



CONSTITUTIONAL AND LEGAL AFFAIRS AND JUSTICE COMMITTEE

First Report for the Session 2024-25

Adverse Possession

CONSTITUTIONAL AND LEGAL AFFAIRS AND JUSTICE COMMITTEE

Second Report for the Session 2024-25

Adverse Possession

10.1 There shall be a Committee on Constitutional and Legal Affairs and Justice which shall be a Standing Committee of the Court. It shall be entitled to take evidence from witnesses and to report on matters as they affect the Island relating to the administration of justice, legal services, the work of the Attorney General and constitutional issues. It may also hold joint sittings with other Committees for deliberative purposes or to take evidence.

10.2 The Committee shall have –
(a) a Chairman elected by Tynwald
(b) two other Members.

10.3 Members of Tynwald shall not be eligible for membership of the Committee, if, for the time being, they hold any of the following offices: President of Tynwald, member of the Council of Ministers, Attorney General, member of the Treasury Department referred to in section 1(1)(a) of the Government Departments Act 1987.

10.4 The Committee shall be authorised to require the attendance of Ministers for the purpose of assisting the Committee.

10.5 Should the need arise in relation to a particular matter, such as a conflict of interest, Tynwald may elect an alternate member for the purpose and duration of the Committee's consideration of that matter. A conflicted member so replaced shall continue to serve as a member of the Committee for all other purposes.

10.6 The Committee shall determine within six months of a General Election whether it will report on a year ending on the last day of March, August or December. Once that determination has been made, the Committee must make an annual report within six months of its year-end, unless during that period it has made an end-of term report under paragraph 10.7. An annual report may be in the form of a statement.

10.7 The Committee shall, no sooner than three months before a Dissolution, make an end-of-term report on its activities during each term of the House of Keys.

The powers, privileges and immunities relating to the work of a committee of Tynwald include those conferred by the Tynwald Proceedings Act 1876, the Privileges of Tynwald (Publications) Act 1973, the Tynwald Proceedings Act 1984 and by the Standing Orders of Tynwald Court.

Committee Membership

Mrs T M August-Phillips MLC (Chair)

Mr L Hooper MHK (Ramsey)

Mr S Peters MHK (Middle)

Copies of this Report may be obtained from the Office of the Clerk of Tynwald, Legislative Buildings, Finch Road, Douglas, IM1 3PW (Tel: 01624 685500) or may be consulted at www.tynwald.org.im.

All correspondence with regard to this Report should be addressed to the Clerk of Tynwald, Legislative Buildings, Finch Road, Douglas, Isle of Man, IM1 3PW.

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To: The Hon Laurence David Skelly MLC, President of Tynwald,
and the Hon Council and Keys in Tynwald assembled

CONSTITUTIONAL AND LEGAL AFFAIRS AND JUSTICE COMMITTEE

First Report for the Session 2024-25

Adverse Possession

I. The Committee and the Inquiry

1. In June 2021, our predecessors on this Committee published a Report on Adverse Possession.¹ This followed the November 2019 sitting of Tynwald, in which a Petition for Redress of Grievance presented by Mr Mark Cleator on the law of adverse possession was referred to this Committee.²
2. The recommendations within this Report focused on the way in which improvements could be implemented in the land registry process in order to increase the number of registered properties on the Island.
3. The Report was debated in Tynwald on 22nd July 2021, with the seven recommendations being approved, in two cases subject to amendment by the Minister

¹ PP 2021/0106: Constitutional and Legal Affairs and Justice Committee, 'Second Report for the Session 2020-21: Adverse Possession', April 2021, <https://www.tynwald.org.im/spfile?file=/business/pp/Reports/2021-PP-0106.pdf>

² Tynwald, Item 24 (19 November 2019) 543 T137, <https://www.tynwald.org.im/spfile?file=/business/hansard/20002020/t191119.pdf>

for Justice and Home Affairs. The eventual resolution of the Court is reproduced in full as an Annex to this Report.³

4. Almost two years later, on 6th March 2023, we resolved to revisit and report upon the Land Registry's implementation of these recommendations to date, and address where any further issues were arising.
5. On 21st July 2023 we heard evidence in public from Mr Ed Clague, Registrar General, and Mr James Lowery, Land Registrar. The transcript from this hearing is reproduced at the end of this Report. We received additional written evidence from the Land Registry.⁴
6. The Central Registry launched a public consultation looking at proposals for changes to the legislation and practices relating to land registration on 21st August 2023. This consultation closed on 9th October 2023.⁵
7. The Land Registry's analysis of responses to its consultation bears the date April 2023. This is clearly an error as the consultation itself did not close until October 2023. In fact the analysis of responses was published on Friday 7th June 2024. This was one working day before the second occasion on which we heard evidence from the Land Registry.⁶
8. On 10th June 2024 we heard further evidence in public from Mr Ed Clague, Registrar General, and Mr James Lowery, Land Registrar. The transcript from this hearing is reproduced at the end of this Report.
9. In addition, on 16th September 2024, we heard evidence in public from the Department of Infrastructure and the Treasury. The transcript from this hearing is reproduced at the end of the Report.
10. The petition of Mr Cleator, which was the starting point for our predecessors' inquiry into adverse possession, also raised the issue of vexatious litigation. We are inquiring into this as a separate matter and we intend to report on it separately in due course.

