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PROPOSALS FOR CHANGES IN THE LAW RELATING TO LAND CHARGES AFFECTING UNREGISTERED LAND AND TO LOCAL LAND CHARGES

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PROPOSALS FOR CHANGES IN THE LAW RELATING TO LAND CHARGES AFFECTING UNREGISTERED LAND AND TO LOCAL LAND CHARGES

INTRODUCTION

1. For the assistance of the Law Commission in their examination of the system of conveying unregistered land, under Item IX of the First Programme, the Council of the Law Society in February and November 1966 submitted Memoranda containing, inter alia, proposals dealing with Land Charges and Local Land Charges. We have subsequently had the advantage of conferring with representatives of the Law Society's Working Party on Conveyancing upon these Memoranda.

2. Since Land Charges and Local Land Charges have already been the subject of earlier Committee Reports (Stainton Committee on Local Land Charges, 1952, Cmd. 8440; Roxburgh Committee on Land Charges, 1956, Cmd. 9825), to which reference was specifically made in the Law Commission's First Programme, and since these subjects readily permit of separate and largely self-contained treatment, it has been decided that the Law Commission should, at this stage of its examination, put forward proposals for changes in the law in this field, whilst its examination of other aspects of conveyancing is still proceeding.

3. The proposals contained in this paper are therefore limited to Land Charges and Local Land Charges. Reference should also be made to the Law Commission's Report on Restrictive Covenants,[1] in which it is proposed that restrictive covenants imposed before the proposed law, governing land obligations positive and negative, comes into effect, should remain subject to the present rules. Restrictive covenants

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[1] Published on 22nd March 1967 LAW COM NO 11

are now the most important, both in effect and in number, of the land charges registrable under s 10 of the Land Charges Act 1925, and the proposals in this paper relating to Land Charges will affect all old "pre-appointed day" restrictive covenants to which that Act applies as well as land obligations created after the appointed day.

I LAND CHARGES

Generally

4. The main problem connected with Land Charges in the conveying of unregistered land arises from the fact that registration of Land Charges under s 10 of the Land Charges Act 1925 is against the owner's name and not against the land affected. It was doubtless expected in 1925 that the progress of registration of title under the Land Registration Act 1925 would be much more rapid than it has, in fact, been.[2]

As time passes it becomes increasingly difficult for purchasers to discover the names of all the former estate owners, since 1925, against whom their search of the Land Charges Register should be made. Further, since a purchaser under an open contract may not be entitled to call for a root of title earlier than 30 years old, by virtue of s 44(1) of The Law of Property Act 1925[3] since 1st January 1956, when 30 years elapsed from the coming into operation of The Land Charges Act, the problem has become more prominent. Such a purchaser has no means of ascertaining the names of estate owners prior to the root of title and therefore lacks the information to effect the necessary searches. But, because of s 198 of the Law of Property Act 1925, he would inevitably be bound by such charges as had been properly registered.

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2 Our recommendations on this subject take into account that the expedition of the programme for compulsory registration of title will tend to shorten the life of the Land Charges Register. But so long as (i) compulsory registration occurs only on the first conveyance on sale of the freehold, or the grant or assignment of a long lease, after the area has been included in the compulsory registration areas and (ii) short leases are incapable of registration by ss 22 and 123 of the Land Registration Act 1925, the register of title will necessarily be incomplete – see also para 22 below. Changes in the law relating to registration of Land Charges are, therefore, necessary in order to simplify and expedite conveyancing and provide protection for purchasers until universal registration of titles can be achieved.

3 See the Law Commission's Interim Report on Root of Title to Freehold Land, published February 14th 1967, in which it is recommended that the statutory minimum period for commencement of title under an open contract should be reduced to 15 years.

It is however right to say, that cases of this kind are in practice almost unknown. The Report of the Committee on Land Charges[4] recommended that s 198 of the Law of Property Act 1925 should be amended to ensure that, whilst for the protection of the charges registration should be effective against "all the world", as between vendor and purchaser it should not be deemed to give the purchaser knowledge at the date of the contract, of matters of which he was in fact ignorant. The Committee further recommended that no contracting out of the section as so amended should, in the case of Land Charges, be permitted. We think that these two recommendations should be implemented.

5. But changing the law as thus recommended, would not solve the problem relating to registered land charges or obligations lying behind the root of title – "old land charges". Assuming the amendment, it seems that the position would be as follows –

(a) an "old land charge" might, possibly, come to light between contract and completion; in that case if, which is unlikely, it were of the category accepted as "removable" then the purchaser could normally require and compel its removal by the vendor; but if it were not "removable", as would be more likely, the purchaser could rescind or resist specific performance;

(b) if, which is more likely, an "old land charge" emerged after completion, the purchaser (subject to any changes in the character of the vendor's covenants on sale) would be without a remedy.

This position, theoretically, will become more acute if the Law Commission's proposal to reduce the statutory minimum root of title period to 15 years is adopted. It is therefore necessary to make provision for the payment of compensation for actual financial loss sustained through the emergence of an "old charge" after completion. Since the risk of loss so arising stems from a defect of the system of registration against names provided by Parliament, it is our view that such compensation should come from public funds Therefore, we recommend the creation of a Compensation

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4 The Roxburgh Report, para 33.

Fund under the control of the Chief Land Registrar, following broadly the pattern laid down in the relevant parts of ss. 82 and 83 of The Land Registration Act 1925.

The Compensation Scheme

6. The proposed introduction of a Compensation Fund raises a number of questions:-

(a) Should the "old land charge" which emerges after completion be binding on the purchaser, or should he take the land free of the charge and leave the chargee to claim compensation from the Fund?
In our view it is preferable to maintain the principle that registration affords complete protection to the chargee, so that a chargee who has done all that is required of him by the 1925 legislation is not deprived of his vested rights. We therefore agree with the Roxburgh Committee, that an old land charge which has been registered should bind a purchaser; subject to what is next proposed, we think that he should be entitled to compensation if he can show that he has suffered financial loss by reason of its existence.

(b) Should there be a power to rectify the Land Charges Register in favour of a purchaser?
Since there may be cases in which the loss arising to a purchaser from the binding character of an "old land charge", which emerges after completion, will far exceed the value of the charge to the person entitled to its benefit, we think that the Registrar should have a power to rectify the Register in appropriate cases by cancelling or varying the Registration upon payment of compensation to the chargee. In exercising this power, which should be subject to appeal to the Courts, the Registrar should have regard to all the circumstances and to the question whether or not the chargee can be adequately compensated in money for the cancellation or variation.

(c) Should the vendor in any circumstances be under a liability either to the purchaser or, if the purchaser has been compensated, to the Fund, for failing to disclose an "old land charge"?

The Ruxburgh Committee, in para. 20 (3) of their Report, considered the suggestion that a vendor should be liable in damages to a purchaser who suffers loss through an undisclosed charge registered before the commencement of title. They agreed this would not work hardship if the vendor knew of the charge, but pointed out that in many cases he would neither have known of it, nor have had any means of discovering it. This is, no doubt, a sound reason for not introducing a general rule that the vendor should always be liable, but the proposed Compensation Scheme raises the question whether a vendor who knew or ought to have known of the charge should escape liability.

This question is also relevant to the general review of covenants for title which the Law Commission is under-taking. It is possible that this review may produce some proposals for alterations in the law which would affect the purchaser's rights against his vendor in this respect.

