.7 Benjamin Elliott, the CEO of an online electronic signature and contract management software company, said: “In my experience electronic signature is now sufficiently established that while a statement may be helpful it is not strictly necessary”.
- 5.8 Neil Singer, CEO of clicktopurchase®, commented that the Law Society had already confirmed that electronic signatures are legally valid but that a further confirmation from the Law Commission would “no doubt add confidence to use of electronic signing”.

¹²³ Electronic Execution of Documents (2018) Law Commission Consultation Paper No 237 (“CP 237”), <https://www.lawcom.gov.uk/project/electronic-execution-of-documents/>, para 8.93.

¹²⁴ 7 of 144 consultees who responded to this question. Consultees who responded in this way were OneSpan, the General Council of the Bar of England and Wales, Stephen Bowman, Richard Oliphant, Benjamin Elliott, Yoti and Neil Singer (CEO of clicktopurchase®).

- 5.9 Other consultees suggested that a statement from the Law Commission may have limited impact. For example, Westminster and Holborn Law Society said:

We have no doubt that the report of the Commission, in so far as it sets out the present law, will give confidence to all those who would act on its findings. Depending of course on its conclusions it is possible that no legislation will be needed. However if the replies to this consultation show significant disagreement with that provisional conclusion legislation would be essential.

Suggestions for further action

Cross-border transactions

- 5.10 The Society of Scrivener Notaries and Adobe, Inc commented that the Law Commission statement may not be sufficient to provide reassurance for cross-border transactions. The Society of Scrivener Notaries said:

Although the Commission's provisional conclusion might result in increased confidence domestically in the legality of electronic execution in England and Wales, the situation in some cross-border transactions would be less clear. There is no certainty that, in the absence of international protocols (e.g. as established by eIDAS), an electronic signature would be accepted by the jurisdiction where the document is to take effect.

- 5.11 Adobe, Inc said:

We find that the consultation lacks an international perspective.

The UK legal approach provides less explicit support for qualified electronic signatures. This non-alignment adds complexity and uncertainty to transactions involving signatories outside the UK, and can only benefit the lawyers whose legal advice is sought.

Consumer/user behaviour

- 5.12 Two consultees suggested that consumer/user behaviour would have an impact on the use of electronic signatures.
- 5.13 OneSpan said that acceptance of electronic signatures:

is being driven by user's and consumer's adoption of mobile technology and online-cloud services from commercial and government organizations and their expectation of a fully-digital experience. This consultation has already had an impact in the market.

- 5.14 The Chancery Bar Association said:

Various groups of individuals are becoming more and more comfortable with using their computer devices, particularly mobile smartphones, to carry out different kinds of transactions. They expect the range of activities that can be effected in this way to increase with time. If an electronic signature is capable of satisfying a statutory requirement for a signature, that will tend to increase confidence in the legality of

electronic execution. What will be needed is the creation of electronic device applications tailored effectively and securely to satisfy the requirements.

Legislation

- 5.15 In response to this question, 14 consultees reiterated their opinion that legislative reform is required to increase confidence in the use of electronic signatures.¹²⁵ These included the Notaries Society, the Law Society, Westminster and Holborn Law Society, the Agricultural Law Association, GC100, Clifford Chance LLP, Bryan Cave Leighton Paisner LLP, Eversheds Sutherland LLP, Taylor Wessing LLP, Shoosmiths LLP, Jennifer Harris and Catherine Phillips.
- 5.16 We consider consultees' views on legislative reform further in response to question 5 of our consultation paper.

Guidance

- 5.17 Three consultees suggested that guidance would be helpful to increase confidence in electronic execution.
- 5.18 RBS said:

RBS would expect that the take-up of e-signing technologies by large market participants (who may be better placed to allocate resources to resolving the legal and technical barriers) in conjunction with clear legal and practical guidance from industry, would give confidence to smaller actors who may not otherwise access these technologies.

- 5.19 Clifford Chance LLP said:

We would add the observation that other non-legal factors also come into play and clarifying the legal validity of electronic signatures is only one step in encouraging electronic signing on transactions. We noted in our covering remarks that there are concerns around the security and reliability of electronic signatures. This is also noted in the consultation paper. These are also matters which must be addressed to increase the take-up of electronic execution.

- 5.20 Peter Howes thought that guidance should be produced and should cover:

the strengths and weaknesses of different forms of electronic signature and recommendations as to how to decide what form is appropriate for what document types will support this.

- 5.21 Four consultees reiterated their opinion that an industry working group should be set up. These included the Council of Licensed Conveyancers, CILEx,¹²⁶ DocuSign and RBS. We consider consultees' views on an industry working group further in response to question 6 of our consultation paper.

¹²⁵ 14 of 144 consultees who responded to this question.

¹²⁶ The Chartered Institute of Legal Executives.

Action by regulators

- 5.22 Beth Rudolf, in a personal capacity and on behalf of the Conveyancing Association, highlighted the role that regulators could play in increasing confidence in electronic execution. They said:

Legal Regulators will need to make reference to the acceptability of electronic signatures within their codes and guidance and representative bodies such as the Law Society will need to require that they be accepted within the Conveyancing Quality Scheme Protocol.

Other protocols such as the Conveyancing Association Technical Protocol will also need to be updated and a general education programme delivered via HM Land Registry and similar to confirm that they accept documents executed digitally.

Action by registries

- 5.23 The Law Society and Hogan Lovells International LLP commented on the role of registries in increasing confidence in electronic execution.¹²⁷ The Law Society said:

One of the biggest influencers of change is the attitude taken by quasi-governmental bodies. For example, Companies House takes an inconsistent approach to accepting electronically executed filings. While they do accept a certified copy of a charging document that has been executed electronically, in other areas it less clear whether electronic execution is acceptable. If Companies House was to be positive in embracing the technological changes that many businesses take advantage of then a more conducive environment for electronic execution would be created.

- 5.24 Hogan Lovells International LLP noted that:

Any documents which would be registrable at HM Land Registry will not be able to be executed electronically until such time as HM Land Registry has confirmed their requirements for electronic execution.

- 5.25 They also suggested that Companies House should confirm on their website the position in relation to documents which exist solely in digital form. They explained that Companies House require a certified copy of an original charging instrument but noted that it was not clear how such a certified copy is to be produced when a document exists solely in digital form. They further observed that similar issues will apply to other registries, including the Intellectual Property Office and the Shipping Registry.

¹²⁷ In response to question 5 of the consultation paper, Kennedys Law LLP said: "Some documents may still be subject to certain registration requirements where the relevant registry will only accept documents executed with 'wet ink' signatures. This will continue to be a barrier to executing those particular documents electronically."