³ Annex 1.

⁴ Appendix 1.

⁵ Central Registry, 'Land Registry Legislation: A Consultation', consult.gov.im, accessed 22 July 2025, https://consult.gov.im/economic-development/land-registry-legislation/supporting_documents/20230808Draft%20Land%20Reg%20Consultation%20Reforms%20v6%20002.pdf

⁶ Central Registry, 'Review of Consultation Responses: Land Registry Legislation', consult.gov.im, accessed 22 July 2025, https://consult.gov.im/economic-development/land-registry-legislation/results/landregistry-consultationresponsesv7_compressed.pdf

II. Progression of the 2021 Recommendations

Registration of the Government estate

11. Recommendation 5 of the July 2021 resolution was:

That the Council of Ministers should adopt a target for the registration of the Government estate by 2030; and that pending a report to be laid before Tynwald by February 2022, the Council of Ministers should defer any consideration of issuing a statutory direction to Departments to register their land.

12. On 13th December 2021, the Tynwald Policy Decisions List was updated to state that:

Preliminary meetings with Registry and the various Departments are taking place to fully understand the costing and action plans for registration of the Government Estate.⁷

13. Following this, on 11th November 2022, we requested a further update from the Treasury in regard to the progress that had been made on this allocated resolution. The Treasury responded on 17th November 2022, saying that a draft paper had been prepared by the Treasury but that comments were awaited from the Department of Infrastructure.⁸

14. In a written submission to the Committee on 18th July 2023, Mr Lowery gave the following update on this resolution:

The Treasury and the Department for Infrastructure are leading this action. I am told that the Treasury is preparing a paper for the Council of Ministers, which will cover the approach and resources required to deliver on the commitment.⁹

15. We further queried this with the Land Registry whilst hearing evidence on 21st July 2023. Mr Clague, the Registrar General, responded that he had yet to see this paper, eight months after our correspondence with the Treasury.¹⁰

16. In December 2023, the Hon. Juan Watterson SHK asked a Written Question, inquiring into what progress had been made with registering Government-owned land. The Minister for Infrastructure, Tim Crookall MHK, responded:

⁷ GD 2021/0088: Council of Ministers, 'Tynwald Policy Decisions Report 2021', December 2021, <https://www.tynwald.org.im/index.php/spfile?file=/links/tls/GD/2017/2021-GD-0088.pdf#page=33>

⁸ Appendix 2.

⁹ Appendix 3.

¹⁰ Q76.

Further to written answers W-202201-0330 and W-202301-0663, the Department of Infrastructure, the Treasury, Attorney General's Chambers and Land Registry have been working together on the project plan to detail the implications and costs that would be incurred as a result of the project to register all Government owned land.

From the initial work, the costs appear to be significant and as per previous written answers, there are limited resources and/or skill sets in many Departments to be able to deliver the registration of the whole Government estate.

A trial of 5 properties (but involving more than 5 titles) is currently being considered to obtain a calculation of the estimated resource and cost implications. It is anticipated that the trial will begin once adequate resource is in place and is expected to last between 6 to 12 months depending upon the properties. Tynwald will be updated to ensure that any further activity with the project is appropriate, value for money and affordable, in line with Government priorities.¹¹

17. On 10th June 2024, Mr Clague, the Registrar General, gave us the following update about the registration of Government estate:

The registration of Government land comes from this Committee back in – when was the original Committee? – 2021 and that was one of the actions that Government was meant to come forward with a project plan for registering all Government land, and the project plan was meant to come into Tynwald by February 2022. That still has not materialised.¹²

18. We further queried this with the Department of Infrastructure and the Treasury whilst hearing evidence on 16th September 2024. Mr Woods, head of Commercial and Public Estates and Housing at the Department of Infrastructure stated that he was unaware of the exact figure of currently registered Government estate.¹³

19. Looking at the projected duration and total cost of registering the Government estate, the Minister for the Treasury, Dr Allinson, told us:

Doing the bulk of the registrations in-house, looking at, for instance, the staffing costs in terms of how many officers you would need to hire or appoint; how

¹¹ Tynwald, Written Question 202301-0950 (Answered 15 December 2023), <https://www.tynwald.org.im/spfile?file=/business/BusinessHansardIndex2126/W-202301-0950.pdf>

¹² Q35.

