



**Law
Commission**
Reforming the law

Updating the Land Registration Act 2002 Summary

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THE IMPORTANCE OF LAND REGISTRATION

1. Land is an important asset: for most people, the land that they own is their home, and the most valuable thing that they have. An effective land registration system is essential for everyone who owns land, whether the land is a home, a business or an investment. The land registration system makes land easier to deal with and more valuable by recording and guaranteeing interests in land. In the past, title to land was proved by the production of a bundle of deeds. Today, most landowners in England and Wales have registered title to their land. That means that their ownership is recorded on a register kept by HM Land Registry. Entry in the register is all someone needs to prove title to their land. Once title is registered, it is guaranteed by the law.
2. Land registration also plays a significant role in the economy as a whole. The World Bank has highlighted the importance of a registration system for the property market, for business and for the wider economy. The World Bank has identified a range of benefits, including transparency, reducing bribery, increasing investment and enabling the proper assessment of taxes. The Bank's *Doing Business 2018* report explained:

When parties engage in a property transaction, it is essential that they obtain legally reliable information regarding the actual property involved in the transaction. The availability of information on the property – as well as its owners or creditors – helps to eliminate uncertainty over property rights or obligations that may encumber the property. In the absence of any public records or any related rights to a property, the transaction costs can become overwhelming, risking that ownership becomes untraceable.¹
3. Most people encounter the land registration system only rarely, typically when they buy or sell their home. Even then, their direct contact with the system will be minimal – the detailed legal work will be undertaken by their conveyancer. There are an unlucky few who have more direct contact with the system: victims of registered title fraud and property owners involved in boundary disputes with their neighbours are some examples. But for everyone, whether having direct contact with the system or not, the importance of land registration cannot be overstated.
4. A register of title to land is necessary because land is a valuable and complex asset. Buying land is not like buying other things. For example, when someone buys a new bicycle from a reputable shop, the buyer can be reasonably confident that no-one else owns it. The situation is different in purchasing land. A buyer of land might find that the property is subject to a mortgage, or is partly owned by someone else, or that a neighbour has a right of way over it. There are many possibilities. The buyer therefore has to be sure that he or she knows about any rights that will continue to exist over the land, to ensure that the land is free of interests that are unwelcome or undermine its value or to ensure that the purchase price is adjusted accordingly. Moreover, land is a valuable asset; although a buyer of a bicycle might be upset to discover that he or she is not the only owner of the bicycle, a buyer of a house who makes a similar discovery might have lost his or her entire life's savings.

¹ World Bank Group, *Doing Business 2018: Reforming to Create Jobs* (October 2017) p 53, <http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB2018-Full-Report.pdf> (last visited 3 July 2018).

5. The role of land registration is to draw a careful balance between the interests of different parties: a purchaser of land wants to be able to rely on the register to know what he or she will obtain if the purchase goes ahead; and those with property rights in the land (depending on the nature of the property right held) will want either to ensure that their rights remain enforceable after a sale, or that they receive the money that they are due from the proceeds of sale.
6. For land registration to eliminate the need for the purchaser to investigate title, it must go one step further than gathering together in the register information about who has rights over the land. It must also guarantee the truth of what it says about ownership of land. As well as telling a prospective purchaser or lender “there are no unregistered interests in this land” (which the register says with some qualification, particularly to protect those who have property rights and are actually in occupation of the land) it must also say “the registered proprietor owns the land and can transfer it to you”. That is known as the guarantee of title or the “title promise”, which is reinforced by provision for payment of compensation (or an “indemnity”) if the register turns out to be wrong.
7. By providing an accurate statement of property rights in relation to land, and by guaranteeing the correctness of that statement, the register of title makes conveyancing faster, easier and cheaper.
8. Approximately 85% of land in England and Wales is now registered, amounting to 25 million registered titles.² All remaining land will be registered the next time it is sold or otherwise transferred. The Government, together with HM Land Registry, has a goal to complete the project of registering all remaining unregistered land by 2030.³