Test case

- 5.26 Three consultees suggested that a test case could be brought to increase confidence in electronic execution.¹²⁸
- 5.27 Kennedys Law LLP supported a suitable test case to provide clarification and guidance by the judiciary.
- 5.28 Catherine Phillips suggested that there should be either legislative reform or a test case to provide certainty about the position of electronic signatures. While CMS LLP¹²⁹ supported legislative reform but suggested that a test case may also be a practical step. They said:

Given that new legislation can take some time to introduce, an authoritative ruling on the use of an electronic signature using the test case procedure under the Financial List (as suggested at paragraphs 7.21 to 7.23 of the Consultation Paper) would, in our view, be a good alternative in the meantime. Ideally, the seniority of the judge or judges presiding would be such that the decision had more standing than a normal first instance decision; we believe the question of electronic signatures is important enough to justify being heard by a court consisting of two Financial List judges, or a Financial List judge and a Lord or Lady Justice of Appeal. In our view, this is likely to provide the additional confidence needed for electronic signatures to become more widely accepted.

Amendment to the Civil Procedure Rules and Family Procedure Rules

- 5.29 Charles Russell Speechlys suggested that the Civil Procedure Rules and Family Procedure Rules should be amended.

Lasting Powers of Attorney (LPAs)

- 5.30 80 consultees told us that our provisional conclusion would result in increased confidence in the use of electronic signatures in a commercial context, but not in relation to lasting powers of attorney (“LPAs”). These included 60 identical responses which said “in relation to commercial transactions yes but not in relation to lasting powers of attorney”.
- 5.31 Carol McBride suggested that it would reduce confidence in many personal documents, for example LPAs and express trusts. Maria Goodacre said that it would not increase confidence in the use of electronic signatures in relation to LPAs because they “are vulnerable to fraud and undue influence”. Similarly, Margaret Taylor also commented that LPA donors “are often vulnerable and older” and observed that “they are naturally suspicious of electronic transactions”.
- 5.32 David Satchell (responding in a personal capacity and on behalf of AmicusLaw) said:

¹²⁸ In response to question 3 of the consultation paper, Icon UK Limited thought that a test case might stem from the work of such a group.

¹²⁹ CMS Cameron McKenna Nabarro Olswang LLP.

As a solicitor I see far too many potentials for abuse – it is a different thing for the business community to be using such arrangement in consensual situations as against vulnerable individuals where much greater protections are needed.

QUESTION 16: FINANCIAL VALUE OF INCREASED CONFIDENCE IN THE LEGALITY OF ELECTRONIC EXECUTION

- 5.33 In our consultation paper we asked consultees what the financial value would be of increased confidence in the legality of electronic execution in England and Wales. In particular, we asked whether consultees thought that there could be a reduction in transaction costs by as much as 10% to 30%.¹³⁰
- 5.34 We received 146 responses to this question. Some consultees commented on the financial value of increased confidence in the legality of electronic execution, but most felt unable to suggest a figure. Consultees also suggested other benefits of increased confidence, while some were concerned about the impact of increased use of electronic execution.

Financial value

- 5.35 The majority of the consultees who responded to this question said that it was difficult or impossible to calculate the financial value of increased confidence in the legality of electronic execution in England and Wales.¹³¹
- 5.36 Only 6 consultees attributed a figure to the potential reduction in transaction costs. These were SLC,¹³² Bryan Cave Leighton Paisner LLP and AliasLab UK Limited, Chris Carr, Catherine Phillips and Matthew Wardle (on behalf of third year law students at the University of Cumbria). The estimates varied but the majority suggested that savings would be around 10% or less of existing transaction costs.
- 5.37 In total, 36 consultees commented on the financial value of increased confidence, including those who did not provide an estimate. Of those:
- (1) 17 consultees believed that there would be a reduction in transaction costs
 - (2) 9 consultees believed that there would be no significant cost benefits per transaction or that use of electronic signatures would be cost neutral as some costs increased and other decreased
 - (3) 10 believed that there would be an increase in costs per transaction or some other additional cost to users of electronic signatures

Reduction in transaction costs

- 5.38 In our consultation paper we suggested that electronic transactions could deliver cost savings. Almost half of the consultees who commented on the financial value of increased confidence in electronic execution agreed and pointed to the potential for a

¹³⁰ CP 237, para 8.94.

¹³¹ 88 of 146 consultees who responded to this question (approximately 60% of responses).

¹³² The Society of Licensed Conveyancers.

reduction in transaction costs.¹³³ These included costs associated with printing, scanning and couriering documents as well as the collation of executed documents after a transaction had been completed.

5.39 Bryan Cave Leighton Paisner LLP said:

A considerable amount of time and money is spent dealing with execution of documents, which involves the cost of couriers, scanning and printing. Depending upon the type of transaction (i.e. how many documents are involved), there could be a cost reduction of around 10%.

5.40 AliasLab UK Limited said:

We see significant increases in efficiency in other industries using these types of means to increase productivity. Somewhere between 20-40% would be reasonable.

5.41 Charles Russell Speechlys suggested that “existing debates between lawyers about legality would be eliminated” and “time would be saved as the physical process of signing a document would be more streamlined”. They expected that any reduction in transaction costs would be “at the lower end of the bracket” of 10% to 30% suggested in our consultation paper.

5.42 Eversheds Sutherland LLP said:

Increased confidence would have an impact for example in reducing legal time spent discussing and advising client on electronic signatures, providing legal opinions and other legal confirmations. It would also potentially avoid costly disbursements currently incurred on matters, for example international courier costs to transport signed pension scheme documents from one jurisdiction to another to complete a matter.

5.43 Clifford Chance LLP said:

The functionality of online signing platforms also facilitates other processes, such as creating transaction document bibles, which we consider will save considerable time and costs.

No significant cost benefits per transaction or cost neutral

5.44 9 consultees were more cautious and suggested that increased confidence would be cost neutral or have no significant costs benefits per transaction.¹³⁴

5.45 Peter Hughes and the Conveyancing Association considered that there would be no saving per transaction, while the Law Society suggested that there was unlikely to be

¹³³ Consultees who responded in this way include SLC, Clifford Chance LLP, Eversheds Sutherland LLP, Bryan Cave Leighton Paisner LLP, Charles Russell Speechlys, RBS and Sussex Partnership NHS Foundation Trust.

¹³⁴ Consultees who responded in this way include the Law Society, the Conveyancing Association, the City of London Law Society (“CLLS”), the Society of Trust and Estate Practitioners (STEP), British Private Equity & Venture Capital Association (“BVCA”), Kennedys Law LLP, Carpenter & Co Solicitors, Peter Hughes and Catherine Phillips.

a high saving per transaction. Similarly, STEP observed that cost savings will only arise at the closing of any transaction and are will therefore be small. CLLS and BVCA observed that the larger the transaction, the smaller the transaction costs will be relative to the overall cost of the transaction.

- 5.46 Carpenter & Co Solicitors cautioned that, while there may be a reduction in transaction costs, litigation costs may increase and Kennedys Law LLP suggested that there may be new transaction costs associated with preventing fraud.