On the assumption, however, that the covenants for title, implied in a conveyance by s. 76 of the Law of Property Act 1925 remain in their present qualified form, there may be rare cases where the emergence of an "old land charge" entitles the purchaser to a remedy against his vendor; but there may also be cases where, notwithstanding that the vendor knew or ought to have known of the existence of an "old land charge" he is under no covenant liability. We consider that the Fund should have a right of recourse against the vendor in both of these cases. In the former case the Fund would be subrogated to the purchaser's rights under the covenants, against the vendor; in the latter case the Fund would have a direct right to claim against him. The vendor is under a duty at common law to disclose latent defects in his title and if evidence of a breach of that duty emerges before completion, the purchaser is entitled to rescind the contract or to claim damages. Even though the present form of the covenants for title may leave the purchaser without a remedy where the breach emerges after completion, it does not seem to follow that under the proposed procedure for compensation the loss should fall upon the Fund in cases where the

vendor knew or ought to have known of the existence of the "old land charge". The Fund's claim against the vendor, is based upon one of two tests; the first is whether the vendor is in breach of his covenants for title, in which case the Fund is subrogated to the purchaser's rights. The second is whether the vendor was in breach of his duty of disclosure to the purchaser, in which case the Fund has a direct claim. The appropriate period of limitation which these claims should attract, would in the first case, be 12 years (appropriate to claims on covenants), in the second case six years from the date of completion of the relevant sale.

(d) What should happen to the "old land charge" once compensation has been paid?

In sub-paragraph (b) above we have dealt with the position where a land charge has been cancelled or varied by a decision of the Registrar upon payment of compensation to the chargee.

We are now concerned with the more common case where the register is not rectified and compensation becomes payable to a purchaser for the financial loss he sustained through the impact of the registered charge. In such a case the answer to the question posed above will depend upon the nature of the charge and the manner in which the purchaser has been financially affected by it. If it is a money charge his compensation claim will relate to what he has had to pay; if fully discharged, there is no reason for it to remain on the register; if partially discharged, what should thereafter appear on the register is the amount of the charge which remains payable. But it may be necessary for charges of a continuing character, (such as restrictive covenants, equitable easements or estate contracts) depending on their characteristics to remain on the register in their original form or, for example, in the case of restrictive covenants, in some modified form. This can be illustrated by the hypothetical case of a purchaser who erects a building upon land in breach of an "old land charge" in respect of which the chargee, in enforcement proceedings,

(a) recovers damages for breach of covenant but not an injunction to remove the building erected; and

(b) obtains an injunction to restrain the erection of further buildings. Here it will be the old covenant in its modified form that is registered i.e. relaxed as regards the erected building.

In every case where, after payment of compensation an "old land charge" in whole or in part remains on the register, such registration should be against the name of the compensated purchaser since it is necessary to bring the matter on to the title which subsequent purchasers will investigate thus absolving the Fund from liability in respect of further claims. Consideration of these points supports our view that the Fund and the question of entries on the register consequential upon payments of compensation should be under the control of the Chief Land Registrar (cp. ss. 82 and 83 of the Land Registration Act 1925) subject to the overriding jurisdiction of the Courts.

(e) Will re-registration of an "old land charge" sufficiently protect the Fund?

Since the difficulties inherent in the system of registration against names might result in a future purchaser overlooking the charge, there would, in our view, be substantial benefit in registering as a local land charge notice of the payment of compensation and of the re-registration, (in whole or in part) of the "old land charge", against the land to which it continues to relate. Such registration would operate as a "long-stop" against the possibility of an inadequate land charge search.[5]

Dead Entries

7. (a) Although large numbers of cancellations of entries in the Land Charges

[5] A precedent for registration of this kind of notice can be found in section 28 of the Town and Country Planning Act 1954 (now superceded by s 112 of the Town and Country Planning Act 1962) relating to compensation for planning decisions which depreciate the value of interests in land.

Register do take place,[6] there is no doubt that the Register is heavily burdened with entries of charges which are no longer effective. Since it would be impossible to devise an effective scheme for automatic cancellation, or for cancellation by mandatory notice, to operate within the present system, the only way of relieving the burden of dead entries is to provide an easier procedure for cancelling them in application. We consider that, as a matter of good conveyancing practice, a chargee's solicitor should effect the cancellation of any registration protecting a land charge as soon as the charge has been discharged or has ceased to be effective: much work and expense can be saved subsequently if it is done at that time.

(b) In the case of restrictive covenants, cancellation must depend on the Charge ceasing to be enforceable (which ultimately depends on the order of a Court, or of the Lands Tribunal under s. 84 of the Law of Property Act 1925). In the case of other land charges, however, it has been suggested – and, so far as puisne mortgages, limited owner's charges and general equitable charges are concerned, we agree – that the present procedure of cancellation by application on the part of the chargee, supported by a statutory declaration or a solicitor's certificate, should be supplemented by the following methods:-

(i) application on a form signed by the chargee's solicitor on express instructions; and

(ii) application by the chargor's solicitor, supported by adequate evidence of discharge, e.g. the document of discharge and a solicitor's certificate of discharge, or a statutory declaration.

Although there are many cases where it is clearly in the chargor's interest to cancel any entry (eg puisne mortgages) the present provisions do not allow the chargor himself to take the necessary action. The Court can always, where appropriate, order the vacation of a charge and this power in disputed cases will have to be preserved; but where there is no dispute as to the facts, cancellation should be virtually automatic on proper applications.

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6 See the Chief Land Registrar's Report on H M Land Registry for 1965 (page 9). There were 44,981 cancellations in that year.

We do not think the same considerations apply to estate contracts and equitable easements since these too frequently become subjects of dispute.

Charges on Company Lands

8. S. 10 (5) of the Land Charges Act 1925 provides that registration under the Companies Act (now s. 95 of 1948) of Land charges for securing money created by a company, should be sufficient registration and should have effect as if the charge were registered under the Land Charges Act. Notwithstanding the language of the sub-section, however, it is clear that the protection of an official search certificate is of no value to a purchaser in respect of company charges registered only under the Companies Act; and that the priority notice procedure provided by the Law of Property (Amendment) Act 1926 cannot be made to operate in relation to such charges. It has therefore been suggested that s. 10 (5) of the Land Charges Act 1925 should be repealed, so that land charges against specific land, to secure money created by a Company, should be registrable in the Land Charges Register in order to be effective against a purchaser. It is important to remember that charges against registered land owned by companies, including floating charges, do require entry in the Land Register to be effective against a purchaser. The possible application of this proposal to floating charges will be considered when the Law Society's views are received – see paragraph 66 of their second Memorandum.

9. Our inquiries have revealed that at the present time there are some, not insignificant, numbers of registrations of Class C (i) and (iii) charges against Companies.[7] We also know that 40,000 – 45,000 registrations of company charges under s. 95 of the Companies Act 1948 take place annually. These obviously include charges upon registered lands owned by companies, floating charges and charges secured by deposit of title deeds, to none of which does s. 10 of the Land Charges Act 1925 apply.

It is therefore difficult to reach any firm estimate of the additional work which would fall on the Land Charges Registry if the proposal to repeal s. 10(5) were adopted; but we do not think that it would be more than a small percentage of the annual number of land charge registrations at present dealt with (approx. 200,000).

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7 A recent sample check on a number of companies reveal 74 registrations in 22 days.