INTRODUCTION TO OUR PROJECT

9. Land registration in England and Wales is governed by the Land Registration Act 2002 (which we refer to as the “LRA 2002”). The LRA 2002 was a major reform of the law, and the product of joint work by the Law Commission and HM Land Registry. The Act repealed and replaced its predecessor, the Land Registration Act 1925, and accomplished a great deal of modernisation. The LRA 2002 came into force on 13 October 2003 and has operated successfully for nearly 15 years.
10. Inevitably, in a statute as far-reaching as the LRA 2002, time has shown that some aspects of it are unclear, or inefficient, or have unintended outcomes. Additionally, the landscape within which land registration operates has changed considerably since the LRA 2002 came into force. We have seen an increase in incidents of fraud relating to registered land, the legal consequences of which have been difficult to resolve. Technology has not developed in the way that was predicted at the time of the legislation, casting doubt on how well the current Act facilitates electronic conveyancing. We have also seen a global economic crisis and a domestic recession, which had a significant impact on the property market. While the market has now

² HM Land Registry, *Business Strategy 2017 to 2022* (November 2017) pp 11 and 15.

³ Fixing our Broken Housing Market (2017) Cm 9352, para 1.18; HM Land Registry, *Business Strategy 2017 to 2022* (November 2017).

improved, these events continue to shape attitudes to mortgage-lending and therefore to property transactions.

11. In our project, we have sought to update the LRA 2002 in the light of the experience of its operation. We have not sought to reformulate the Act, but to improve specific aspects of its operation while leaving the general framework of Act intact. As a result, our recommended reforms cover a broad range of discrete issues, but do not alter the underlying principles that are fundamental to the Act.
12. We published our Consultation Paper, Updating the Land Registration Act 2002, on 31 March 2016.⁴ Our consultation period closed on 30 June 2016. In addition to the many consultation events that we attended, we received 70 responses to our Consultation Paper from a wide range of individuals and groups. Respondents included representative bodies and groups, law firms and other organisations, and a range of individuals including academics, judges, practitioners and members of the public. Many of our consultees provided thorough and detailed responses. Our recommendations for reform contained in our Report⁵ have been made on the basis of consultation responses and the wide engagement that we have had with stakeholders throughout the project.
13. Many of the topics that we discuss in our Report are primarily of interest to legal professionals (especially conveyancers) and others whose practice or research relates to land registration and conveyancing. Parts of our work will also be of interest to lenders and other professionals working within the financial services and property markets. Some aspects of our work will be of interest to a wider audience, including our discussion of the circumstances in which the land register can be changed (alteration and rectification), the operation of HM Land Registry's indemnity scheme, the application of the LRA 2002 in the context of adverse possession or "squatting", and the development of electronic conveyancing. Readers may also have had personal experience of some of the issues which we consider in our Report; for example, their homes may have been subject to claims for manorial rights or relating to liability for chancel repairs, or they may have learned that rights to mines and minerals lying beneath their properties have been registered.
14. Our Report contains a draft Bill to implement our recommendations, which makes changes to the existing LRA 2002. We will publish on our website a version of the LRA 2002 which shows how our Bill would amend the Act. We will also publish on our website an impact assessment and an analysis of consultation responses.⁶ Our impact assessment demonstrates the financial significance of our reforms, which would provide a benefit to the economy of approximately £40 million.

Policy developments during the project

15. Our project is confined to updating the LRA 2002. However, we have proceeded against a backdrop of evolving Government policy on, among other things, completion

⁴ (2016) Law Commission Consultation Paper No 227.

⁵ Updating the Land Registration Act 2002 (2018) Law Com No 380. We refer to it as the "Report" throughout this Summary.

⁶ <https://www.lawcom.gov.uk/project/updating-the-land-registration-act-2002/>.

of the register, transparency, and the beneficial ownership of land by overseas entities. We discuss the various policy developments in more detail in the Report.⁷

16. The most significant policy question that the Government has grappled with during our project is whether HM Land Registry's operations should be moved into the private sector. The Government published a consultation document on this question in March 2016,⁸ a week before we published our Consultation Paper. Following its consultation, the Government decided not to proceed with privatisation of HM Land Registry.⁹
17. That matter is not one that falls within the scope of our work. Nevertheless, concerns about privatisation featured in a number of consultees' responses to our Consultation Paper, and affected their views on some of our provisional proposals for reform.
18. Although we think that many of our consultees' concerns are alleviated by the Government's announcement not to proceed with privatisation of HM Land Registry, we have been careful not to dismiss consultees' concerns. Ultimately, however, our work is relevant and important regardless of who owns HM Land Registry. Our recommendations will make the law governing land registration clearer, fairer and more efficient.