Increase in transaction costs or costs generally

- 5.47 In our consultation paper we acknowledged that there may be some initial set-up costs associated with using electronic signatures. Some consultees provided us with examples of such short-term costs.¹³⁵

- 5.48 A number of consultees pointed to the upfront costs associated with buying or accessing technology. For example, ICAEW said:

in some circumstances transaction costs may increase – certainly in the short term – as an organisation may need to buy access to signing platforms, video technology, dual authentication etc to enable electronic signing and attesting. Also, if such systems lack inherent security, the costs of specific errors and fraud could easily swamp any ‘efficiency’ savings resulting in general.

- 5.49 The Chancery Bar Association pointed to the costs of subscribing to a third-party platform to enable electronic execution and the Society of Scrivener Notaries suggested that there would be costs associated with the implementation of relevant software.
- 5.50 The Law Society, Hogan Lovells International LLP and Clifford Chance LLP suggested that there would be costs associated with training lawyers and possibly clients in the use of signature platforms and electronic signature software.

Other benefits

- 5.51 A number of consultees considered that electronic execution would increase the efficiency of transactions.¹³⁶
- 5.52 While many of these consultees linked increased efficiency to a reduction in transaction costs, some pointed to other benefits. For example, Bryan Cave Leighton Paisner LLP considered that “the reduction in delays caused by signatories needing to be physically present in a specific location would deliver significant value” and was just as important as any cost reduction.

¹³⁵ These included the Law Society, the Chancery Bar Association, the Society of Scrivener Notaries, ICAEW, Clifford Chance LLP, Hogan Lovells International LLP and Kennedys Law LLP.

¹³⁶ 22 of 146 consultees who responded to this question. These included the Law Society, CLLS, SLC, CILEx, the Conveyancing Association, the Society of Scrivener Notaries, GC100, BVCA, Clifford Chance LLP, Eversheds Sutherland LLP, Hogan Lovells International LLP, Bryan Cave Leighton Paisner LLP and Neil Singer (CEO of clicktopurchase®).

- 5.53 CLLS did not think that electronic signatures would necessarily result in a reduction in transaction costs of as much as 10% but did think that, for complex commercial documents, electronic execution would be “quicker and more convenient”, “particularly for out of hours execution of time-critical documents”.
- 5.54 Hogan Lovells International LLP observed that:
- Financial institutions and other sophisticated businesses are pushing to be able to sign all agreements (including deeds) electronically to improve efficiency, reflect agile working patterns and to reduce administrative burden.
- 5.55 The Law Society, BVCA, Jennifer Harris and Matthew Wardle (on behalf of third year law students at the University of Cumbria) pointed to the environmental benefits of electronic execution of documents. Jennifer Harris noted that where documents are currently printed then signed, there would be a reduction in printing if electronic execution were used. Similarly, the Law Society suggested that “having more documents executed electronically will result in less paper and printing materials being used, which should have a positive environmental impact”.
- 5.56 The Conveyancing Association suggested that “there will be a reduction in fraud claims where the electronic signature is linked to a robust verification of identity which will overall reduce insurance costs”.
- 5.57 GC100 suggested that electronic signatures would make execution more efficient and lead to a reduction in transaction costs, but added that “the principal benefits of increased confidence in the legality of electronic execution are non-monetary in nature”. They suggested that signing platforms had a number of benefits over exchange of scanned copies of manuscript signature pages by email, including providing a single source of information about the signing process, signatories and final execution version of documents.

Concerns about use of electronic execution

- 5.58 Four consultees raised concerns about the use of electronic execution in response to this question. Michael O'Brien suggested that the use of electronic signatures would increase disputes. David Satchell (responding in a personal capacity and on behalf of AmicusLaw) suggested that there may be additional litigation and Tom Sorby (responding in a personal capacity and on behalf of Ilet and Clark Solicitors) observed that “parties have to appreciate the seriousness of action and intent – this will be lost”. Similarly, Arnison Heelis commented that any reduction in transaction costs would be “disproportionate to the massive increase in scope for fraud”.
- 5.59 Over half of the responses received in response to this question were concerned that increased confidence in the use of electronic execution could have negative implications for donors of LPAs.¹³⁷ 58 consultees provided the following comment:

¹³⁷ 75 of 146 consultees who responded to this question (approximately 51% of responses).

Impossible to calculate. My real concern is that the balance of power is already against the donor of a lasting power and further digitalization simply makes it easier for those who seek to take control over the donor's affairs are able to do so.

5.60 Susan Fairless said:

any financial considerations and benefits are far, far outweighed by the fact that the balance of power in making LPAs is already weighted against the donor and further digitisation simply makes it easier for those who seek to take control of the donor's affairs to do this. This also makes financial abuse easier as a result and the losses from financial abuse would be far greater than any reduction in transaction costs.

5.61 Buckles Solicitors LLP said:

electronic execution of Lasting Powers of Attorney will result in a financial detriment to individuals and the Court system as fraud and financial abuse increases, and takes up the time of the Court of Protection.

5.62 Naomi Bowie (responding in a personal capacity and on behalf of Darwin Bowie Ltd) said:

The major factor should be protection of the donor of a power, who is all too often at risk of their affairs being taken over by attorneys, whether family members or others. If the donor lacks capacity, electronic signature will enable the attorney to hide this.

QUESTION 17: INDUSTRY WORKING GROUP

5.63 We explained in our consultation paper that in our initial discussions with stakeholders, we heard that it is not only legal uncertainty which is impeding the use of electronic signatures. Other factors may include the security and reliability of electronic signatures, as well as questions of trust and identity, the interoperability of electronic signature systems, and the archiving of information.

5.64 In our consultation paper we asked:¹³⁸

Do consultees agree that the Law Commission's proposal to establish an industry working group, to consider practical, technical issues, would do any of the following?

(1) Provide benefits such as reduced transaction costs? If so, how much?

(2) Provide non-monetary benefits? If so, what benefits?

Monetary benefits

5.65 We received 119 responses to question 17(1).

5.66 65 consultees provided identical, or virtually identical responses, which stated that they "cannot quantify" the benefits of an industry working group.

¹³⁸ CP 237, para 8.95.

- 5.67 12 further consultees also noted that a reduction would be hard to quantify.¹³⁹ For example, the Law Society said: “We agree that any reduction in uncertainty, or helpful guidance, will likely reduce the time spent by others in considering these issues, thus reduce costs. However, it is not at this stage possible to put a figure on this”.
- 5.68 Similarly, UK Finance said: “There are too many variables to answer this question, but the consideration of practical, technical issues would be helpful”.
- 5.69 Peter Howes said he would also be “very cynical” about “cost estimates at such a macro level”.
- 5.70 Other consultees were more confident that a reduction in transaction costs could be measured.¹⁴⁰ For example, Icon UK Limited said “Yes it could establish a broad range. In fact, we (Icon-UK Ltd) have an ROI calculator that could be used as the start point for shared analysis”. The Sussex Partnership NHS Foundation Trust expected a “working group to undertake a step by step analysis of the process which would identify the potential cost savings”.

