

Exploring the Law Commission's review on land registration

10/05/2016

Property analysis: Thomas Talbot-Ponsonby of 3PB Barristers explores the primary concerns of the Law Commission's review and suggests there should be a greater focus on electronic conveyancing and increasing the jurisdiction of the Land Registration Division of the Property Chamber of the First-tier Tribunal.

Original news

Proposed reform of the Land Registration Act 2002, LNB News 31/03/2016 166

A project by the Law Commission is designed to update the Land Registration Act 2002 (LRA 2002), which governs registered land, in light of the experience of its operation since it came into force in October 2003. A review by the Commission asks how LRA 2002 is working in practice and whether there are opportunities for the system to be clarified and updated. The consultation period runs until 30 June 2016.

What is the focus of the Law Commission's review?

The legislation governing land registration was comprehensively reviewed and updated in 2002—over 75 years after it first came into force (other than a few pilot areas).

The Commission's review considers how effective the 2002 reforms have been and identifies areas of the legislation that would benefit from improvement in the light of the 12 years' experience of working under the current legislation. Some areas work well—inevitably, in others, there is room for improvement.

What are the current concerns with the land registration system?

There were two particular concerns with the land registration. First, there are some areas where there can be confusion about the priority between competing entries on the register of title—or where a purchaser can acquire land subject to a matter that was not registered at the time he acquired his title.

Second, the Land Registry gives a guarantee of title, with provision for an indemnity if a title needs to be rectified in a manner that is adverse to the registered proprietor. In seven of the past eight years, at least half of the amount paid out by the Land Registry under the guarantee of title has arisen out of cases of fraud. The Land Registry is not well placed to assess or mitigate against fraud, as it is largely reliant on checks carried out by conveyancers. Accordingly, the question arises as to what duty conveyancers should owe to the Land Registry to reduce the risk of fraud and what (if any) limitations there should be on the availability of rectification of the register.

Other matters to be considered by the review are:

- whether compulsory registration should be extended from leases of more than seven years to include leases of more than three years
- compulsory registration of rights to mines and minerals, and whether owners of the surface should be given notice of that registration
- powers of the registered proprietor and the use of restrictions on the register to record contractual (or other) fetters on those powers
- the extent to which evidence of the existence of a right should be required to register a notice
- how well the new rules on adverse possession are working and whether any changes are required

Are there any aspects of the registration system that you would like to see the review focus on?

Many registered titles are comparatively simple, identifying a piece of land together with details of ownership, and perhaps a few adverse rights affecting the land.

Some, however, are very complicated, especially where a large estate has been assembled and then broken up. Conveyancers can be referred to reams of documentation that may or may not be relevant to the land in question. It would be helpful to ensure information on the register is clearly recorded to identify what affects a given piece of land and what does not.

Electronic conveyancing was envisaged by LRA 2002, but has not come to fruition—largely, I suspect, because the Land Registry envisaged moving directly to a model whereby a large part of the conveyancing process took place through a proprietary system. The review suggests alternative options are considered to move towards electronic conveyancing—I believe this is something the review should consider in detail, as this has the potential to speed up transactions and reduce costs.

Another aspect that is considered is to increase the jurisdiction of the Land Registration Division of the Property Chamber of the First-tier Tribunal. This is welcome—tribunal judges are, by and large, experienced Chancery practitioners with extensive knowledge of land registration law and procedure and related chancery matters and it would be very helpful to have a greater jurisdiction for the Tribunal.

Could this review lead to dramatic changes to the land registration system?

The review expressly states that it is not intended to make dramatic changes—the registration system was subject to a thorough review in 2002 and this review is to consider what further changes may be beneficial in the light of 12 years' experience of working with LRA 2002.

However, the biggest changes are likely to come in due course through electronic conveyancing. LRA 2002 contains a brief legislative framework for this with provision for detailed rules. Just as the Land Registry has recently made the index map plan available online, it may be that in time the register can be available online with layers of information so that it is clearer which obligations relate to which areas of land, with the option for conveyancers to log in and update the register based on transactions as they occur. It remains to be seen how far the Land Registry can go, incrementally, under the current legislation.

Thomas Talbot-Ponsonby has experience of a broad range of transactional property and corporate work. This includes investment sales and purchases, development, refinancing and landlord and tenant work. He has a deep knowledge of the law and has a range of clients from private individuals to multinational companies. This includes landlord and tenant matters, boundary disputes, and disputed registration of land and probate and is a specialist in relation to all property related taxes. He has a detailed knowledge of stamp duty, land tax and the operation of various reliefs.

Interviewed by Barbara Bergin.

The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor



CLICK HERE FOR
A FREE TRIAL OF
LEXIS®PSL

[About LexisNexis](#) | [Terms & Conditions](#) | [Privacy & Cookies Policy](#)
Copyright © 2015 LexisNexis. All rights reserved.