Our approach

19. The core purpose of a register of title is to make conveyancing faster, easier and cheaper. It does so by providing certainty as to ownership of land and entitlement to sell it. This purpose informs three principles of the operation of the land registration system. First, the "mirror principle", which is that the register should provide an accurate and complete reflection of property rights in relation to a piece of land. Secondly, the "curtain principle" that a curtain is drawn across the register against any trusts. Thirdly, the "insurance principle" that those who suffer loss when the register is found to be incorrect are entitled to an indemnity.
20. These principles continue to inform the operation of land registration systems across the world and our recommendations generally accord with them. However, these principles are not absolute, so we have not been guided by them alone. In making our recommendations, we have taken a practical and functional approach to the register. The register of title is a working document, which is used by a variety of people for different purposes in relation to their dealings with land. Our central concern has been to ensure that the register works effectively for all who use it.

OUR RECOMMENDATIONS

21. Land registration is a technical and complex area of law. In order to understand the difficulties and uncertainties in the current law, and to ensure that our recommendations are workable, it has been necessary for us to explore the issues and consultation responses at a forensic level of detail. Readers of the Report who

⁷ Report, para 1.16 and following.

⁸ Department for Business, Innovation and Skills, *Consultation on Moving Land Registry Operations into the Private Sector* (March 2016).

⁹ Autumn Statement 2016 (November 2016) Cm 9362, para 1.66.

are not familiar with land registration may find it useful to refer to an outline of registration of title that we published in our 2016 Consultation Paper.¹⁰ Additionally, our Report contains a glossary that may assist understanding of some of the technical terms that we use in this Summary.

22. In the Report, we make many recommendations, most of which are about the operation of technical aspects of the LRA 2002. In this Summary we do not cover all of our recommendations; they are diverse and comprise too wide a range of issues to cover succinctly here.¹¹ Instead, we provide context to our Report by highlighting some of the key areas in which we are making recommendations for reform.
- (1) Registered title fraud, including –
 - (a) preventing fraud: improving the scheme for indemnity, and
 - (b) the title guarantee: making alteration fairer and clearer.
 - (2) Facilitating electronic conveyancing.
 - (3) Making the system for unilateral notices fairer and more efficient.
 - (4) Bringing mines and minerals onto the register.
 - (5) Clarifying the scheme governing adverse possession.
 - (6) Rationalising the jurisdiction of the Tribunal.

Registered title fraud

23. It is an essential requirement of registered conveyancing that the register should be reliable. One of the tools employed by the LRA 2002 to ensure that the register is reliable is the title guarantee in section 58. Section 58 provides that when a person becomes registered as proprietor of a legal estate, he or she becomes the owner of that estate.
24. The title guarantee applies even in cases of fraud. The operation of the title guarantee can be illustrated by a simple AB scenario.
- A is the registered proprietor of land. A fraudster, impersonating A, sells the land to B. B becomes the registered proprietor in place of A. The fraudster disappears with the purchase money.
25. If it were not for the title guarantee, A would still be the owner of the land. The fraudster had no right to sell the land to B. But because of the title guarantee, when B becomes registered, B becomes the owner of the land.
26. The title guarantee presents a problem: both A and B have been registered as proprietor. The LRA 2002 does two things that solve this problem.

¹⁰ Chapter 2.

¹¹ A summary of all our recommendations can be found in Chapter 1 of the Report: see para 1.43.