¹³ Q87.

many conveyances you would need; any external professional support and also quite a considerable advertising bill in terms of the procedure for registering land. So that totalled over a period of time and that was really looking at over 20 years at being around about £7.8 million.¹⁴

20. We are disappointed with the progress made on the registration of the Government estate. We believe that the registration of the Government estate is crucial in encouraging the voluntary registration of land on the Island. Therefore, we reiterate the Tynwald resolution of 22nd July 2021 that registration of Government property should be prioritised. In July 2021, Tynwald set the target of 2030 for the registration of the Government estate, allowing nine years for this project. This timescale was not part of this Committee's original recommendation but was added by way of an amendment moved by the then Minister for Justice and Home Affairs. Although four years have elapsed with little progress, we are not persuaded that the original timescale needs to be more than doubled, from nine years to 20 years. Rather we think that with the right level of commitment, it would be realistic to register all Government land in 10 years.

Recommendation 1

That Tynwald is of the opinion that all land owned by the Isle of Man Government should be registered with the Land Registry and that, provided steady progress is made, it is realistic to plan for this to be completed by 2035; and that the Council of Ministers should report to Tynwald by May 2026 on how progress can be tracked and pace maintained over such a long timescale.

Additional triggers for compulsory registration

21. Recommendation 4 of the July 2021 resolution was:

That the sufficiency of the current triggers for compulsory land registration be reviewed and that consideration be given to introducing the following additional triggers:

- Conveyance not on sale (including appointment of new trustees)
- Gift on marriage
- Assent (probate)
- First charge

¹⁴ Q90.

- Freehold on registration of a lease
- Lower minimum lease term
- Receipt of Agricultural Payments

22. We queried additional triggers with the Land Registry whilst hearing evidence on 10th June 2024. Mr Clague, the Registrar General, told us that he was not ruling out future triggers. When we asked about legislation to introduce additional triggers, Mr Clague stated:

If in an amendment Bill we can say, ‘Bring in these new triggers and enabling powers to bring in further triggers via an order’ that will make the process in the future a lot simpler.¹⁵

23. When we asked about the initiation of policy development, Mr Clague, the Registrar General, told us:

Our next exercise now is we have requested permission, or we are in the process of requesting space on the legislative agenda, and then we will prepare the legal drafting instructions, which will be fairly complex – we think that will take us about three months – and then we will have to come back for consultation on the detail on that as well.¹⁶

24. We welcome the addition of the Land Registration (Amendment) Bill 2025 to the Legislative Programme in the Island Plan 2025/2026 Update, but we note that there is no indication of when the Land Registration (Amendment) Bill 2025 is expected to be implemented.

Recommendation 2

That legislation to reform the law on the registration of land should be introduced as soon as possible.

Public engagement with land registration

25. We do not think that the triggers set out above are enough. More needs to be done to engage with those who have not registered their property and to persuade them of the advantages of voluntary registration.

¹⁵ Q14.

¹⁶ Q15.

26. We queried the Land Registry as to what had been done in recent years to campaign for the advantages of registration. When giving oral evidence, Mr Ed Clague, the Registrar General, stated:

You are quite right. I think 'We have not' is the straightforward answer. The closest we have come to that is that we invited the Manx National Farmers' Union to visit the Registry some time around 2015, when we extolled the values of land registration and the risks with it. It was a very informal evening when we invited them round. We could definitely do that with groups such as the National Farmers' Union, but 'We have not' is the honest answer.¹⁷

27. Mr Clague agreed that increased public engagement around benefits of registration could be an advantageous strategy in improving the volume of land registered.¹⁸

Recommendation 3

That Tynwald is of the opinion that an educational programme should be created to raise awareness of the benefits of land registration for the general public.

Incentivisation of land registration

28. Recommendation 2 of the July 2021 resolution was:

That the requirements of the application process for the registration of land be reviewed with a focus on improvements that could facilitate the consistency, accuracy, efficiency and appeal of first registration.

29. In a written submission, the Land Registry calculated that, overall, the percentage of land registered on the Isle of Man as of 19th September 2023 was 25.86%.¹⁹

30. We do not think that this evidences that the appeal of land registration has been improved sufficiently. We would expect this rate to increase if further changes were made to engage the public with the registration process.

Conclusion

The current percentage of land registered on the Isle of Man is not sufficient. More needs to be done to incentivise the registration of a greater volume of land.

Recommendation 4

¹⁷ Q25.

¹⁸ Q25.

¹⁹ Appendix 1.

That Tynwald is of the opinion that the Land Registry should create further incentives to increase uptake of land registration. A public consultation should be launched and the resulting report returned to Tynwald by May 2026.

Advertisement of registration

31. The Select Committee on the Registration of Land was established on 21st October 2015. This was as a result of a Tynwald resolution to consider the Petition for Redress of John Ffynlo Craine and Annie Andrée Jeannine Hommet, which related to the issue of property registration.