From the point of view of the chargee the proposal would involve some additional work and cost (i.e. that entailed in registration) but in view of the advantage of the priority procedure this would be acceptable. From the point of view of a searching purchaser no more work or expense would be involved, since purchasers of land from companies invariably requisition a land charge search in connection with other possible charges affecting their vendor company.

10. Two arguments (apart from possible administrative difficulties) are made against the repeal of s. 10(5) of the Land Charges Act 1925. The first is that to which reference has been made in para. 4 above (i.e. that the Land Charges Register has now only a limited life) but which we do not find convincing; the second is that prospective purchasers of company lands should, in any case, search the Company Register for other purposes. Whilst the latter is undoubtedly true, we consider that the benefits of priority notice and official search protection which this repeal would involve, although limited to those charges created in the future, will outweigh these arguments, bearing in mind that a land charge search is invariably made against a company vendor.

Land Improvement Charges Affecting Unregistered Land[8]

11. Included in s. 10 of the Land Charges Act Class A charges are land improvement charges. These are rent charges in favour of the statutory Agricultural Mortgage Corporation or the Lands Improvement Company.[9] The rent charges concerned do not confer upon the chargee a power of sale or a right to sue upon personal covenant. But s. 11 of the Land Charges Act 1925 provides that Class A and B charges (Class B are minimal in number[10]) take effect "as if created by deed of charge by way of legal mortgage". From this provision there came two unfortunate and undesired results; firstly the chargee acquires, contrary to intention, a power of sale; secondly, it may be difficult for the borrower to obtain advances upon his land from the normal sources. We consider that s. 11 of the Land Charges Act 1925 should be appropriately amended.

The System of Land Charge Registration

12. We have considered whether it would be practicable to alter the whole basis of land charge registration, e.g. for the future to operate it against land rather than

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8 In the case of registered land these are only noted on the Register and not registered as charges.

9 Both these bodies make loans under the improvement of Land Act 1864.

against names, or possibly to combine land charge with local land charge registration (the latter is against land) in single registers. It would clearly be impossible to reconstitute the Land Charges Register ab initio with the aim of converting it into a "land" register. It would also be impracticable to have two sets of registers at the Land Charges Registry, one set, effective to an appointed day, being charges against names, the other set, charges against lands from after the appointed day.

There remains suggestions which have previously been canvassed[11] that land charge entries should be transferred to local land charge registers or that, from an appointed day, land charges should be registrable in the local registers. The first suggestion is, in our view, unacceptable, the very bulk of existing registered charges and the impossibility by administrative decision of identifying accurately the land affected, would defeat it. The second suggestion has much attraction but having regard to the administrative and other problems which relate to local land charges (see Section II below) and whilst the future of local government organisation is under review, any immediate step in this direction would, we think, be premature.

Efficiency of Search Procedure

13. Discussions which the Law Commission has held with the Chief Land Registrar and his officers responsible for land charges registration have already led to the implementation of proposals for the improvement of the forms of application for official searches. These are designed more emphatically to draw attention to the need to provide previous descriptions of the land and its location to which the application is directed. But it is impossible wholly to eliminate mistakes in these respects. Registration is based upon applications submitted and these may contain mistakes in names,[12] or in descriptions and locations of properties. Once a land charge has been registered it is not uncommon for the description, and for the postal address of the property to which the application related, to change and there is not, nor do we think there could be devised, any suitable procedure for such changes to be effected on the Land Charges Registers. Applications for official searches frequently contain similar mistakes or discrepancies of names and descriptions or, more commonly, omit the names of earlier estate owners or previous descriptions of the property, such matters

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10 Class B Registrations 1962-4; 1963-16; 1964-14; 1954-11

11 Inter alia, in the Stainton, Roxburgh and Wilberforce Reports.

12 The serious consequences of this as illustrated in Oak Co-operative Building Society v Blackburn [1967] 2 W L R 1426, are being studied.

often being unknown to the applicant for search. But cases where mistakes of this kind lead to litigation are rare. We know of only one reported case.[13]

It can happen that mistakes occur in the conduct of official searches at the Land Charges Registry by omission from the official search certificate of matters which should have been disclosed but these are extremely rare in relation to the enormous number of searches made annually.[14] Although the Chief Land Registrar has, in practice, accepted responsibility for compensating a chargee prejudiced by the operation of s.17(3) of the Land Charges Act 1925, there is at present no statutory provision covering this position. Instead of these claims being decided, as at present, on principles derived from negligence and breach of statutory duty, we consider that the scope of the Compensation Fund (proposed in para. 5) should be sufficiently wide to include these cases.

Subject to the study of the use of computers now being undertaken, we do not think that any further steps can be taken, beyond improvement of the forms of application for registration and search, to improve the efficiency of search procedure which, as far as the Land Charges Registry is concerned, is in our view, carried out with the maximum speed and efficiency.

Reduction of Classes of Charges in s.10 of the Land Charges Act 1925

14. The Roxburgh Committee suggested[15] firstly, that all mortgages unprotected by deposit of title deeds, whether legal or equitable, might be registered in Class C(i) under s. 10 of the Land Charges Act 1925 and that Class C(iii) might be abolished, and secondly, that options for renewal or purchase contained in leases should no longer be capable of registration. We are told that the former suggestion would not effect any saving of time or cost and that the distinction between Classes C(i) and C(iii) is convenient in practice. The case of Weg Motors v. Hales[16] has since demonstrated the reasoning behind the second suggestion to be incomplete in that an option for purchase or renewal exercisable by a lessee may not be, to quote para. 15 of the Roxburgh Report "squarely on the title". We do not therefore recommend any reduction in the s. 10 classes.

Exclusion of certain of the present classes of Land Charges from registration

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13 Du Sautoy v Symes [1967] 2 WDR 342.

14 2.8 million official searches were made in 1965, but only 80 errors came to light.

15 Paragraphs 13-15 of their Report.

16 [1962] Ch 49. See also for registered land Webb v Pollmount Ltd. [1966] Ch 584.

15. We have considered whether any useful purpose would be served by excluding from registration under s. 10 of the Land Charges Act 1925 any of the existing classes covered. We have taken into account the fact that for the last 12 years registrations under Classes B, C(ii) and D(i) have been minimal and under Class E non existent,[17] but there would be no practical advantage administratively or otherwise in excluding them from registration.

The Roxburgh Committee, however, suggested that equitable easements (Class D(iii)) could be excluded. Registrations of this class now run at the annual rate of 2,300 – 2,400, a substantial number of which are the subject or priority notice procedure. In a different context, we are examining the impact of the decision of the Court of Appeal in E. R. Ives Investments Ltd. v. High [1967] 2 W.L.R. 789 upon the law relating to equitable easements. Provisionally, however, it seems to us that the registration requirement does serve a useful purpose (as the number of registrations suggests) and we have found no support for the suggestion that Class D(iii) should, in fact, be excluded.

Time Limits on Registration

16. It has been suggested that time limits for effectiveness of registration should be imposed on the classes of Land Charge registrable under s. 10 of the Land Charges Act 1925, or on some of them. Prima facie this seems attractive, but the practical difficulty of providing effective machinery for re-registration, in appropriate cases on the expiration of the stipulated period, is insuperable. Chargees or their successors could not be expected to remember expiration dates; nor could their solicitors. Further, we find it difficult to justify the additional work which would be entailed in re-registration of a still subsisting charge.