Reduction in transaction costs

- 5.71 16 consultees took the view that one of the effects of increased confidence and certainty in electronic signatures that a working group would provide, would be reduced costs.¹⁴¹
- 5.72 The General Council of the Bar of England and Wales thought that an industry working group would lead to “greater common acceptance of the position between lawyers leading to reduced costs”. Similarly, the Law Society said that “any reduction in uncertainty, or helpful guidance, will likely reduce the time spent by others in considering these issues, thus reduce costs”.
- 5.73 Catherine Phillips said:
- The industry working group has the potential to save a considerable amount of time otherwise spent by individual law firms in researching all of the practical and technical issues. It should also reduce time spent in resolving disagreements between firms about accepted methods of use and this should reduce transaction costs.
- 5.74 Clifford Chance LLP said: “we consider that an industry working group could iron out the technical and practical issues law firms are grappling with and promote a joined up

¹³⁹ Consultees who responded in this way include Bryan Cave Leighton Paisner LLP, Sussex Partnership NHS Foundation Trust, David Satchell (responding in a personal capacity and on behalf of AmicusLaw), Francesca Tubb, Elizabeth Foggin, John Sale, the Society of Scrivener Notaries, Joanna Addison, UK Finance, Eversheds Sutherland LLP, Clifford Chance LLP and Yoti.

¹⁴⁰ Consultees who responded in this way include Icon UK Limited, Sussex Partnership NHS Foundation Trust, Stephen Bowman, Matthew Wardle (on behalf of third year law students at the University of Cumbria) and Beth Rudolf (in a personal capacity and on behalf of the Conveyancing Association).

¹⁴¹ Consultees who responded in this way include the General Council of the Bar of England and Wales, ICAEW, SLC, CLLS, the Law Society, Weightmans LLP, Richard Oliphant, Catherine Phillips, Charles Russell Speechlys, Clifford Chance LLP, Eversheds Sutherland LLP, Adobe, Inc., Yoti, DocuSign and GC100.

approach across the market. Industry guidelines therefore have the potential to lead to costs and time savings.”

5.75 CLLS suggested that costs may reduce as greater acceptance of electronic signatures increases competition across document platforms.

5.76 Beth Rudolf, in a personal capacity and on behalf of the Conveyancing Association, said:

The working groups could include insurers who could outline their requirements to consider a process that sufficiently reduces risk to the point that would impact their premium. Other such initiatives have seen fraud prevention activities reduce premiums by as much as 2%. Additional smaller savings can be made in the removal of the need for costly tracked delivery services.

5.77 The Chancery Bar Association recognised that a working group could led to reduced transaction costs, but did not think a separate working group was needed. They said:

There is a need for some collaboration between government and industry to find technological solutions to the difficulties involved in creating suitable electronic signature processes. A government led undertaking could result in reduced transaction costs and non-monetary benefits such as increased confidence in the legal system. Individuals from industry could provide insight on current working practices and the state of knowledge but a separate working group is not needed.

5.78 The Society of Scrivener Notaries said:

Travel costs in an electronic environment would obviously decrease or disappear, but this must be balanced against the costs of setting up and running the systems required. Particularly from a cross-border perspective, given the few transnational transactions that have been affected by e-signatures, the cost savings (if any) are impossible to quantify.

5.79 Stephen Bowman thought it would save approximately “2-6 hours of time per transaction...around £2000 in legal costs alone”. Matthew Wardle (on behalf of third year law students at the University of Cumbria) went further, pointing out that:

Within the European Union; it is estimated that through the introduction of eProcurement, those who has switched to this system have seen cost savings of around 5-20%. Calculations from one business who offers an e-signature service has estimated costs monthly of up to €1000 when delivering documents through the post. With help from e-signatures, these costs could be halved. Similar cost savings have also been reported by those who use similar types of software but in a legal context. Though it could be argued that similar levels of cost savings may not be as dramatic due to requirements needed in order to satisfy the standards set by the law, costs surrounding the printing and posting of paper documents is likely to reduce for all associated parties.

5.80 Some consultees considered cost reductions in a cross-border context.¹⁴² Adobe, Inc said:

In our experience, legal questions far outweigh any other considerations when companies weight up if, how and where to deploy electronic signatures. This is all the more true when companies need to consider e-signatures in a cross-border context.

5.81 GC100 said:

An increased use of electronic execution would make the process of executing documents more efficient, particularly on transactions that involve the execution of a large number of documents, by a large number of parties in different jurisdictions and time zones. This would undoubtedly lead to a reduction in transaction costs.

Increased costs or cost neutral

5.82 Some consultees did not think there would be any cost savings as a result of a working group, or that they would be minimal.¹⁴³

5.83 BVCA said:

We would not expect a significant impact on transaction costs for our members, however an industry working group which addresses some of the practical issues surrounding electronic execution and assisting in bringing together the practicalities with the legal requirements, would be of benefit to anyone using the technology.

5.84 The Society of Estate Practitioners said:

It seems to us that the cost savings arising will be small as they will only arise at the closing of any transaction...when documents are actually to be executed. There is already a widespread use of electronic signatures in commercial transactions. Any clarification of the legality of electronic signatures for complex documents such as deeds will add to the confidence of the processes, but its financial value would be limited. We anticipate that there could be a reduction in transaction costs, but we are unable to put a precise figure on it.

5.85 Four consultees acknowledged that reduced costs may be offset by the cost of the technology.¹⁴⁴

5.86 Some consultees suggested that there would be costs associated with fraud and disputes. David Satchell (responding in a personal capacity and on behalf of AmicusLaw) did not know “how much, or if such savings will be outweighed by increased costs of resolving disputes”. Similarly, Elizabeth Foggin highlighted a

¹⁴² Consultees who responded in this way include the Society of Scrivener Notaries, the Notaries Society and Adobe, Inc.

¹⁴³ Consultees who responded in this way include BVCA, The Society of Estate Practitioners, Tom Sorby (responding in a personal capacity and on behalf of Ilet and Clark Solicitors), Jennifer Harris, Smith Partnership and Carpenter & Co Solicitors.

¹⁴⁴ Consultees who responded in this way include the Notaries Society, ICAEW, GC100 and David Wells.

“concern that it will increase fraud and litigation costs”. So, too, did John Sale, who thought any cost savings would be “offset by increased claims for fraud”.

Non-monetary benefits

5.87 We received 120 responses to question 17(2). Consultees suggested non-monetary benefits associated with the establishment of an industry working group as well as benefits associated with electronic execution in general.

Speed

5.88 65 consultees provided identical, or virtually identical responses, simply stating “speed” as a non-monetary benefit. Like responses to part one of consultation question 17, many consultees saw this an opportunity to make a wider point not exclusive to a non-monetary benefit that the working party would provide.

5.89 Other consultees also acknowledged the increased speed of a transaction as a benefit.¹⁴⁵ The Conveyancing Association said:

In some cases the same original document needs to be signed by all parties which can create significant delays in the document being posted out to each party to sign, witness and post back. The potential for the document to go missing in transit creates further delays and additional cost.