32. In May 2016, the Select Committee published its Report,²⁰ making two recommendations that were approved by Tynwald in July 2016:

Recommendation 1 - That legislation be introduced to require that before any land is voluntarily registered, notice should be served on any interested parties who can be identified and advertised on the land concerned in the same way as a planning application.

Recommendation 2 - That legislation be introduced to require that where any land is subject to compulsory registration triggered by a transaction where the parties are represented by the same advocate, notice should be served on any interested parties who can be identified and advertised on the land concerned in the same way as a planning application.²¹

33. In its Adverse Possession report from 2021, our predecessors on this Committee concluded that “directly sending written notification to relevant parties upon receipt of a claim of adverse possession is an effective mechanism of offering registered land owners a greater degree of security.”²²

34. Currently, land registration notices are only required in specific cases under the Land Registrar’s discretion. This includes registration of land acquired through adverse

²⁰ PP 2016/0078: Select Committee on the Registration of Land , ‘Report of the Select Committee on the Registration of Land (Petition for Redress)’, April 2016,
<https://www.tynwald.org.im/spfile?file=/business/pp/Reports/2016-PP-0078.pdf>

²¹ Tynwald, Item 21 (21 July 2016) 2167 T133,
<https://www.tynwald.org.im/spfile?file=/business/hansard/20002020/t160721.pdf>

²² PP 2021/0106: Constitutional and Legal Affairs and Justice Committee, ‘Second Report for the Session 2020-21: Adverse Possession’, April 2021, para 34,
<https://www.tynwald.org.im/spfile?file=/business/pp/Reports/2021-PP-0106.pdf>

possession. Notice must be published in a local newspaper, to allow those with a legal interest in the land to register claims.²³

35. On 21st July 2023, the Land Registrar James Lowery told us:

There is also a previous standing committee decision which affects us in relation to voluntary applications, and that is what established the potential for requiring advertisements for voluntary applications. While we look at it on a case-by-case basis, we have to bear it in mind that we are governed by that previous standing committee ruling that, when there is a voluntary application, we have to consider whether an advertisement has to be made. And yes, we are fully aware that if we ask somebody to advertise in a local paper, there is an inherent cost of over £500 for it.²⁴

36. Mr Ashford queried whether land registration was being made as attractive as possible, to which Mr Lowery responded:

We are not, because we are complying with the Select Committee ruling that, if somebody is voluntarily registering their land, they will have to potentially advertise it and notify their neighbours.²⁵

37. In August 2023, the land registry launched a consultation paper regarding potential reforms to land registration legislation. One proposed amendment to legislation listed is the addition of a requirement to publicly advertise applications for possessory titles. This consultation closed in October 2023, with findings yet to be published.²⁶

38. After considering the adverse effects that the 2016 resolutions may have on the volume of properties being registered on the Island, we believe that financial constraints may cause advertisements to become a barrier for land registration. Therefore, this acts as a deterrent to the process and reduces uptake of registration.

Recommendation 5

²³ Isle of Man Government, 'Notices and Objections', Gov.im, accessed 16 April 2024, <https://www.gov.im/categories/home-and-neighbourhood/deeds-and-probate-registry/land-registry/notices-and-objections/>

²⁴ Q15.

²⁵ Q21.

²⁶ Central Registry Isle of Man, 'Land Registry Legislation: A consultation' (August 2023), https://consult.gov.im/economic-development/land-registry-legislation/supporting_documents/20230808Draft%20Land%20Reg%20Consultation%20Reforms%20v6%20002.pdf

That Tynwald is of the opinion that consideration should be given to alternative methods of notification for possessory title applications.

III. Conclusions and Recommendations

39. For ease of reference our conclusions and recommendations are repeated here:

Recommendation 1

That Tynwald is of the opinion that all land owned by the Isle of Man Government should be registered with the Land Registry and that, provided steady progress is made, it is realistic to plan for this to be completed by 2035; and that the Council of Ministers should report to Tynwald by May 2026 on how progress can be tracked and pace maintained over such a long timescale.

Recommendation 2

That legislation to reform the law on the registration of land should be introduced as soon as possible.

Recommendation 3

That Tynwald is of the opinion that an educational programme should be created to raise awareness of the benefits of land registration for the general public.

Conclusion

The current percentage of land registered on the Isle of Man is not sufficient, and more needs to be done to incentivise greater volume of land to be registered.

Recommendation 4

That Tynwald is of the opinion that the Land Registry should create further incentives to increase uptake of land registration. A public consultation should be launched and the resulting report returned to Tynwald by May 2026.

Recommendation 5

That Tynwald is of the opinion that consideration should be given to alternative methods of notification for possessory title applications.