Estate contracts seemed a special case for consideration in this context since such registrations are often effected merely to provide temporary protection to a

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[17] The figures for the last three years are:-

	Class B (A rent or sum of money charged upon land other-wise than pursuant to the application of some person)	Class C(ii) (Limited Owners charge)	Class D(i) (Charges for Death duties)	Class E (Annuities created before 1926)
1963	16	2	20	Nil
1964	14	3	21	Nil
1965	11	1	18	Nil

purchaser or other interested party. In an attempt to find a suitable means of separating registrations of this kind from registrations of estate contracts intended to be of long duration (e.g. purchases of land by instalments; options to purchase or to renew leases; and sales not completed by conveyance for some agreed reason) we considered sub-dividing Class C(iv) into short term registrations at a reduced fee and perpetual registrations at a higher one. But we concluded that unless the fee for the latter were raised to a relatively exorbitant level, no use would be made of short term registration.

Summary of Proposals on Land Charges

17. We therefore recommend that:-

(a) s. 198 of the Law of Property Act 1925 should be amended as proposed in the Roxburgh Report (para. 4);

(b) a Compensation Fund on the lines discussed should be set up for the benefit of those who suffer financial loss through the emergence of "old land charges" after completion (paras. 5 and 6); and should also be available to chargees who suffer loss as a result of the operation of s. 17(3) of the Land Charges Act 1925 (para. 13).

(c) the procedure for cancellation of dead entries should be improved (para. 7);

(d) s. 10(5) of the Land Charges Act 1925 should be repealed to the extent that it deals with company charges against specific lands falling within Classes C(i) and (iii) so that such charges would in future be registrable at the Land Charges Registry (paras. 8 to 10).

(e) s. 11 of the Land Charges Act 1925 should be amended to exclude Land Improvement Charges from its operative effects (para. 11).

II LOCAL LAND CHARGES[18]

Comment

18. Registration of local land charges, which is basically governed by s. 15 of the Land Charges Act 1925, presents a complex of interlocking problems of policy, administration and conveyancing. Since this paper is in furtherance of the examination of Item IX of the Law Commission's First Programme – modernisation

[18] This expression is used to cover all matters registrable in registers of local land charges.

and simplification of the system of transferring land – its emphasis will be on the conveyancing aspect, although questions of policy and administration will be touched upon when they have direct relevance. The Committee on Local Land Charges in January 1952 produced its report[19] containing a detailed study of these same problems as then seen to exist, concluding with numerous recommendations for changes in the law. Little has been done since to implement these recommendations[20] and in the meantime the problems have grown immeasurably larger.[21] The dimensions of the present problems are illustrated by the fact that the standard textbook, Garner's "Local Land Charges " (5th Ed. published June 1966), now lists some two hundred types of charges which may be registered as local land charges under public Acts. One aspect of the problem of local land charges is also touched upon in the Roxburgh Report (1956 Cmd. 9825) i.e. s. 198 of the Law of Property Act 1925 (fully discussed in paragraph 4 above in relation to land charges but of much less importance in local land charges cases, since registration under s. 15 is against land and not against names).

Conveyancing Aspects

19. It will be convenient to list the headings to be followed in this section –

(a) Problems of search (paras. 20 – 27).

(b) Supplementary inquiries (paras. 28-33).

(c) Additional matters appropriate for registration (para. 34).

(d) The impact of s 198 of the Law of Property Act 1925 (para. 36).

(e) Priority notice procedure (para. 37).

(f) The consequences of non-registration and inaccurate search (paras. 38-40).

(g) The case for compensation to purchasers (paras. 41-44).

(h) Standardisation of charging provisions (paras. 45-46).

(i) Overall control (para. 47).

The section will conclude with a summary of recommendations.

(a) Problems of Search

(i) Multiplicity of Registers

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19 The Stainton Report 1952 Cmd 8440.

20 See para 79 of Cmd 8440. Of the changes recommended only (13), regarding certain definitions, and (16) the "urgent need of consolidation" of the Local Land Charges Rules – accomplished in 1966 – have been implemented.

21 Vast numbers of new local land charges or matters registrable as such under many post 1951 Statutes have been created; two additional parts (one dealing with purely private matters) have been added; and a number of new Registers have been established.

20. A purchaser, seeking to discover what orders have been made affecting the use of land, or subjecting it to third party rights, or charges falling outside the simple land charges category, has to search not only the Local Land Charges Registers covering the area in which the land is situate, but may also need to search a number of other registers, of which examples are those kept under the Rent Control legislation, the Highways Act 1519 (as to public rights of way), the Water Resources Act 1963 (regarding licences), Town and Country Planning Act, 1962, Caravan Sites etc. Act 1960, and most recently the Commons Registration Act 1965. There is no reason to suppose that the list is yet closed. Whilst we can see no immediate prospect of substituting, for this increasing proliferation of registers and registration authorities, one registration authority for every appropriate area, to cover all matters required to be registered against land. It is clearly essential to contend with the problem and its relationship to supplementary inquiries (see also paragraph 31 below). We cannot, however, make any immediate recommendation on this point.

(ii) Duplication of Registers

21. In relation to matters registrable under s. 15 of the Land Charges Act 1925 and those other statutory charges to which the registration provisions of that section are attracted (these are mainly matters under Parts VI to XII of the Registers), the purchaser is concerned, except in the case of County Boroughs, to search in two registers, i.e. that kept by the County Council and that kept by the County District Council. The Stainton Committee[1] recommended the absorption of the county registers by the district registers and this proposal has been awaiting determination since 1952. Accepting the merits of amalgamation, it would however be of little advantage to purchasers so long as it is necessary for them to make and to obtain answers to supplementary inquiries of and by more than one authority. Whilst some extra cost is incurred and additional time taken by the need to requisition official searches of two registers, (for which however standard forms are invariably used), time and money are also involved in dealing with supplementary inquiries. So long as it is necessary to obtain information upon these from different authorities (because of the division between them of powers and functions) it will be better, in the interests of avoiding some delay, and of securing greater accuracy and more complete

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(1) Para. 79(5).

information, to retain the existing practice whereby the authority responsible for the matter to which inquiries are addressed should answer them directly.

The reorganisation of local government in the London area involved the transfer to the new Borough authorities of existing local land charge entries registered elsewhere and this operation was, according to our information, carried out with accuracy and speed. We hope this may provide a pattern for similar transfers (thus avoiding the need to search two registers) in the future. One consequence of this change is that it becomes possible to reduce the number of supplementary inquires to be addressed to the Greater London Council to two, the London Boroughs dealing with all the others. As from 1st April 1967 a further change takes effect by which, in respect of these two residual inquiries, the Boroughs will act as a "post office" between the purchaser and the Greater London Council. It remains to be seen whether this will expedite answers to inquiries.

(iii) Registered Land

22. The Stainton Committee[1] recorded the opinion of the then Chief Land Register that if the title to all land were registered, with some decentralisation of the Land Registry itself,[2] amalgamation of the Local Land Charges registers with the register of title would be feasible. But since 1952 the position has become vastly more complicated (see paragraph 18 above). Here again practical considerations arise. It is the making of and dealing with supplementary inquiries and the answers thereto that impose the maximum burden on purchasers. Concentration of local land charges entries in the central (or district) registrars would give little relief in this respect. Ideally, if a title is registered, one would hope to provide machinery to ensure that the register did reflect all charges and burdens affecting that title. We consider, however, that at present this question is inappropriate for recommendations and must await an overall review of the land law, taking into consideration any new policy for local government organisation.