- (1) First, the LRA 2002 (specifically schedule 4) permits the register to be altered for a number of reasons, including to correct a mistake.
 - (2) Secondly, other provisions of the LRA 2002 (specifically schedule 8) provide for the payment of an indemnity by HM Land Registry to those who suffer loss due to mistakes in the register. Provision for an indemnity reflects the insurance principle.
27. In the AB scenario, B's registration was a mistake because of the fraud. When the fraud is discovered, either A can be paid an indemnity, or the register can be rectified to make A the owner again, with B being paid an indemnity. While it is inevitable that one of the parties will lose the land, neither will be left financially out of pocket. The availability of indemnity and of alteration of the register is vitally important to the land registration scheme in the LRA 2002. However, there are problems with the current law in relation to both matters.

Preventing fraud: improving the scheme for indemnity

28. Title fraud – when the title of property is fraudulently transferred as in the AB scenario – is a serious concern.
29. The impact of fraud upon its victims is obvious. The effect of it can be profound. If the fraudulent disposition is registered by HM Land Registry, before the fraud is identified, then the victim may lose his or her home, although he or she will be able to claim an indemnity. However, if the fraud is spotted before the conveyance is registered, the victim of fraud will not be entitled to claim an indemnity from HM Land Registry; the victim may be left to suffer the loss of the purchase price, and might not be able to recover this loss from his or her conveyancer. For a family buying a home, this would be a devastating financial blow.
30. The wider impact of fraud is less obvious, but nevertheless substantial. Although it has wide-ranging consequences, an important effect of fraud concerns the fees charged by HM Land Registry for applications. Because of the insurance principle, HM Land Registry stands in the position of an insurer of first resort for fraud that makes it into the register. The costs of indemnity paid by HM Land Registry to victims of fraud are ultimately borne by all users of the land registration system through the fees they pay for registration. In the last ten years HM Land Registry has paid approximately £58 million in indemnity payments specifically in relation to fraud (including related costs). This cost does not account for the fraud that is identified before it is registered, which we estimate accounts for approximately half of all title fraud. Nor does it include the wider impact of fraud, such as the costs of criminal enquiry and prosecution, increases in insurance premiums and the personal impact on the victims.
31. Although HM Land Registry has some rights of recourse to attempt to recover these costs from those at fault, these rights are limited. They do not generally enable HM Land Registry to recover from the conveyancer acting for the fraudster, even if the conveyancer has been negligent.
32. Although HM Land Registry carries the risk of fraud once conveyances are entered in the register, HM Land Registry is not best placed to detect and prevent individual cases of fraud. Those who may be better placed – such as conveyancers and

mortgage lenders – may not be incentivised to develop best practice because they will not necessarily bear the cost. The vast majority of conveyancers and mortgage lenders do of course conduct their business in a professional manner and exercise all due diligence in their dealings with land; nevertheless, poor practices sometimes come to light. Moreover, practices are not uniform because conveyancers are governed by different guidance depending, for example, on whether the conveyancer is a solicitor.

33. Our ultimate aim is to prevent fraud from happening in the first place, particularly identity fraud which accounts for the majority of registered title fraud.
34. We make recommendations that will give HM Land Registry the tools necessary to reduce identity fraud. Our recommendations introduce a new duty of care on conveyancers in respect of identity checks. HM Land Registry will be empowered, but only after consultation with stakeholders, to issue directions that outline the reasonable steps that conveyancers must undertake to verify the identity of their clients. HM Land Registry, with the benefit of its stakeholders' views and experiences, will be able to tailor these identity checks so that they are responsive to emerging schemes for identity fraud. If a conveyancer fails to comply with the steps outlined by HM Land Registry in directions, and if a fraud is registered that HM Land Registry indemnifies, HM Land Registry will have a right of recourse against the conveyancer to recover the amount paid. Conversely, as long as a conveyancer complies with the directions, the conveyancer has the certainty of knowing that he or she will not be liable if, notwithstanding, identity fraud has taken place.
35. Our reforms ensure that the financial consequences of fraud fall on the minority of conveyancers who do not exercise appropriate due diligence. They will also encourage best practice in the profession, and, by providing a standard set of checks, give clarity and certainty to conveyancers about their obligations in respect of identity checks.¹²