Mrs Tanya August-Phillips MLC (Chair)

Mr Lawrie Hooper MHK

Mr Stu Peters MHK

June 2025

**Annex 1: Tynwald Court Votes and Proceedings, Item 17:
Constitutional and Legal Affairs and Justice Committee: Adverse
Possession, 22nd July 2021**

17. Constitutional and Legal Affairs and Justice Committee: Adverse Possession

Motion made –

That the Constitutional and Legal Affairs and Justice Committee's Second Report for the Session 2020-21: Adverse Possession [[PP No 2021/0106](#)] be received and the following recommendations be approved:

Recommendation 1

That the Land Registration Act 1982 be amended to introduce the same application, notification and response procedures as contained in the Land Registration Act 2002 of England and Wales in respect of adverse possession claims over registered land.

Recommendation 2

That the requirements of the application process for the registration of land be reviewed with a focus on improvements that could facilitate the consistency, accuracy, efficiency and appeal of first registration.

Recommendation 3

That a central and collaborative online platform be developed which is capable of capturing and granting public access to a wide range of information in relation to land, including about local planning applications or developments which might affect the land's value or use.

Recommendation 4

That the sufficiency of the current triggers for compulsory land registration be reviewed and that consideration be given to introducing the following additional triggers:

- Conveyance not on sale (including appointment of new trustees)
- Gift on marriage
- Assent (probate)
- First charge
- Freehold on registration of a lease
- Lower minimum lease term
- Receipt of Agricultural Payments

Recommendation 5

That the Council of Ministers use its existing power under the Land Registration Act 1982 to direct the registration of all Government landholdings; and that it report back to Tynwald no later than February 2022 with details of how this will be executed.

Recommendation 6

That a reduction of the fee for voluntary registration of land be considered.

Recommendation 7

That an inquisitorial process by the Land Registrar be formalised in procedure to decide disputed cases of land ownership in first instance and that the ability to offer preliminary opinions without prejudicing formal hearings be facilitated in statute.

Mrs Poole-Wilson

Amendment moved –

To leave out all the words in Recommendation 1 and to add the words: “That Manx legislation regarding the operation of the Limitation Act 1984 in relation to registered land should be amended; that the Department for Enterprise should consult the Land Registry on the implementation of such a reform, which should include the introduction of a system under which the same or similar application, notification and response procedures as contained in the Land Registration Act 2002 (of the UK Parliament) would be implemented in respect of adverse possession claims over registered land”;

and to leave out all the words in Recommendation 5 and to add the words: “That the Council of Ministers should adopt a target for the registration of the Government estate by 2030; and that pending a report to be laid before Tynwald by February 2022, the Council of Ministers should defer any consideration of issuing a statutory direction to Departments to register their land”.

Mr Cregeen

Amendment carried.

Amended motion –

That the Constitutional and Legal Affairs and Justice Committee’s Second Report for the Session 2020-21: Adverse Possession [[PP No 2021/0106](#)] be received and the following recommendations be approved:

Recommendation 1

That Manx legislation regarding the operation of the Limitation Act 1984 in relation to registered land should be amended; that the Department for Enterprise should consult the Land Registry on the implementation of such a reform, which should include the introduction of a system under which the same or similar application, notification and response procedures as contained in the Land Registration Act 2002 (of the UK Parliament) would be implemented in respect of adverse possession claims over registered land.

Recommendation 2

That the requirements of the application process for the registration of land be reviewed with a focus on improvements that could facilitate the consistency, accuracy, efficiency and appeal of first registration.

Recommendation 3

That a central and collaborative online platform be developed which is capable of capturing and granting public access to a wide range of information in relation to land, including about local planning applications or developments which might affect the land's value or use.

Recommendation 4

That the sufficiency of the current triggers for compulsory land registration be reviewed and that consideration be given to introducing the following additional triggers:

- Conveyance not on sale (including appointment of new trustees)
- Gift on marriage
- Assent (probate)
- First charge
- Freehold on registration of a lease
- Lower minimum lease term
- Receipt of Agricultural Payments

Recommendation 5

That the Council of Ministers should adopt a target for the registration of the Government estate by 2030; and that pending a report to be laid before Tynwald by February 2022, the Council of Ministers should defer any consideration of issuing a statutory direction to Departments to register their land.

Recommendation 6

That a reduction of the fee for voluntary registration of land be considered.

Recommendation 7

That an inquisitorial process by the Land Registrar be formalised in procedure to decide disputed cases of land ownership in first instance and that the ability to offer preliminary opinions without prejudicing formal hearings be facilitated in statute.

Motion carried.