(iv) Cross Reference to other Registers

23. It has been represented to us that the cross-referencing to other registers which contain entries of charges in fact registrable in the local register, which is permitted

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(1) Para. 37.

(2) Decentralisation is making rapid progress under the "Eight Year Plan", but progress is inhibited by the fact that leasehold title registration is limited and compulsory registration is dependent on a first transfer. Unless the basis of the land Registration Act is changed so that

by Rule 20 of the Local Land Charges Rules 1966, gives adequate information in many cases. We think that it is unsatisfactory that full information should not be available in the Local Land Charges register as to matters registrable under s. 15 of the Act; this is of particular importance in the case of planning charges etc. registrable under s. 15(7) of the Land Charges Act 1925. We therefore recommend that such full information should be given.

(v) Amalgamation – Reduction of Parts of Local Land Charge Registers

24. Although the Stainton Committee recommended[1] that the number of parts, then 10, should not be increased and should, if possible, be reduced, we do not think that this would bring any conveyancing advantage and might, perhaps, create its own problems. The nature of the charges now grouped under each of the twelve parts of the Register is governed by the special characteristics which each group possesses, which characteristics are reflected in the Local Land Charges Rules of 1966, and we think that no additional burden falls upon the registering authority or on purchasers because of the number of parts in which the registers are kept. We therefore do not support the Stainton recommendations on this point.

(vi) Extinct Charges

25. In respect of two kinds of local land charges there are automatic time expiration provisions.[1] In other cases the local registrar is under a duty to cancel the entry of any charge which has been satisfied or become unenforceable (Rule 22 of the Local Land Charges Rules 1966). The Stainton Committee[2] expressed the view that many dead entries remain on the registers and they recommended that the circumstances under which a charge becomes unenforceable (and therefore must be cancelled) should be clarified; and that other amendments of the relevant Rule should be made with a view to cancelling dead entries.[3] Their detailed criticisms remain, in our view, generally valid and the growth in registration since 1952 accentuates their importance. The new Local Land Charges Rules 1966, however, contain no provision imposing a duty upon the charging authority to notify the registrar of the satisfaction of a charge, or enabling a purchaser who has received a clear certificate of search to

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registration is required of all interests in land, there will never come a time when all titles are registered.

(1) Para. 79(1).

(1) Under s. 15(4) of the Land Charges Act 1925 and Rules 6(3) and 17(3) of the Local Land Charges Rules 1966.

(2) Para. 78.

(3) Para. 79(15).

procure the removal or modification of a charge which for this reason is unenforceable against him. These deficiencies have important results in conveyancing because the presence of an actual entry, even though the charge is extinct, may lead not only to delay, but also to unnecessary work and expense being incurred in inquiries by the parties to the proposed transaction.

26. We have given particular attention to the problem of removing from the Local Land Charge Registers entries relating to pre-1947 town planning schemes, where such entries in fact exist. (As appears from Paragraph 6 of the Stainton Report and item 4 of Appendix D to it, considerable confusion has existed as to whether such entries should appear and we understand that many Registrars have in fact deleted them). Apart from the fact that subsisting charges registered before 1st June 1966 constitute "planning charges" for the purposes of Rule 2(2) of the Local Land Charges Rules 1966 – and should now be entered in Part 3 of the Register – the main importance of such entries is where they relate to land under requisition by the Crown. In such cases the time limit for enforcement proceedings in respect of contravening user does not expire until four years after the date of de-requisitioning. In its First Memorandum to the Law Commission on Transfer of Land, the Law Society recommended that the power of planning authorities to serve an enforcement notice with reference to a development before 1948, where the Crown has held an interest since that date, should be abolished. If this recommendation were accepted – and it has our support – then the main reason for retaining entries relating to pre-1947 planning decisions would disappear. In any case, since many local authorities did not in fact register such decisions and since many Registrars have in fact deleted them from the registers, it is now completely fortuitous whether or not such matters will emerge on a Local search. We therefore recommend that legislative provisions should be made to authorise their wholesale removal.

(vii) Lack of Uniformity in Registers

27. The Stainton Committee[1] drew attention to a number of matters demonstrating the lack of uniformity in the keeping of the registers and related information (e.g. of records of searches), but made no specific recommendation concerning them. Since the right of personal search is little exercised in relation to local land charges, official search giving far better protection, we do not think that,

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(1) Paras. 70, 73 and 75.

however undesirable from the aspect of administration, lack of uniformity in these matters gives rise to any serious problems in conveyancing. We, therefore, make no proposal here . We think the problem is linked to the Stainton Report recommendation[2] that the same Government Department should be responsible both for making Local Land Charge Rules and for the administration of Local Land Charge Registries and for a departmental inspectorate. (See below paragraph 47)

(b) Supplementary Inquiries

28. From the conveyancing aspect the practice of making supplementary inquiries is of the greatest importance. There are four main matters which create problems. First, the subject matter of such inquiries; second, the need (except in the case of County Boroughs) to address such inquiries to more than one local authority; third, the delays which occur in obtaining answers to such inquiries; fourth, the question of the answering authority's legal liability.

(i) Subject Matter

29. The matters to which inquiries are directed are, speaking broadly, local authority decisions which are likely in future to affect the use or value of the land concerned. The scope of the inquiries to a large extent forms the subject of agreement between the Law Society and local authorities' associations and, pursuant to that agreement, standard forms are in use which are varied from time to time to include new matters.[1] The Stainton Committee recommendation[2] that certain additional matters should form the subject of supplementary inquiries, and some of them have subsequently been added to the "agreed" list.

But, in some cases, further inquiries, in addition to those covered by the standard forms, are also made; where this occurs an additional fee is payable and the inquiry is normally answered. We think that it would be impossible completely to standardise the matters to which supplementary and additional inquiries should relate, since these must vary according to the location and peculiar characteristics of the property and to the purchaser's intentions. We also think that, so far as standardisation of inquiries is practicable, it is best left to be dealt with on the present "agreement basis" and kept open for review, as now, from time to time.

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(2) Paras. 79(6).

(1) The forms currently in use date from 1965-CON-29A etc. series.

(2) Para. 79(2).

30. The Stainton Committee[3] dealt with the question of supplementary inquiries in some detail. They concluded, and we entirely agree, that this practice is essential in conveyancing. The continued growth of legislation enabling government departments local and other public authorities and statutory undertakers to exercise powers in relation to, and impose controls upon, land in private ownership makes it impossible to foresee a time when these inquiries could be eliminated. Their scope is more likely to expand than to contract. Yet we think, as has been suggested to us by the Law Society, that some time would be saved if the standard supplementary inquiries were made, where practicable, by the vendor's solicitors before contract and passed, together with an up-to-date official search certificate, to the purchaser before formal contracts are exchanged and we so recommend. We do not think that this improvement is appropriate for legislative action. Accordingly we would welcome such steps as The Law Society may take to establish this as a matter of good conveyancing practice.