The title guarantee: making alteration fairer and clearer

36. As mentioned earlier, the title guarantee in section 58 of the LRA 2002 is subject to the power of the court and the registrar to alter the register. This power is governed by schedule 4 to the LRA 2002.
37. Alteration may appear to undermine the guarantee of title, particularly when the alteration is what the LRA 2002 describes as a "rectification" of the register. A "rectification" is an alteration to correct a mistake which prejudices the title of a registered proprietor. The issue of whether an alteration amounts to a rectification has significant consequences. A party who suffers loss as a result of the register being rectified (or as a result of a refusal to rectify the register) is entitled to claim an indemnity. Other alterations do not give rise to an indemnity.
38. The interaction of the title guarantee and the provisions for altering the register raises vexing questions in the context of registered title fraud, as illustrated by the following example (the ABC scenario).

¹² Chapter 14 of the Report.

A is the registered proprietor of land. A fraudster, impersonating A, sells the land to B. B becomes the registered proprietor in place of A and then sells the land to C. C becomes the registered proprietor, and moves in, taking possession of the land.

At this point, A discovers what has happened.

Three people have relied on the register, one of whom has the land (C), one of whom has the price of the land (B) and one of whom apparently has nothing (A). Yet all relied on the register to give them a guarantee of title and all have acted entirely conscientiously. C wants to keep the land, while A wants the land returned. How does the system of land registration respond to these facts?

39. Experience of the LRA 2002 has shown that the Act does not provide the answer to the question posed as readily or as clearly as it should.
40. The courts have questioned whether C's registration can be described as a "mistake", as the transfer from B to C is a genuine one. We agree with the conclusion now reached in the case law that rectification of the register must be available against C. If it were otherwise, A – an innocent victim of the fraudster's activities – would be left without the land and without an indemnity. Such an outcome would undermine either the title guarantee or the insurance principle. In order to ensure that this cannot happen, we make a recommendation to amend the LRA 2002 to make it clear that rectification is available against C.
41. The court has also suggested that, before applying for alteration, A has a "right" to seek rectification and that this right is a property right. Due to the operation of the priority rules in the LRA 2002, this suggestion could operate to deprive either A or C of their ownership in the land, but without a right to seek an indemnity. Once again, we make a recommendation to prevent this from happening.
42. There are still other questions which are not satisfactorily answered by the LRA 2002. Should C retain the land and A be indemnified or should the land be returned to A leaving C with an indemnity? Should it matter how much time has passed since the fraud took place?
43. We recommend reforming the scheme for determining how decisions about whether to alter the register should be made. We aim to provide further guidance about who should remain as the owner of the land, and who should be indemnified. Our recommendations are based on the following key principles.
 - (1) Where a registered proprietor is removed from the register by mistake (A in our example), we recommend that the law should be weighted in favour of returning the land to him or her.
 - (2) The law currently provides protection to a registered proprietor in possession when determining who should retain the land. The law has long seen possession as an indication of who most needs or values the land itself, rather than being adequately compensated by an indemnity. We recommend strengthening this protection by extending it to persons who are in possession of land but, due to the mistake, are no longer the registered proprietor of the land.

- (3) We recommend the introduction of a “longstop” so that after ten years rectification of the register should generally cease to be available. The longstop therefore provides greater certainty in land registration by bringing finality to claims to alter the register. The longstop should not apply where (a) the person who was mistakenly removed or omitted from the register remains in possession, or (b) the registered proprietor caused or contributed to the mistake by fraud or lack of proper care. Although the longstop would prevent alteration of the register, it would not prevent a party from claiming an indemnity.
 - (4) We recommend that where a charge (a mortgage) is registered by mistake (for example, because the charge was forged) or is granted by a registered proprietor whose own registration is a mistake, then the chargee should not be able to oppose rectification of the register. The chargee should be confined to receiving an indemnity. This recommendation reflects the fact that the chargee’s interest in the land is purely financial.
 - (5) Where, through a mistake, an interest in land that is granted out of another interest or estate¹³ loses priority (and so no longer binds the land), we recommend that the register should be able to be altered to restore the priority of that interest. However, we recommend that the ten-year longstop should also apply.
44. We also recommend that cases where more than one person is registered as proprietor of the same land – which we call multiple registration – should be resolved by application of the scheme for alteration and rectification, applying the above principles. By ensuring that the situation is not resolved by another route – for example, by the scheme governing adverse possession – we aim to ensure that whoever loses the land is able to claim an indemnity.¹⁴