Oral Evidence

21st July 2023 – Evidence of Mr Ed Clague, Registrar General and Mr James Lowery, Land Registrar



**STANDING COMMITTEE
OF
TYNWALD COURT
OFFICIAL REPORT**

**RECORTYS OIKOIL
BING VEAYN TINVAAL**

**PROCEEDINGS
DAALTYN**

**CONSTITUTIONAL AND LEGAL AFFAIRS
AND JUSTICE COMMITTEE**

LAW OF ADVERSE POSSESSION

HANSARD

Douglas, Friday, 21st July 2023

PP2023/0127

CLAJ-AP No. 1/22-23

All published Official Reports can be found on the Tynwald website:

www.tynwald.org.im/business/hansard

Members Present:

Chair: Miss T M August-Hanson MLC
Mr D Ashford MBE MHK
Mr S G Peters MHK

Clerk:
Mr J D C King

Assistant Clerk:
Miss E Duncan

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EVIDENCE OF Mr Edward Clague, Registrar General and Mr James Lowery, Land Registrar, Land Registry3

The Committee sat in private at 5.25 p.m.31

Standing Committee of Tynwald on Constitutional and Legal Affairs and Justice

Law of Adverse Possession

*The Committee sat in public at 3.36 p.m.
in the Legislative Council Chamber,
Legislative Buildings, Douglas*

[MISS AUGUST-HANSON *in the Chair*]

Procedural

The Chair (Miss August-Hanson): Good afternoon, everyone, and welcome to this public meeting of the Standing Committee of Tynwald on Constitutional and Legal Affairs and Justice. I am Tanya August-Hanson MLC and I chair this Committee. With me are David Ashford MBE MHK and Stu Peters MHK.

5 I have a conflict of interest, as I have a role in DEFA regarding planning. I am just putting that on the table now. My colleagues will be asking the questions that I feel go a little bit too close to my remit.

Before we begin, please make sure that all mobile phones are off or on silent and, for the purposes of *Hansard*, that only one person is speaking at any one point in time.

EVIDENCE OF Mr Edward Clague, Registrar General and Mr James Lowery, Land Registrar, Land Registry

10 **Q1. The Chair:** Today, we welcome representatives from the Land Registry. For the benefit of *Hansard* and anyone listening, can each of you please introduce yourself, giving your job title and how long you have been in your current post?

15 **Mr Lowery:** Good afternoon. My name is James Lowery. I am the Land Registrar and legal officer for the Land Registry. I have been in my post for coming up to two years.

Mr Clague: Hello. I am Edward Clague. I am the Registrar General, and I have been in my post since June 2018.

20 **Q2. The Chair:** Thank you. In June 2021, the previous Committee published a report on adverse possession. The report was debated in Tynwald on 22nd July 2021 and its seven recommendations were approved, subject to amendment in the case of recommendations 1 and 5.

Let's begin with recommendation 1. For anyone listening, recommendation 1 is as follows:

That Manx legislation regarding the operation of the Limitation Act 1984 in relation to registered land should be amended; that the Department for Enterprise should consult the Land Registry on the implementation of such a reform, which should include the introduction of a system under which the same or similar application, notification

and response procedures as contained in the Land Registration Act 2002 (of the UK Parliament) would be implemented in respect of adverse possession claims over registered land.

In August 2022, it was updated on the Tynwald policy decisions list: 'A review of the legislation in the UK and other jurisdictions has been conducted by the legal officer and Land Registrar. Preparations are being made to consult in this area.' What were the main outcomes of the review?

Mr Lowery: When was that? August 2021?

The Chair: August 2022.

Mr Lowery: I reviewed the legislation and concluded that ... At that point, I took some advice from the Attorney General's Chambers on a couple of issues in relation to all the recommendations and started preparing a consultation.

Mr Clague: It is also worth mentioning that there has been some consultation with the conveyancing community as well, hasn't there, on the broad principles?

Mr Lowery: Yes. After that research in August, I prepared a presentation to the Land Registry User Group, which is a quarterly meeting of the professionals with the Land Registry. I presented the recommendations – mainly recommendations 1, 4 and 7 – to the professionals, because those are the main recommendations that require legislative changes. I presented those potential recommendations to them and received some feedback that was then going to be inputted into a consultation document.

Mr Clague: It is worth adding that we have the consultation document here in strong draft. I think it is fair to say that if there had not been some tragic personal circumstances for James, the document would probably have been released about a month ago, but unfortunately, James had a bereavement in the family. The consultation is now ready to go; it just needs the final formatting and putting out to consultation.

Q3. Mr Peters: When is that likely to be published?

Mr Clague: We hope to see the final consultation out within two weeks.

Q4. The Chair: There are a number of upcoming consultations off the back of the recommendations. Will they all be going out at around the same time over the course of this recess period?

Mr Clague: Yes. There are three recommendations that could incur changes to primary legislation: adopting adverse possession rules similar to those adopted in England and Wales; additional triggers; and the third one ... James, just remind me.

Mr Lowery: Formalising the inquisitorial process of the Land Registry and, potentially, the ability to offer a preliminary opinion without prejudicing formal hearings.

Mr Clague: So all three recommendations will be addressed in the same consultation document.

Q5. The Chair: Have all three been subjected to similar or the same stakeholders in the stakeholder consultation process?