(ii) Inquiries of Two Authorities

31. The need to make these different inquiries arises from the fact that (except in County Boroughs) there is a division of local government powers and functions, the exercise of which may affect the future use or value of land, between authorities in respect of the same geographical area. (See paragraphs 20 and 21 above). Unless and until responsibility for a given area, in relation to the matters relevant to inquiries, is vested in a single authority, nothing effective can be done to overcome the "double inquiry" problem. To direct all inquiries to a single local authority would, under the present organisation of local government, mean that the authority to whom the inquiries were addressed, would have to act as a post office, so far as the other authority's information was concerned.[1] It seems to us that this would cause greater delays and increase the risk of the furnishing of inaccurate or insufficient information. We therefore make no proposal on this matter.

(iii) Delay

32. Many local authorities are able to deal with supplementary inquiries quickly and efficiently, but the time taken by others is a frequent cause of complaint. We appreciate that the time taken to answer such inquiries depends on a number of

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(3) Paras. 12-17.

(1) See paragraph 21 above as to the position in Greater London from 1st April 1967.

factors, including the provision of adequate staff, but we think it desirable that there should be a time limit for providing answers.

The authorities undertake, for a fee, to answer, from the information available to them, the inquiries contained in the standard forms drawn up by agreement between the Law Society and the local authorities' associations. It seems to us reasonable that those standard inquiries should be answered within a set time limit. In many cases – for example, in most sales of private dwelling houses – the standard inquiries are all that the purchaser submits, and receipt of the replies within a time limit would undoubtedly speed up the signing of the contract and enable the parties to make their arrangements on the basis of a planned timetable.

In some cases, however, the purchaser wishes to make additional inquiries not included on the standard from, and it is the practice of local authorities to answer them to the best of their ability although they have given no undertaking to do so. As regards those cases, two further questions arise: (1) would it be reasonable to require the authority to answer the additional inquiries within the same time limit and (2) if not, would it be of any advantage to the purchaser in those cases that he should receive replies to the standard inquiries within the time limit while the additional ones followed later?

As regards the first question, we feel that a time limit should be imposed for replies to the additional inquiries as well as to the standard ones, unless the authorities demonstrate that this would be impossible or would lead in practice to the submission of inadequate or unhelpful answers. As regards (2), we think that even if replies to the additional inquiries had no time limit, it would nevertheless be helpful to the purchaser to know that he was going to receive replies to the standard inquiries within a set time; and there would in practice be many cases in which the authority would be able to answer the additional, as well as the standard, inquiries within the time limit.

We therefore recommend the imposition of a time limit for replies to standard and, if possible, additional inquiries. We also support the recommendation contained in paragraph 79(6) of the Stainton Report, (See para. 47 below). The administrative changes there suggested should help to improve the situation.

(iv) Legal Liability

33. Answers are given on a "without legal responsibility" basis[1] and it has been suggested that it is unsatisfactory, and not in accordance with present day legal trends, that there should be information given for reward, affecting contemplated legal rights, but without liability. In so far as the supplemental inquiries contained in the standard form are directed to ascertain whether or not some action, taken by a local authority, affecting the land, admits of an answer yes or no, we find it hard to justify that such answer be given without liability. If, however, any additional supplementary inquiries relate to matters still within the authorities' contemplation and on which they have reached no definite decision, we think that if a liability basis were applied, the answers, if furnished at all, would tend to be considerably less informative. We therefore suggest that a distinction should be drawn between the two kinds of supplementary inquiries; those on the agreed list and others; that incorrect answers to the former should carry potential liability but not the latter.

(c) Additional Matters Appropriate for Registration

34. The Stainton Committee recommended that certain additional matters should be made registrable under s. 15 of the Land Charges Act 1925.[1] So far as these related to planning charges,[2] most of those which were not registrable in 1952 (those falling outside the terms of s. 15(7) of the Land Charges Act 1925 as amended) are now covered by the Planning Register kept under the Town and Country Planning (General Development) Order 1963 (S.I. No. 709) Art. 14, to which cross-reference in the Local Land Charges Register is usually made under the terms of the Local Land Charges Rules 1966 Rule 20.[3] But there are other matters in respect of which the recommendation of the Stainton Committee has not been implemented and we consider that steps should now be taken to provide for their registration.[4] In principle, all public authority orders imposed, which are actually operative so as to affect specific land in the hands of subsequent purchasers, ought to be registered.[1] (See also paragraph 6 above as to an additional matter so registrable).

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(1) A term to this effect is indicated in the Standard CON. 29 forms.

(1) Para. 79(3).

(2) For the width of the present definition see Rule 2(2) of the Local Land Charges Rules 1966.

(3) Further to Rule 20 of the Local Land Charges Rules 1966, see paragraph 23 above.

(4) Ministers orders for control of advertisements are amongst the recommendations not dealt with; but no such orders have in fact yet been made.

(1) We think that this ought to apply, for example, to requisition orders (cf. Lewisham Corporation v. Malony [1947] 2 All E.R. 36); to conditions imposed in relation to a permitted user under planning controls (cf. Rose v. Leeds Corporation [1964] 1 W.L.R. 1393) and to all compulsory purchase orders (c.p. Stainton paras. 10-22 and s. 11 of the Land Commission Act 1967). Since Stainton it has been held, contrary to that Committee's views, that a notice to

35. In Rose v. Leeds Corporation [1964] 1 W.L.R. 1393, the Court of Appeal held that a planning permission subject to a time limit given by the Leeds Corporation to the Plaintiff's vendor was not registrable as a local land charge because it did not prohibit or restrict the user or mode of user of the affected premises. This was widely regarded as changing what had previously been understood to be the law. (Cf. Stainton Report Appendix D para. 5). We think that it should be clearly laid down that all conditional planning permissions should be registrable, whether the condition is imposed by the local planning authority or by the Minister on appeal or directly. The terms of section 15(3) of the Land Charges Act 1925, as amended, limit registration to prohibitions or restrictions imposed by local planning authorities; and although the definition of a "Planning charge" in the Local Land Charges Rules 1966 R. 2 is sufficiently wide to cover a Minister's condition, we think that section 15(3) should be appropriately amended.

(d) S. 198 of the Law of Property Act 1925

36. The Stainton Committee considered, but did not recommend any amendment, to s. 198 of the Law of Property Act[2] 1925. But four years later the Roxburgh Committee[3] did make a proposal for the amendment of that section, qualified in relation to local land charges by a right to contract out. (See paragraph 4 above). Although the effect of s. 198 of the Law of Property Act 1925 upon a purchaser may be less serious in the case of Local Land Charges than in relation to land charges covered by s. 10 of The Land Charges Act 1925 (since the law and practice concerning these two cases are so different[1]) we consider that this proposal should be implemented.

(c) Priority Notice Procedure (Rule 25 of the Local Land Charges Rules 1966)[2]

37. When it is intended to apply for the registration of a local land charge, a priority notice to this effect, containing a description of the nature of the charge and

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treat is not registrable as an estate contract (see Capital Investments Ltd v. Wednesfield U.D.C. [1964] 1 All E.R. 655). The existence of compulsory purchase orders can be a matter of extreme gravity to a purchaser.

(2) See para. 11 of Cmd 8400.

(3) See para. 33 of Cmd. 9825.