Facilitating electronic conveyancing

45. A major aim of the LRA 2002 was to facilitate the introduction of a system of electronic conveyancing. It was envisaged that electronic conveyancing would lead to the closure of the registration gap (the period between when a disposition is completed and when the disposition is registered by HM Land Registry), as well achieve savings in conveyancing both for the parties and for HM Land Registry.
46. The model for electronic conveyancing set out in the LRA 2002 is ambitious. The Act envisages that all aspects of a conveyancing transaction would occur electronically and that, ultimately, the creation and registration of interests would take place simultaneously. Although significant steps towards electronic conveyancing have been taken, the system ultimately envisaged in the LRA 2002 has not been implemented.
47. Our concern has been that the LRA 2002 is not flexible enough to facilitate the development of electronic conveyancing in a way that responds to technology and the market.

¹³ An example would be a lease granted by a freehold owner to someone else.

¹⁴ Chapter 13 of the Report.

48. We consider that for electronic conveyancing to become a practical reality, it is necessary to step back from the original model envisaged in the LRA 2002. In particular, we believe that removing the requirement of simultaneous completion and registration will open up avenues along which electronic conveyancing can develop. We therefore recommend a new power to introduce electronic conveyancing which does not require completion and registration to happen simultaneously. Although simultaneous completion and registration will remain the goal of electronic conveyancing, our recommendation would ensure that electronic conveyancing can be made mandatory before that stage of development is reached.
49. We also consider that the power in the current LRA 2002 to make electronic conveyancing mandatory cannot be used incrementally in an efficient way. For each type of disposition which is brought into the mandatory scheme, a new rule needs to be made by the Secretary of State. Rules need to pass through Parliament, and we have been told that it can take more than a year for a rule to be enacted. To address this inefficiency, we recommend amending the power to allow the Secretary of State to make a blanket rule, applying to all types of disposition, after which HM Land Registry will have to issue a notice in respect of each type of disposition in order for mandatory electronic conveyancing to apply to it. This recommendation ensures that Parliamentary scrutiny of the decision to make electronic conveyancing compulsory remains intact, but gives the Registrar flexibility to determine the timetable for individual dispositions.
50. For the LRA 2002 to facilitate electronic conveyancing, it must promote confidence in the effect of electronic dispositions. Currently, it is unclear whether overreaching can occur when a conveyancer has been delegated the power to execute an electronic document by two or more trustees. Overreaching is a form of protection given to purchasers of land against interests in land that exist under a trust. Overreaching is commonly relied upon in conveyancing and its operation is essential to the smooth running of transactions, and ultimately of the property market. We make a recommendation to ensure that overreaching can occur.¹⁵

Making the system for unilateral notices fairer and more efficient

51. The most familiar kind of interest that a person may have in land is ownership – a person may own a freehold or leasehold estate. However, there are many other kinds of interest that can exist in land; these interests give a person a right over land that belongs to someone else. An example is a right of way (called an easement). An easement may be either a legal or an equitable interest. Other interests in land – for example, estate contracts (a contract to buy the land which meets certain conditions) – are always equitable. It is possible to protect some interests in land through the entry of a “notice” in the register. If an interest is equitable, it can only be protected in the register through the entry of a notice.
52. There are two forms of notice under the LRA 2002: agreed notices and unilateral notices. Concerns have been raised with us in about the process of entering, and of applying to cancel, a unilateral notice.

¹⁵ Chapter 20 of the Report.