5.90 Bryan Cave Leighton Paisner LLP noted “an increase in efficiency of transactions”, and the consequent ability to “assist clients in providing a smoother process”. DocuSign also highlighted the “improved speed of execution for time-sensitive transactions”. Matthew Wardle (on behalf of third year law students at the University of Cumbria) suggested electronic documents could be “completed...[in] as quickly as five minutes”. He also added that it would lead to “speeding up workflows for those working in different parts of the world”. RBS pointed out that “time and money spent on signing formalities and concerns [could] be spent more productively”.

5.91 ILAG said:

The use of electronic signatures has demonstrated a significant increase in the turnaround time for the receipt of completed forms. This results in quicker decision times and allows faster payment of benefits. In practice, the completion time for an employer to return a paper proposal form, that relies on a ‘wet signature’, is far too long. The implementation of electronic signatures in this market is expected to deliver substantial benefit to all parties.

5.92 GC100 said:

Post-execution questions about the final executed documents are often resolved by reference to the copy of the documents in a particular individual’s inbox or sent items folder – this is obviously an inefficient process, and one that could be

¹⁴⁵ Consultees responded in this way include Bryan Cave Leighton Paisner LLP, Icon UK Limited, Michael O’Brien, SLC, ILAG (Investment and Life Assurance Group), Chris Carr, John Stoddart, Peter Howes, Stephen Bowman, Chris Carr, Beth Rudolf (in a personal capacity and on behalf of the Conveyancing Association), Stephen Duffy, Matthew Wardle (on behalf of third year law students at the University of Cumbria), DocuSign, Kennedys Law LLP, RBS and GC100.

improved significantly through the use of online signing platforms. Furthermore, use of an online signing platform enables parties to specify a sequence in which appropriate signatories are required to review, and then sign, documents, and also facilitates the seamless use of alternate e-signatories, which helps to overcome the difficulties associated with changes in availability of particular individuals.

Benefits for consumers and individuals

5.93 Some consultees noted that consumers would benefit from the practical and technical guidance of a working group.¹⁴⁶ RBS said the working group could “driv[e] better customer experiences through standardisation” and produce “better customer outcomes through the potential for better record keeping of documents”.

5.94 The Conveyancing Association suggested that there would be a reduction in delays to transactions, greater satisfaction with the legal process and enablement of other technology services. It also suggested that there would be “an improved customer journey”:

Currently it is a frustration to anyone having to receive, print, sign a document and then post or deliver it back. Add in the frustration of having to find a suitable witness, explain what you are doing when you may not want anyone else to know, and then making sure that they witness correctly and it becomes an unnecessarily irksome process. In many other aspects of your life you routinely use electronic signatures for vital activities such as car and health insurance and purchase of high value items, not to mention online banking and submission of tax returns.

5.95 SLC pointed out that a working group’s “informed decision or proposals” could lead to “efficiencies to benefit the consumer”. Icon UK Limited summaries some of the benefits they had identified:

- Improved Customer Experience (faster, better and more secure)
- Travel is not required in order to transact agreements, even complex ones nor ones needing witnessing
- Productivity increases (e.g. due to less transaction abandonment due to frustrations and delays in current paper interrupted processes, to efficient data/information exchange, to removing paper handling, etc.)
- Perception and reality that (with the right controls and technologies) the signing process is safer and less prone to fraud
- Enables end-to-end transactions to be completed digitally, from initial contact to onboarding (all fully recordable).

5.96 AliasLab UK Limited listed “convenience, availability, [and the] ability to integrate with other electronic systems” as consumer benefits, whilst Peter Howes noted “shortened

¹⁴⁶ Consultees who responded in this way include the Conveyancing Association, Icon UK Limited, RBS, SLC, AliasLab UK Limited and Peter Howes.

transaction times, simplified electronic processes [and] reduced record management overheads”.

- 5.97 Some consultees wanted to ensure that deeds and vulnerable parties were considered.¹⁴⁷ MLP Law hoped that the industry working group would “ensure that there are suitable safeguards in relation to personal deeds and that priority is not simply given to commercial interests”. Margaret Taylor said that “we need to be looking at protection”. Whilst Solicitors for the Elderly thought a “working group would be beneficial if it is properly representative of stakeholders”.

Increase in confidence and certainty in electronic signatures

- 5.98 A number of consultees thought a working group would promote greater confidence and certainty in the use of electronic signatures.¹⁴⁸ Some thought creating industry standards would also facilitate confidence and certainty. STEP said that there was “a need for some collaboration between government and industry to find technological solutions to the difficulties involved in creating suitable electronic signature processes”. Notably, they thought a “separate working group may not be needed” to achieve this.

- 5.99 ILAG said that an:

Industry consensus on such practical and technical issues would increase efficiencies and certainty between businesses and consumers. It would also allow for new technologies and innovative approaches to be discussed in a non-competitive environment.

- 5.100 Similarly, Matthew Wardle (on behalf of third year law students at the University of Cumbria) said that:

A working group comprising of technical specialist will be able to highlight and provide answers to areas which have not been discussed, one of these areas is that of common standards within the area of e-signatures.

- 5.101 Charles Russell Speechlys said that “in terms of non-monetary benefits...increasing lawyer confidence in the use of electronic execution is key to the successful adoption of this technology”. Eversheds Sutherland LLP said that “anything to bring consistency to law and practice in this area can only be positive”. Iain Macfarlane noted that “no one wants to move first on this topic”. He said that “the principal benefit will be to create enough...momentum that...lawyers can adopt electronic signatures with confidence”.

- 5.102 The Society of Scrivener Notaries looked at the issue of certainty from a cross-border perspective, saying that “they welcome concrete practical and technical solutions

¹⁴⁷ Consultees who responded in this way include MLP Law Ltd, Elizabeth Foggin, Margaret Taylor, Solicitors for the Elderly and PCB Solicitors LLP.

¹⁴⁸ Consultees who responded in this way include STEP, ICAEW, ILAG, Charles Russell Speechlys, Matthew Wardle (on behalf of third year law students at the University of Cumbria), the Society of Scrivener Notaries, Eversheds Sutherland LLP, Iain Macfarlane, TheCityUK and Yoti.

developed by the working group to the extent they lead to increased security and certainty in cross-border transactions”.

5.103 Yoti’s thought that an industry working group would “provide several non-monetary benefits...foremost...the development of clear guidance which the courts may have regard to”.

5.104 Catherine Phillips said:

An industry working group has the scope to provide a considerably more efficient method of evaluating the complex practical, technical issues involved in the use of electronic signatures and generate a well-informed output that can be consistently applied across the profession.

Electronic signatures are part of the overall transaction management and different firms use different technology to affect this part of the transaction. As such, I envisage that a working group of this nature would have to examine the differences across technology (which for reasons of confidentiality may be challenging). It would be a good opportunity to consider whether we need an industry standard for the technology that is used in transactions.