(1) The essential differences may be summarised as follows:- Land charges are registered against names and therefore a pre-contract search has normally to be limited to the prospective vendor, while the post-contract search includes the names appearing from the abstract of title: Local Land Charges are registered against land and therefore pre-contract searches have no limitations. These differences are reflected in the different treatment accorded to the respective categories in the standard conditions of sale currently in use i.e. Law Society's and National.

the land to be affected may be entered in the register at least 14 days before the registration of the proposed charge is to take effect. Provided that the application for registration of the charge is made within 28 days of the date when the priority notice was entered, and expressly refers to the priority notice, the registration takes effect as if it had been made at the time when the charge was created. We are informed that little use is made of priority notices in respect of local land charges by the local authorities for the reasons fully discussed in the Stainton Report. In the course of our consultations we have considered the usefulness of the Local Land Charge Rule 25(6)[3] under which a purchaser who completes within 14 days of obtaining an official certificate of search is unaffected by a local land charge registered in the interim (unless itself protected by a priority notice). It has been represented to us that this procedure has not proved to benefit to prospective purchasers mainly because of the impossibility of forecasting the date on which the certificate of search will be issued, and frequently, the serious delays in dealing with supplementary inquiries.[1]

If, as we believe, it is correct to conclude that there is no useful purpose served either for local authorities or for purchaser, in retaining the priority procedure then, for the reasons discussed in paras. 54-58 of the Stainton Report and upon our information as to the practice since, the strong case for its abandonment must be weighed against our provisional proposals contained in Paras. 38-40 (enforceability of unregistered charges) and Paras. 41-44 (compensation) below.

It seems to us, that the effect of imposing a compensation liability upon an authority that fails to register a local land charge may well lead to the possibility of an increased use of priority procedure by local authorities (subject to its inherent limitations in their case) and that the effect of conferring compensation rights on purchasers who have searched, with negative results may make the 14 days protection afforded by an official search more valuable. Although priority procedure at the present time has little practical value, at least it does no one any harm.

We are therefore disposed to recommend its retention for the time being since the impact of our other proposals may advance its usefulness in practice.

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(2) S.I. 1966 No. 579.

(3) Replacing the old rule to the same effect.

(1) See para. 32 above.

(f) Non-registration and Inaccurate Search Certificates

38. Those local land charges which fall strictly within the terms of s. 15(1) or (7) of the Land Charges Act 1925, are, in the absence of registration, void against a purchaser for value. But other charges registrable as local land charges are generally speaking not thus void. Furthermore there are types of local land charges (e.g. financial charges enforceable against the owner for the time being of the land affected under s. 291(1) of the Public Health Act 1936 and s. 181 of the Highways Act 1959), which, as affecting the land, may be void for non-registration but remain effective nonetheless to impose personal liability to pay upon a purchaser. Statutory charges (mainly those which are included under the headings of Parts 6 to 12 of the register but do not fall within s. 15(1) to (7) of the Act) are not void for want of registration and even in the case of those planning charges which are void for non-registration, the local authority concerned may avoid this consequence by making a new order.

Considering these complications, the Stainton Committee recommended[1] that charges covered by s. 15(7) of the Land Charges Act 1925 and similar charges, relating to restrictions on, or mode of, user, should nevertheless be enforceable against a purchaser notwithstanding non-registration or non-disclosure on a search, but that he should be entitled to compensation against the authority whose fault it was that the charge was not entered on the register. This recommendation had two qualifications; first prior notice calling for compliance should be a pre-condition to enforcement proceedings based upon an unregistered matter; second, if the charging authority were at fault it should be empowered, subject to the approval of the appropriate tribunal to cancel an unregistered charge and thus avoid payment of compensation.

39. In the course of our consultations, it has been represented to us that the substance of this recommendation of the Stainton Committee should be applicable to all unregistered local land charges. We agree with this because where, as in most cases, an authority which has failed to register is nevertheless able to recover payments from the owner for the time being, (as e.g. in most Part 2 charges) or by new orders to give effect to the charge against a purchaser (as e.g. in the case of most Part 3 or Part 4 (planning and housing) charges), the fact that the actual charge is void for non-registration is, in the end, of little practical importance. Subject to qualifying

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(1) Para. 79(8) and (9).

the Stainton recommendation by making it clear that if an authority cancels a charge to avoid payment of compensation, it should be unable thereafter to take further action to give effect to any charge of substantially the same character, we propose that the Stainton recommendation, as thus qualified, should be implemented.

40. The question now inevitably arises – what, if our proposal were adopted, would be the point of providing for registration of local land charges at all? The answer, we think, is clear. Firstly purchasers are concerned to get the maximum possible freedom of use and enjoyment of the land which they are proposing to acquire; no one wants to buy rights of compensation against unknown restrictions. And indeed it would be reasonable to provide that a right to compensation should arise only where a purchaser had failed to discover a charge through no fault of his own, e.g. where diligent enquiry had not revealed it. It would follow, therefore that if local land charge registration were abolished, a purchaser would have to make specific inquiries concerning a great any matters at present the subject of search. In effect this would involve the resurrection of the pre-1925 doctrine of notice which, because of its unsatisfactory features was deliberately interred by the property legislation of 1925. Secondly, registration does disclose local land charges with the result that a prospective purchaser, generally speaking, will be in a position to ascertain most of the burdens to which he will become subject on purchase.

(g) The Case for Compensation

41. Accepting that unregistered local land charges (or some of them) or such charges registered but, by error, not disclosed by an official search certificate, should nevertheless be enforceable against a purchaser for value, we do not think that it would be contested – accepting the qualifications attached by the Stainton recommendations and our gloss upon them[1] – that a purchaser suffering resultant financial loss should be entitled to compensation.

42. The first question which arises is against whom his claim for compensation should lie. Ex hypothesi he will, prior to purchase, have obtained a clear search certificate and he will subsequently have received notice of a binding charge. Such a purchaser has no means of determining where the fault lies; he cannot, for example, tell whether the charging authority gave any, or sufficient, notice to a "foreign" local registrar.[1*] Further the Local Land Charges Rules 1966 (and their predecessors)

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(1) See paragraphs 38-39 above.

(1*) See Stock v. Wanstead and Woodford Borough Council [1962] 2 Q.B. 479.

contain no provisions regulating a charging authority's obligation to notify the local registrar[2] in a different authority's area, of the creation of local land charges (cf. Rule 21 which relates only to the duty to pass on information of "incidental variations.")

Prima facie, therefore, it seems that the claim should lie against the registering and not the charging authority, though if the former were not at fault (i.e. where the charging authority has failed to provide the local registrar with any or sufficient information) the local registrar should be entitle to indemnity against the charging authority. As the law is, however, we do not think there is a basis for such indemnity because neither the Act nor the Rules impose a clear duty upon the charging authority vis-à-vis the local registrar. The basis for a right of indemnity could, however, be provided by legislation.

But it is an integral part of the Stainton Report's recommendations upon this matter (see paragraph 38 above) that a charging authority should, subject to court approval, be entitled to escape liability to pay compensation by cancelling an unregistered local land charge. Since we agree with this proposition (as qualified in paragraph 39 above) we have considered whether it could be given effect within the scheme of imposing compensation liability to an injured purchaser upon the local registrar who has issued a clear search certificate. We think that it could because in the case postulated, i.e. default of the charging authority, the purchaser's compensation claim would arise when he has notice of the binding charge. His first step would be to claim against the local registrar who, if he considered the charging authority to blame, would at once seek indemnity from that authority; they would then have the opportunity to consider whether or not to cancel the unregistered charge.