75 **Mr Clague:** Yes. At the moment, the consultation we have done has been informal and it has been with the conveyancing community. The next stage, once we get this finalised and formatted correctly, will be to go to public consultation.

80 **Q6. Mr Ashford:** Obviously, there are statutory timescales for consultations to take place, but once the consultation has been completed and barring any unforeseen circumstances, what timescales are you working to for publishing the responses to the consultation, once you have everything in? We have recently seen some consultations from Government where there have been very long periods between the consultations closing and the responses coming back. Obviously, it is two years tomorrow since that Tynwald resolution was passed.

85 **Mr Clague:** I am in danger of making myself a hostage to fortune here. This is quite complex and detailed subject matter that we are consulting on. I do not expect a massive amount of consultation, as maybe there has been in other public consultations. I am looking at James here, because James is going to be the one who is doing the real work, but once the consultation is closed, I would hope we could have the findings out within six weeks and be able to say, 'This is the outcome of it.' Depending on the outcome of the consultation and if it leads us to change
90 primary legislation, there will be a different timescale, which you will know better than me.

Q7. Mr Ashford: Yes, but just the responses to the consultation.

95 **Mr Clague:** Once the consultation closes, it should be fairly rapid to get the responses out.

Q8. The Chair: Regarding the first recommendation, were areas of improvement suggested as being needed when things were already working?

100 **Mr Lowery:** In my opinion, under the current system for the protection of people's property the property cannot be dispossessed unless there is possession of 21 years. That is quite a strong level of protection and is much stronger than the level of protection in any other jurisdiction, where the periods are 10 or 12 years.

105 One of the difficulties I had with this work was that, practically speaking, at the moment, if we receive an application for possession of somebody's land, we currently have a quite extensive advertising process with newspaper advertisements and direct notices to neighbours. It will not matter whether their property is registered or not, the direct notice to neighbours will go to them if they are a neighbour of the relevant property. So a significant amount of notification would happen currently. The key difference in relation to adopting the United Kingdom system is really that, even if you have established a period of occupation of somebody else's land, if there is
110 a registered owner of that property, you are not necessarily guaranteed to get possession of his property.

115 **Mr Clague:** There is strong protection currently. The Committee made numerous recommendations. I think probably the best step for us now is to consult the legal profession and the public to garner their opinion, to get the best of both, I suppose.

120 **Q9. Mr Peters:** Well, just a quick point. One of my constituents, who is in the Public Gallery today, tells me that the UK legislation is much stronger than the Isle of Man's legislation. I can understand that, on first sight, you would think that ours is better, but apparently not.

Mr Clague: There are two distinct differences. I suppose the difference between the Isle of Man and the UK is that it is 12 years, I think, in the UK.

Q10. Mr Peters: It is 21 years here.

125 **Mr Clague:** I think one of the issues will be around trusts. That was dealt with in the first hearing
the first time round: is there a responsibility upon the trustees to make sure that the land is not
abandoned? We can take an opinion on which is the better system on that, but 21 years is a
significant time of land abandonment.

130 **Q11. The Chair:** I suppose what I am trying to get at with some of my questions is, regardless
of the fact that this is a Tynwald recommendation, I want to understand how much of a
commitment there is from the Registries to change in putting out the consultation. If you are
sending out the consultation, are you sending it out because it is a Tynwald resolution, or are you
sending it out with some degree of faith in it? That is what I am asking.

135 **Mr Lowery:** The feedback from the profession was that it would be a positive change – mainly
that it is an incentive for people to register their property to protect themselves. The other
feedback from the profession was that they would like to continue to have some of the
protections that we have now in the Island as well. One item that they mentioned was that a
140 registered owner of a property will give an address where they will accept service on their title
deeds, so if somebody tried to put an application in to possess their land, we would write to them
at that address. One of the professional recommendations was that that is fine but shouldn't we
also be doing what we do now, which is basically to ask for advertisement of the property, possibly
in a newspaper or possibly with a notice on the property? One of the main difficulties for people
145 with registered property is that, potentially, you can abandon your property by not updating the
address that you are served at. If you are not living at a property, it is vital that you have the
correct address for service on the Land Registry, because we will correspond with the address that
we are told.

150 **Q12. Mr Peters:** Realistically, nobody is going to do that, are they? If I own a piece of land and
I have the title deeds to prove it is my land, if someone challenges that and I have moved two or
three times, does it mean that I am never going to be aware that somebody is challenging my
ownership?

155 **Mr Lowery:** Under the UK system, all they do is write to the registered address. The proposal
that we have is to continue to have a form of advertisement. In the Isle of Man, when you put a
notice on somebody's door or if you put a notice in the paper, people do see it. We constantly see
applications for voluntary first registrations and for adverse possession where we have this
advertisement requirement, and we constantly get correspondence from neighbours of potential
160 objectors, so the system that we have at the moment does work.