53. Under the current procedure, there is no requirement for the beneficiary of the unilateral notice to produce evidence in support of the right he or she claims. That may hamper attempts between the parties to negotiate a solution if there is a dispute over the existence of the right. If the dispute cannot be resolved, it must be referred by HM Land Registry to the Land Registration Division of the First-tier Tribunal (Property Chamber) (“the Tribunal”). Only at that stage is the beneficiary of the notice required to produce evidence of the right. Registered proprietors may therefore find themselves embroiled in proceedings before the Tribunal to challenge the entry of a notice before any evidence has been produced of the right that is being claimed. Concerns with the unilateral notice procedure were brought into sharp relief by the report of the House of Commons Justice Committee on Manorial Rights, published in January 2015.¹⁶
54. We do not think that the current procedure fairly balances the competing interests of registered proprietors and of beneficiaries of property rights who need a secure means of protecting their interests. We recommend reform of the system that governs applications to cancel a unilateral notice to require the beneficiary to provide evidence at an earlier stage. Although the beneficiary of an interest will still be able to apply to enter a unilateral notice without providing evidence that the interest exists, if the registered proprietor applies to cancel the notice, then the beneficiary will be obliged to provide evidence that shows, on its face, that the interest exists. Our recommendation will ensure that the registered proprietor is provided with evidence of the interest claimed before being forced into proceedings before the Tribunal.¹⁷

Bringing mines and minerals onto the register

55. A general rule of property law says that a person who owns land owns it “to the centre of the earth”. Although the rule is not applied literally, it suggests that the owner of land also owns any mines and minerals beneath the surface. The mines and minerals can, however, be owned by someone other than the owner of the surface land.
56. If someone other than the surface owner does own a separate freehold or leasehold estate in mines and minerals, the mines and minerals estate is not required by the current LRA 2002 to be registered when it is transferred. Notably, although mines and minerals estates are not currently subject to compulsory first registration, if they are registered voluntarily, any subsequent conveyance of them must be registered.
57. The reason mines and minerals are excluded from compulsory first registration has its roots in the difficulty of proving ownership of mines and minerals. Where mines and minerals are owned separately from the surface land, the separation often has historic or feudal origins. These ancient origins often make it difficult to know who owns mines and minerals unless and until they are exploited.
58. The uncertainty about who owns mines and minerals is exacerbated by the fact that they are unlikely to be registered. To promote transparency of property ownership and the mirror principle, we make a recommendation to bring mines and minerals onto the register. We recommend that dispositions of mines and minerals estates that indicate an intention to exploit the mines and minerals must be registered. Our recommendations are intended to ensure that compulsory registration applies where a

¹⁶ Justice Committee, *Manorial Rights* (HC 657, January 2015).

¹⁷ Chapter 9 of the Report.

dealing with the estate in mines and minerals suggests that the purchaser is likely to want to work the mines or extract the minerals. We also recommend that HM Land Registry provides notification to surface owners when it receives an application to register a mines and minerals estate under their land. Currently HM Land Registry does so only where the estate in mines and minerals is registered with an absolute title; a title that is in fact rarely awarded in respect of mines and minerals. Our recommendation ensures that notification is made when the mines and minerals is registered with a qualified title, which is more commonly awarded in respect of these rights.¹⁸

Clarifying the scheme governing adverse possession

59. The operation of adverse possession or “squatting” in registered land was subject to significant reform in the LRA 2002.¹⁹ In particular, reflecting the idea of title being acquired by registration, the Act removed the ability of an adverse possessor to obtain title to registered land merely through possession. Instead, the Act introduced a wholly new procedure under which a person who has been in adverse possession of land for ten years can apply to become the registered proprietor of the land. If the application is successful, then the registered proprietor’s title is transferred to the adverse possessor, who therefore obtains title by registration. When an application is made, notice of it is given to the registered proprietor (and certain other parties, including the holder of a registered charge) who can oppose the application. If the application is opposed, then generally it is rejected and the registered proprietor is given two years to bring possession proceedings against the adverse possessor. If, however, the applicant’s claim meets one of three conditions the adverse possessor will be registered as proprietor, notwithstanding that the application is opposed.
60. We do not propose any fundamental changes to the framework governing adverse possession of registered land, or to the policy that led to the changes introduced by the LRA 2002. Instead, our reforms centre on ensuring that the procedure laid down by the LRA 2002 operates correctly.
61. The operation of the procedure governing adverse possession claims over registered land is of considerable practical significance. However, certain aspects of the procedure are unclear. It is unclear, for example, whether an adverse possessor can make repeated (perhaps opportunistic or harassing) applications for registration when his or her previous application has been rejected.
62. One of the three conditions enabling an adverse possessor to be registered despite his or her application being opposed applies where an application for registration is based on an adverse possessor’s possession of land neighbouring his or her own land. For the condition to apply there is a requirement that the adverse possessor had a reasonable belief for at least ten years that the land belonged to him or her. It is unclear how this requirement applies: how long after the date that the adverse possessor realises his or her mistake – that the land does not belong to him or her – must he or she apply for registration?