5.105 Two consultees considered how a working group could educate industry groups.¹⁴⁹ Richard Oliphant said that a working group should “educate lawyers who in turn can offer better advice to their clients on how to go digital and authenticate more transactions electronically.” Adobe, Inc added that the:

Government has a key role not just to help set and interpret rules, but to educate the market in how to take advantage of technologies. The industry working group could provide invaluable education material and case studies to help encourage adoption and usage of signatures.

Environmental benefits

5.106 Three consultees referred to the environmental benefits of electronic signatures.¹⁵⁰ Chris Carr identified an opportunity to “cut down on the use of paper”. So, too, did the Society of Scrivener Notaries, who pointed out “the reduced environmental impact of conducting transactions through paperless systems”. DocuSign noted the “environmental enhancements from [the] elimination of printing, shipping, storing, and purging hard copies of both drafts and final documents”.

No non-monetary benefits

5.107 A few consultees thought that there would be no non-monetary benefits to a working group.¹⁵¹ David Satchell (responding in a personal capacity and on behalf of

¹⁴⁹ Consultees who responded in this way include Richard Oliphant and Adobe, Inc.

¹⁵⁰ Consultees who responded in this way include DocuSign, Chris Carr and the Society of Scrivener Notaries.

¹⁵¹ Consultees who responded in this way include David Satchell (responding in a personal capacity and on behalf of AmicusLaw), Jennifer Harris, Tom Sorby (responding in a personal capacity and on behalf of Ilet and Clark Solicitors), J Lewis and Carpenter & Co Solicitors.

AmicusLaw) said that there were no non-monetary benefits that he could “envisage” while Jennifer Harris said it would “add delay”.

QUESTION 18: BENEFITS OR COSTS WHEN EXECUTING DEEDS ELECTRONICALLY

5.108 In our consultation paper we explained that we have canvassed several options for electronically executing deeds without the physical presence of a witness. We welcomed evidence from consultees on the benefits (for example, reduced delays in completing transactions) or costs which might result from the following:¹⁵²

(1) The capacity to execute deeds electronically without the physical presence of a witness.

(2) Any or all of the specific options for electronically executing deeds described above, namely via video link, signing platform, or acknowledgement.

The capacity to execute deeds electronically without the physical presence of a witness

5.109 We received 129 responses to question 18(1).

Benefits

5.110 21 consultees said that executing deeds electronically without the physical presence of a witness could be more convenient. It was suggested that the benefits of this approach could be reduced costs, an increase in the speed in which transactions could be completed and/or the facilitation of cross-border transactions.¹⁵³ For example, Weightmans LLP said:

We take the view that it should be less time consuming for our clients. Efficient transactions should result in reduced costs for clients and the ability to take on more transactional work as a lawyer. It could free up time to help businesses grow and could open them up to the international market.

5.111 ICAEW said:

Our members have told us that being able to execute deeds electronically without the physical presence of a witness is frequently quicker, easier and therefore more convenient, particularly with regard to cross border transactions. The electronic means used to execute a deed does not, however, have a bearing on this.

5.112 Stephen Bowman said:

From my experience as a corporate lawyer (having worked both in regional and city firms), dispensing with the need for a witness would hugely benefit our transactional

¹⁵² CP 237, para 8.96.

¹⁵³ Consultees who responded in this way include Chris Carr, AliasLab UK Limited, Weightmans LLP, Matthew Wardle (on behalf of third year law students at the University of Cumbria), Kathryn Toomey (on behalf of second year law students at the University of Cumbria), the Society of Scrivener Notaries, Beth Rudolf (in a personal capacity and on behalf of the Conveyancing Association), Hogan Lovells International LLP, ICAEW, RBS, Icon UK Limited, DocuSign, the Notaries Society, SLC, Eversheds Sutherland LLP, Bryan Cave Leighton Paisner LLP, OneSpan, Catherine Phillips and Stephen Bowman.

work. Often documents are negotiated and agreed late at night, with the parties at home waiting for a call to sign, and it can be impossible to find a witness who is awake and able to sign documents in the night. For example, one private equity fund manager in the US had to wake his neighbour at 4am in the morning to get a document witnessed. It is understandable that not every person wants to inconvenience people in that manner, so the need for reform to allow transactions where some documents need to be executed as a deed to complete is glaringly obvious.

5.113 Eversheds Sutherland LLP and Hogan Lovells International LLP suggested that it would make the UK more attractive as a jurisdiction to do business. Hogan Lovells International LLP said:

The main benefit of making it possible and easy for a signatory to sign a deed electronically despite that signature needing witnessing is that it should reduce the complexity and practical difficulties of arranging for transaction documents to be signed when the signatory is not physically present. Reducing complexity and practical difficulties will, in turn, improve efficiency and may reduce costs. Crucially it will help to keep English law as an attractive legal jurisdiction for business. It would also facilitate the development of digital ways of working such as blockchain and smart contracts.

5.114 GC100 said:

It seems to us that this would avoid the confusion that sometimes results from a lack of understanding of the circumstances in which witnessing is required (and the mistakes that flow from this, which often become apparent only when disputes arise, at which point this can be used to obtain what might be considered an unfair commercial advantage in negotiations or litigation). This issue is particularly acute on international transactions involving multiple jurisdictions where English law is used with imperfect knowledge of the intricacies of the law on the execution of documents.

Costs or other concerns

5.115 82 consultees raised concerns in relation to LPAs or the protection of vulnerable individuals.¹⁵⁴ 59 consultees provided the following identical response:

Whilst it would increase the speed in which a document can be completed, I am not convinced in relation to lasting powers of attorney that the benefits outweigh the protective function.

5.116 Julie Man said:

In an area increasingly under abuse with the elderly and vulnerable measures brought in to protect them especially when under duress it appears are slowly being eroded in favour of technological advances. In addition, a lot of elderly people will not have the means or access to the technology proposed and should have the

¹⁵⁴ 82 of 129 consultees who responded to this question were concerned about LPAs and/or the protection of individuals (approximately 64% of responses).

option to use the more traditional methods that they feel personally comfortable when dealing with what already maybe to them a frightening and worrying process.

5.117 Four other consultees¹⁵⁵ were generally concerned about the risk of fraud and abuse. For example, Peter Hughes said that “this will inevitably introduce security risks and the potential for fraud and abuse”.

5.118 David Satchell (responding in a personal capacity and on behalf of AmicusLaw) and Solicitors for the Elderly noted that it is important for parties to have the time to think before deciding to go ahead with a transaction. Solicitors for the Elderly said:

We accept that it may increase the speed and efficiency of certain transactions, but this may be at the cost of allowing parties desirable time for reflection before committing themselves.

5.119 Eight consultees noted that the capacity to execute deeds electronically without the physical presence of a witness would not necessarily reduce costs.¹⁵⁶

5.120 Peter Howes said: “any benefit statement should also highlight the increased risk of having less evidence.” While Mike Paley said that “if documents are sufficiently important as to need witnessing, witnessing needs to be done in a proven secure way.”

5.121 Caroline Carter raised concerns about the cost of financial fraud. Weightmans LLP said that “due to perceived increased transactional risks, firms’ professional indemnity insurance might increase.”

