

LAND REGISTRATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS

Schedule 8: Indemnities

Claimant's fraud or lack of care

282. *Paragraph 5* replicates the principle of contributory negligence introduced by the Land Registration Act 1997. No indemnity is payable if the loss was suffered as a result wholly or partly of the claimant's own fraud. If however the loss was suffered as a result of the claimant's lack of proper care, then the indemnity payable is reduced to the extent that it is fair having regard to the claimant's share of the responsibility for the loss. Indemnity will not be payable when the claimant's lack of proper care is solely responsible for the loss. Additionally, the paragraph provides that, unless the claimant paid for the interest noted in the register or the registered estate in respect of which the loss was suffered, the claimant will be treated as if the loss caused by the fraud or lack of proper care of a person from whom the claimant has acquired the interest was his own fraudulent act or careless action.

Valuation of estates etc.

283. *Paragraph 6* There is no restriction on the type of loss that is recoverable by a claimant. This means that a claimant can recover any loss flowing from the particular circumstance whether that loss is direct (for example, the value of land lost) or consequential (the loss of a valuable contract). If indemnity is sought for the loss of an estate, interest or charge, however, paragraph 6 puts a maximum value on the figure for that indemnity. This provision replicates the current position, which sets out two different bases for assessing the maximum sum allowed. If indemnity is payable because the claimant has suffered the loss by reason of rectification, the maximum sum is the value of the estate, charge or interest immediately before rectification of the register of title, but as if there were to be no rectification. By contrast, if the claimant has suffered the loss because of a mistake but where the register was not rectified, the maximum sum is the value of the estate, interest or charge at the time when the mistake which caused the loss was made. Where the valuation is taken at the date that the mistake was made, however, it will be possible for interest to be paid from the date of the mistake (see paragraph 9). The payment of the maximum sum permitted for the direct cost of the interest lost does not prevent the claimant recovering consequential loss.