We therefore consider that compensation claims of purchasers in this context should be against the local registrar, he having the right of indemnity against any charging authority from whose default the claim arises. Appropriate legislative provision will be required. At the same time, a charging authority's duty to notify the local registrar in a different authority's area, in the proper form, of the creation of a local land charge, should be specified and laid down.

43. The second question is how a purchaser's claim for compensation should be measured. Assuming that the charging authority (being in default) has not cancelled

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[2] We have here used the term local registrar with reference to the present system; but see para 44(a) below in which we support the Stainton Committee's recommendation that responsibility for keeping the Register should be placed on the Local Authority and not its clerk (Stainton 79(7)).

the unregistered local land charge and thus escaped liability, we think that where the charge, the subject of the claim, possesses a money character (i.e. burdening the land with financial obligations), compensation should be assessed by reference to the money burden upon the purchaser; but that where the charge is one imposing restrictions upon the user or enjoyment of land, compensation should be assessed by reference to the resultant diminution in value of the purchaser's interest at the date of purchase.

44. If the case for compensation be accepted, then two associated problems need consideration.

(a) The first is whether the recommendation contained in para. 79(7) of the Stainton Report, that: responsibility for keeping the register should be placed on the local authority not upon its clerk, should be implemented. For the reason contained in para. 49 of that Report we think that it should and those whom we have consulted support this view.

(b) The second problem is whether a legal basis for liability exists under the present law. As to this, whilst we are informed that liability for erroneous search certificates (i.e. those not disclosing a charge actually registered) is sometimes accepted and is, indeed, frequently the subject of liability insurance, we cannot be sure this is always the case and as far as we are aware the point has not been directly decided.[1] Further we do not think that under the present law an injured purchaser could mount to a successful claim either against the local registrar or against a charging authority at fault, in respect of an unregistered local land charge. The legislation which we recommend in paragraph 42 above will, however, cover the position.

(h) Standardisation of Charging Provisions

45. The Stainton Committee discussed this question in paras. 31-36 of their Report reaching the conclusion that there should be a "general formula" describing charges which are to be registered which should apply automatically to all future legislation. They observed "we do not envy the draftsmen the task of framing it" – and with respect we agree. Their conclusion formed the subject of para. 79(4) of their

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(1) It is to be noted that the Land Charges Act 1925 contains no provision for indemnity to persons suffering loss such as are contained in the Land Registration Act 1925 s. 83.

recommendations. We have consulted upon this matter and have reached the provisional view that on balance there is little advantage to be gained, from a practical aspect, by implementing the proposal. The changes which have taken place in local land charge registration since 1952 illustrate, we think, that the widely differing natures of the various matters taking effect as local land charges, do not lend themselves to reduction into a general formula. If, however, our proposals to unify the law as to the consequences of non-registration etc. be accepted, there is room for eliminating the differences between the two main types of legislative formula i.e. –

(a) matters which are local land charges by reference to s.15 of the Land Charges Act 1925 or other specific definitions;

(b) matters which are treated for purposes of registration as local land charges.

The feasibility of such an operation seems to be supported by the fact that the new Local Land Charges Rules 1966 do lay down a uniform system of registration procedures and matters ancillary thereto.

46. Whilst being of the opinion that local land charges are not at present reducible within a general formula, we nevertheless think that it would, from a practical point of view, be highly expedient that local registration authorities should keep, and maintain available to the public, up-to-date lists of all registrable matters[1] The Local and Private Acts pertaining to that area should be known by the local authority and are less likely to be known to the purchaser. Therefore it would not, we think, be beyond the powers of each authority to compile its own lists.[2]

(i) Overall Control of Local Land Charge Registers

47. The recommendation contained in para. 79(6) of the Stainton Report should in our opinion be implemented in the interests of efficiency; but it is difficult to make specific proposals until the solutions to the problems of multiplicity and duplication of registration authorities are forthcoming.[3] There are at present two government departments concerned with the legal and administrative aspects of the registration of

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(1) These in fact vary from place to place owing e.g. to differing local authorities practices and to local and private acts.

(2) See Stainton Report para. 33 for some of the factors.

(3) See paragraphs 20 and 21 above.

local land charges[4] but, as Stainton points out[5] it would be desirable to centralise control in one department, namely the Lord Chancellor's exercising its functions through and on the advice of the Chief Land Registrar. The present absence of overall control has an impact on conveyancing practice in a number of respects which have been mentioned in Part II of this paper, but the difficulties to be overcome in the organisation of overall control make it unlikely that this desirable result could be attained at all quickly.

Summary of Proposals on Local Land Charges

48. We therefore make the following recommendations:-

(a) that full information as to local land charges registered elsewhere should be given in the local register (cf. Local Land Charges Rules 1966, Rule 20) (paragraph 23 above):

(b) that amendments should be made to the Rules with a view to securing the cancellation of extinct and unenforceable local land charges (paragraph 25 above: cp. Stainton, para. 79(15));

(c) that legislative provisions be made to authorise the removal of entries relating to pre-1947 Town planning schemes, from the local land charge register (para. 26 above. cp. Stainton, para 6.)

(d) that the procedure for sending supplementary inquiries to the county council and (except in county boroughs) to the district council should be continued: that all such inquiries should be answered within a time limit: that replies to the standard (but not to any additional) inquiries should be given on the basis of legal liability (paragraphs 28-34 above: cp. Stainton, para. 79(1) and (2)):

(e) that additional matters should be made the subject of registration as local land charges (paragraph 34 above: cp. Stainton, para. 79(3)):

(f) that s. 15(3) of the Land Charges Act 1925 should be amended so that all conditional planning permissions are registrable as local land charges (para. 35 above).

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(4) i.e. the Lord Chancellor's Office and the Ministry of Housing and Local Government.

(5) See paragraph 48, of the Stainton Report.

(g) that s. 198 of the Law of Property Act 1925 should be amended as recommended by para. 33 of the Roxburgh Report (paragraph 36 above).

(h) that local land charges not registered or not revealed by an official search certificate, owing to an omission or fault on the part of that authority with whom it is required to be registered, should be enforceable against a purchaser subject to his right of compensation against that authority (paragraphs 38-44 above: cp. Stainton, para. 79(8) and (9)):

(i) that the procedure for registration by the charging authority with the registering authority should be clearly defined (paragraphs 41 and 42 above: cp. Stainton, para. 79(14)):

(j) that the liability to pay compensation should be imposed by legislation on the authority in default (paragraph 42 above):

(k) that the local authority should be the registering authority and not its clerk (paragraph 44 above: cp. Stainton, para 79(7)).

(l) that there should not be any general formula attempting to describe, by reference to subject matter, local land charges; but the difference between the varying legislative formulae under which they are made registrable should be eliminated (paragraph 45 above, cp. Stainton, para. 79(4)):

(m) that lists of matters registrable as local land charges should be compiled by registering authorities and available to the public (paragraph 46 above).

49. We do not recommend for immediate implementation, but propose for later review the questions of:-

(i) the multiplicity of registers and registration authorities for different matters (paragraph 20 above):

(ii) the duplication of local land charge registration authorities counties (paragraph 21 above cf. Stainton, para. 79(5)):

(iii) the question of local land charges affecting registered land (paragraph 22 above):

(iv) the question of overall departmental control (paragraph 47 above: cp. Stainton, para. 79(6)).

50. The results of our inquiries suggest that on balance there is now no advantage in reducing the number of parts of the register (paragraph 24 above: cf. Stainton, para. 79(12)).

19th May 1967.