5.122 Jennifer Harris said:

I don't believe this will reduce delays or reduce costs and is likely to add confusion and delay to the process by creating a convoluted system whereby the document has to go back and forth to the witness.

5.123 Catherine Phillips said:

Practically speaking, for those signing, it will be more convenient to sign electronically. However, the cost of using electronic signatures depends on the technology and transaction management platforms that support its use. It seems likely that the better the quality of the underlying technology, the more benefit electronic signatures will have. Combining features of manual and electronic signatures and transaction management will not maximise the potential benefits.

¹⁵⁵ Consultees who responded in this way include Peter Hughes, Smith Partnership, David Wells and PCB Solicitors LLP.

¹⁵⁶ Consultees who responded in this way include Judge Elizabeth Cooke, Caroline Carter, Weightmans LLP, the Chancery Bar Association, the Society of Scrivener Notaries, CILEx (“74% of respondents disagreed or strongly disagreed that proposals for virtual witnessing and attention would reduce transaction costs”), Catherine Phillips and Jennifer Harris.

5.124 Judge Elizabeth Cooke suggested that it could lead to a “huge cost to individuals where litigation comes to the wrong conclusion for lack of reliable evidence.”

5.125 Eight consultees said that they had not experienced significant difficulties in finding a witness to be physically present.¹⁵⁷ For example, the Chancery Bar Association said:

As stated above, we believe that this is seeking to solve a problem that does not exist in practice, in that it is very rare not to be able to find a witness who can be physically present for the few moments it takes to execute a document, given that witnesses do not, in general, have to be anyone in particular.

Benefits or costs of video link, signing platform, or acknowledgement

5.126 We received 166 responses to question 18(2).

Video link

5.127 77 consultees commented on the use of video link to execute a deed electronically. 73 consultees said that video link would be an acceptable option because it retains the protective function of witnessing.¹⁵⁸ 64 consultees provided an identical response which said:

Video link would be the only acceptable method of executing a deed as the protective function is retained.

5.128 MLP Law said that “the only suitable way for personal deeds would be by video link to ensure suitable safeguarding functions can be retained”.

5.129 Elizabeth Foggin had some reservations regarding the use of video link:

The only way to retain the protective mechanism of the witness means that video link would be the only acceptable method but even this I find dubious - how would you know whether or not there is an invisible presence (off-screen) coercing /placing undue pressure on the donor.

5.130 BVCA and Caroline Carter said that the benefits of video link are convenience and speed, particularly where the transaction needs to be completed last-minute or signatories are abroad.

5.131 Bryan Cave Leighton Paisner LLP said: “the use of a video link may help facilitate some signings.”

5.132 CLLS said:

We can see the advantage of video-link witnessing, particularly if there was a reason to want the same witness (e.g. a lawyer) for several signatories.

¹⁵⁷ Consultees who responded in this way include Bryan Cave Leighton Paisner LLP, CLLS, the Chancery Bar Association, BVCA, Charles Russell Speechlys, Iain Macfarlane, Angela Hickey and Rosemary Alison Wyeth.

¹⁵⁸ 73 of 116 consultees who responded to this question (approximately 63% of responses).

5.133 Three consultees mentioned both benefits and costs associated with execution deeds via video link.¹⁵⁹ For example, the Society of Scrivener Notaries suggested that it would reduce delays in execution and time and cost associated with travelling. However, it said that it is “not suitable for Elderly and Vulnerable who may not have access to such equipment”, “much increased potential for fraud” and “the cost of running system may be passed on to client”.

5.134 GC100 said that “of the options listed, video link would seem to be the least attractive because of the practical difficulties.”

5.135 OneSpan said:

Certainly using a video link requires a little more effort than a signing platform or simple acknowledgment. However, specialty e-signature vendors have fully integrated video links built in to their standard e-signing platforms today and I would expect to see this capability become much more widely available in 2019 as the cost and availability of video-conferencing-as-a-service expands.

Signing platform

5.136 Six consultees shared their views on the potential benefits or costs of signing platforms.¹⁶⁰

5.137 Stephen Bowman said:

In a recent venture capital fundraising round, where consent to a new investor was urgently needed by a wide and dispersed international shareholder base to avoid the company running out of funds, an electronic signing platform was successfully used to circulate and collect signatures for a written shareholder resolution. The resolution was passed within 24 hours, which would have been impossible had the electronic signature platform not been used.

5.138 GC100 said:

Signing platforms are simple both to understand (conceptually) and use and provide high levels of certainty with respect to authentication.

5.139 Kathryn Toomey (on behalf of second year law students at the University of Cumbria) said:

A signing platform would be the most secure method of signing a deed. As it only allows those who have access to log in remotely. It tracks who has entered the platform and at what time and date. It leaves a digital trail of who and when the signatures were made. More importantly the signature does not have to be made at a desk, the signing platforms allows for a different device to be used to carry out the

¹⁵⁹ Consultees who responded in this way include the Society of Scrivener Notaries, Kathryn Toomey (on behalf of second year law students at the University of Cumbria) and Matthew Wardle (on behalf of third year law students at the University of Cumbria).

¹⁶⁰ Consultees who commented on signing platforms include Benjamin Elliott, Stephen Bowman, the Society of Scrivener Notaries, Kathryn Toomey (on behalf of second year law students at the University of Cumbria), Matthew Wardle (on behalf of third year law students at the University of Cumbria), and GC100.

signature, depending on the signing platform used. [...] The only negative aspects of using a signing platform is that the other parties signing, cannot see each other when signing the deed.

5.140 The Society of Scrivener Notaries said that the benefits of a signing platform were reduced delays in executing deeds and that the intention of each party would be clearer while signatures are placed simultaneously. However, it also noted that there would be a cost associated with running the signing platform.

5.141 Bryan Cave Leighton Paisner LLP did “not support the use of the signing platform alone (ie without conventional witnessing of the signatures made using it)”.

Acknowledgement

5.142 Four consultees commented on the potential benefits or costs of acknowledgement.¹⁶¹ For example, the Society of Scrivener Notaries said that the benefits of acknowledgement was reduced delays in executing deeds (but not acknowledging them) However, it noted that there was the potential for manipulation between execution and acknowledgment, possible uncertainty after execution of the document and the possibility that it would not be accepted in some jurisdictions.

5.143 Bryan Cave Leighton Paisner LLP did not support acknowledgement as an option for the electronic execution of deeds.

5.144 Clifford Chance LLP raised concerns that it does “not add anything to the technical evidence which would be available from a signatory electronically signing (e.g. the IP address from the computer used to sign or the audit trail from an online platform).”

Other comments

5.145 RBS said that there would be “significant cost benefits” in all options, saying:

Due to the acknowledged difficulties around witnessing, the execution of deeds via e-signatures require separate processes to those required by documents signed under hand. Removing the need for the physical presence of a witness would be a step towards bringing these processes together which would, in turn, reduce cost and improve customer experience.