¹⁸ Chapter 3 of the Report.

63. We make recommendations to clarify both of these issues. Our recommendations will ensure that the procedure governing adverse possession of registered land applies as it was intended, by providing sufficient protection to registered proprietors from repeated claims based on adverse possession and by ensuring the prompt resolution of disputes based on adverse possession of boundary land.
64. We also make provisional proposals designed to clarify the relationship between the procedure under the LRA 2002 and the general law of adverse possession under the Limitation Act 1980, which continues to govern adverse possession of unregistered land.²⁰

Rationalising the jurisdiction of the Tribunal

65. The Land Registration Division of the First-tier Tribunal (Property Chamber) operates primarily to determine disputes arising out of applications made to HM Land Registry which cannot be resolved by agreement.
66. The Tribunal's jurisdiction in two areas is unclear. In both cases, the LRA 2002 does not expressly empower the Tribunal fully to resolve the matters referred to it. The parties may therefore have to make further applications to the registrar or issue further proceedings in court in order to resolve their dispute.
67. First, the extent of the Tribunal's power to determine the exact line of a boundary on a reference under section 60(3) of the LRA 2002 is unclear.²¹ The Tribunal's jurisdiction in this area has been recently considered by the Upper Tribunal, in three cases.²² These cases have not fully resolved the issue. Doubt remains whether the Tribunal can direct the registrar to reflect the exact line of the boundary in the register if it is substantially or wholly different from the one on the application plan. To address this uncertainty, we recommend that, on any reference under section 60(3), the Tribunal should have an express statutory power to determine where a boundary lies. This reform will reduce the length of litigation between neighbours, diminish the stress and inconvenience to the parties, and reduce the costs to the parties and to courts and tribunals.
68. Secondly, it appears that the Tribunal's lacks the power to make two kinds of declaration.
 - (1) The Tribunal may determine whether a party has an equity by estoppel. However, the Tribunal does not have the power to determine how the equity by estoppel is to be satisfied.
 - (2) The Tribunal may determine whether a party a beneficial interest in land. However, it is not clear whether the Tribunal has the power to declare the extent of the beneficial interest.

²⁰ Chapter 17 of the Report.

²¹ Boundaries in registered land are general boundaries unless they have been determined. We discuss the general boundaries rule in Chapter 15 of the Report.

²² *Murdoch v Amesbury* [2016] UKUT 3 (TCC); *Bean v Katz* [2016] UKUT 168 (TCC); *Lowe v William Davis Ltd* [2018] UKUT 206 (TCC).

69. In both situations, the Tribunal has all the evidence before it necessary to make these declarations. Because it cannot make them, the parties may need to pursue the matter further before the court. In order to ensure that disputes can be resolved in a single forum, we recommend that the LRA 2002 expressly confer on the Tribunal the power to determine how an equity by estoppel should be satisfied, and to declare the extent of a beneficial interest.²³

THE SIGNIFICANCE OF OUR RECOMMENDATIONS FOR REFORM

70. Our recommendations cover a myriad of technical issues within the current land registration system. Despite their technical nature, our reforms are significant to ensuring that the LRA 2002 continues to achieve its goal of making conveyancing faster, easier and cheaper. By updating the LRA 2002, our recommendations will ensure that the register works more effectively for all who use it. While our full Report is likely to be read primarily by specialist lawyers, the recommendations that it contains will benefit all those who use the land registration system, including homeowners, landlords, tenants and businesses.

²³ Chapter 21 of the Report.