RBS is aware that the availability of senior individuals in organisations who are signing documents is a challenge in the ‘real-world’ process of transactional executions. The need for the physical presence of witnesses adds further complexity in the case of the execution of deeds. However, as noted above proposed benefits need to be balanced against the protective value of the extra level of formality in the execution of deeds.

5.146 David Wells and Michael O’Brien took the opposite view. They said that it would be costly to buy the software. Michael O’Brien noted:

¹⁶¹ Consultees who commented on acknowledgement include the Society of Scrivener Notaries, GC100, Clifford Chance LLP and Bryan Cave Leighton Paisner LLP.

There is a cost to the consumer to buy the equipment, train in its use and keep up to date. So any saving on paper is more than eaten up other expenses.

5.147 AliasLab UK Limited noted that all options are “technically possible just now” while Chris Carr said that “the simpler [the option] the better”.

5.148 DocuSign said:

The different methods described by the Law Commission enable different degrees of advantages, as the convenience of the workflow will affect adoption; the fewer the barriers and logistics to the process, the greater the benefits that will be attained.

However we will not presume to estimate the costs or benefits of individual methods in this context. As the world leader in electronic agreement execution, we stand prepared to support the models that are ultimately deemed most worthy. To that end we encourage the Law Commission to continue to advocate for technology-neutrality, so that valuable innovation is encouraged and rewarded. We welcome the chance to participate in further dialog and working groups to explore these matters and to educate legal and business leaders about potential technological solutions.

5.149 SLC said:

We believe that an electronic signature system, which incorporates sufficient proof of identity verification checks for the conveyancer to prove, beyond all doubt, that the person executing the document is, indeed, the person that they are purporting to be, coupled with an ability to confirm that the conveyancer has provided all necessary advice to the executing party in relation to the nature and effect of the document/deed together with an acknowledgement confirmation that the executing party has received and understood such advice would negate the need for electronic signatures to be witnessed by a third party.

5.150 GC100 noted that there is a benefit in having a limited number of options for electronically executing deeds:

In our view there is some merit in having a limited number of mechanisms for execution of deeds; this would facilitate a rapid general understanding of their advantages (primarily efficiency and accuracy of the signing process) and quicker and more widespread uptake.

Appendix 1: Acknowledgements

The following bodies and individuals responded to our consultation.

Professional membership organisations

Agricultural Law Association	British Private Equity and Venture Capital Association (BVCA)
GC100	Institute of Chartered Accountants in England and Wales (ICAEW)
Investment and Life Assurance Group (ILAG)	Kent Law Society
Liverpool Law Society	Solicitors for the Elderly
The Chancery Bar Association	The Chartered Institute of Legal Executives (CILEx)
The City of London Law Society (CLLS)	The Conveyancing Association
The General Council of the Bar of England and Wales	The Law Society
The Notaries Society of England and Wales	The Society of Licensed Conveyancers (SLC)
The Society of Scrivener Notaries	The Society of Trust and Estate Practitioners (STEP)
TheCityUK	UK Finance
Westminster and Holborn Law Society	

Government and public bodies

Cumbria County Council
HM Land Registry
Sussex Partnership NHS Foundation Trust

Law firms

Arnison Heelis Solicitors	Bana Vaid & Associates
Bird Wilford and Sale Solicitors	Blocks Solicitors
Bryan Cave Leighton Paisner LLP	Buckles Solicitors LLP

Carpenter & Co Solicitors	Charles Russell Speechlys
Clifford Chance LLP	CMS Cameron McKenna Nabarro Olswang LLP (CMS LLP)
Cognitive Law Ltd	Darwin Bowie Ltd
Dixon Ward Solicitors	Eversheds Sutherland LLP
Glanvilles LLP	Hogan Lovells International LLP
J A Hughes	Jones & Co Solicitors
Jordans Solicitors	Kennedys Law LLP
Leeper Prosser Solicitors	Melkerts Solicitors
MLP Law Ltd	Mullis & Peake LLP
PCB Solicitors LLP	Shoosmiths LLP
Smith Partnership	Steene Law Ltd
Taylor Wessing LLP	TLT LLP
Wedlake Bell LLP	Weightmans LLP

Businesses

Adobe, Inc	AliasLab UK Limited
CapDesk ApS	DocuSign
euNetworks	Funding Circle Ltd
Icon UK Limited	Lloyds Banking Group
OneSpan	Pension Bee
The Royal Bank of Scotland plc (RBS)	Selwood Research
Smart Pension	Yoti

Members of the judiciary

Judge Elizabeth Cooke

Individuals

Joanna Addison	Catherine Anderson	Paddy Appleton
Carolyn Bagley	Kerry Bates	Richard Bates

Caroline Bielanska	James Bird	Nicholas Bohm, a member of the project's advisory panel
Naomi Bowie	Stephen Bowman	Jenny Brading
John Breeze	Kayleigh Brown	Sarah Bushell
Chris Carr	Caroline Carter	Hannah Clark
Caroline Coats	Laura Colville	Karin Cox-Putker
Marjorie Creek	Gabriella Cuoghi	Gareth Day
Charles Daysh	Catherine Diamond	Samantha Downs
Elizabeth Dunn	Benjamin Elliott	Peter Facey
Susan Fairless	Graham Farries	Elizabeth Foggin
Joanna Elizabeth Fong	Emma Fretwell	Bekka Fuszard
Melissa Gilman	Andrea Godfrey	Maria Goodacre
Alison Greatbanks	Catrin Griffiths	Samantha Hamilton
Jennifer Harris	Rachel Hawkins	Rebecca Haywood
Angela Hickey	Mark Hopper	Afonwy Howell-Pryce
Peter Howes	Peter Hughes	Megan Jones
Lesley Kemp	Tanya Kirman	Richard Lane
Ella Lewis	J Lewis	Deniece Lines
Ian Macara	Iain Macfarlane	Julie Man
Karen Markall	Ken McRae	Katherine Melkerts
Hugo Moore	Naomi Neville	Michael O'Brien
Richard Oliphant	Mike Paley	Sophia Parkes
Michael Parr	Catherine Phillips	Philippa Pipe
Edward Popham	Lorna Pound	Jennie Pratt
Nigel Pugh	Jacqueline Randall	Mary Rimmer
Catherine Robson	Beth Rudolf	Sally Runnacles

Lucy Samy	David Satchell	Kenneth Seakens
Neil Singer, CEO of clicktopurchase ®	Tom Sorby	Margaret Taylor
Kathryn Toomey (on behalf of second year law students at the University of Cumbria)	Robert Tozzi	Francesca Tubb
Edward Vidnes	Lesley Walker	Laura Walkley
Heather Wannell	Craig Ward, Baron of Lundie	Kelly Wardell
Matthew Wardle (on behalf of third year law students at the University of Cumbria)	Jenny Watson	Robert Watson
David Wells	Sarah White	Caroline Williams
Rosemary Alison Wyeth		

Other

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Alzheimer's Society