Mr Clague: If I can make two points ... Are we committed to this consultation? We are
committed to this consultation. I apologise that we have been slow on this consultation. This is
not an excuse, but, by way of an explanation, we have had the significant task of updating the
165 Land Registry fees, which I suppose, in fairness, took the best part of six months for James to work
through the draft, because it was quite a complex set of changes. So I apologise for the slowness
in getting the consultation out, but we are committed to doing this. We are always keen to see
improvements to the legislation. It acts in all our interests to see the legislation considered,
reviewed and improved.

170 **Q13. The Chair:** When you were looking at the fees project that you have just spoken about,
did any thought go into voluntary registration and, I suppose, how that might be paid for?

Mr Clague: Yes, we have addressed that. That is recommendation 6, which is that the fee for
175 voluntary registration could be reduced. Currently, it is £75, and it was recommended for review.
On review, when we were directing around Land Registry fees, the view was to provide a level of

protection for owner-occupiers in an overheated market and to raise additional revenue. So we looked at all fees but specifically this recommendation. It was felt that the £75 fee was not a disincentive to voluntary registration. In relation to voluntary registration, the majority of costs to the person registering land will be the advocate's fees, the legal costs. We did consider it, but it was felt that the £75 fee was not a disincentive to voluntary registration. It remains at £75, and that was approved by Tynwald. I think it was laid before Tynwald in March, from memory, and the fees order came into effect on 1st May.

Q14. The Chair: Has any thought gone into the disincentive for people to register, regarding their need to pay legal costs? Has any thought gone into that?

Mr Lowery: The whole basis of our Land Registration Act is that the title to a property is certified by the advocate who submits the application. The advocate has to review the title to the property and be satisfied that they have a good title to put into the Land Registry. We cannot affect that, as far as I can see. The advocates will charge the fees for doing the work that they have to do.

Q15. The Chair: I am thinking less about the process that needs to take place and more about the Registry's contribution to that process.

Mr Clague: James, it may be useful if you explain how voluntary registration would be approached. We are the Registry, so, at the end of the day, we are the last link in the chain. If I were to go to an advocate today and say, 'Will you voluntarily register my property?', he has to produce a statement that he can send to the Registry to say, 'There is no precise [*Inaudible*] title to this property.' He will incur costs in getting to a position to prepare that statement, and those costs are outwith the control of the Registry.

We are constantly trying to make more transparent the information that those advocates have to rely on to make their decisions, so we have introduced a Land Registry title locator. If you look on gov.im maps, you can see planning applications. You will see flood warnings and a whole host of data. We are trying to assist the conveyancing process by making our data as accessible as possible, but what the advocate will charge his client for performing the searches and preparing the certificate is really outwith our control.

Mr Lowery: May I make a comment? There is also a previous standing committee decision which affects us in relation to voluntary applications, and that is what established the potential for requiring advertisements for voluntary applications. While we look at it on a case-by-case basis, we have to bear it in mind that we are governed by that previous standing committee ruling that, when there is a voluntary application, we have to consider whether an advertisement has to be made. And yes, we are fully aware that if we ask somebody to advertise in a local paper, there is an inherent cost of over £500 for it.

Q16. Mr Ashford: While we are on the topic of registration – you may not have this figure to hand, but, if not, you could go away and see if you can find it for us – what percentage of land on the Island is currently registered?

Mr Clague: That is a big question. I will have to go away and think about that. The biggest challenge that we have, I would say ... When we look in the Land Registry at property that regularly turns over – the houses on the estates and the houses we all live in – I would say probably between 60% and 70% of the properties that are now conveyed in the Land Registry have already been registered at least once. So, very unscientifically, 60% to 70% of property that regularly transacts is probably registered now, but there are some very large landowners in the Isle of Man – mainly the Department of Agriculture – who have large land stocks that are still not registered. One of

the recommendations of the Committee was that the Isle of Man Government should consider registering its land, and I know that the DoI and Treasury are looking into that.

I will come back to you with more precise figures. I appreciate that I have not answered your question, but, of the property that transacts, it is roughly between 60% and 70%; of the land mass, it is significantly less.

Q17. Mr Ashford: One of the major things that we are looking at is adverse possession. How many cases of adverse possession do you normally see in a year?

Mr Lowery: I did look at this. I think there were about seven last year and we have had about 10 this year.

Q18. Mr Ashford: So it is quite substantial. It is not one of these things that –?

Mr Lowery: Practically speaking, most of the applications for adverse possession are generally for an area of land associated with a property that somebody owns. It could be a bit of garden that was missed off a previous deed or where they believe that the boundary has changed. Some applications are for grass verges in front of properties where the Department of Infrastructure is not maintaining it and the applicant is saying that they have maintained it over time. I have seen one application for adverse possession of an actual property.

Q19. Mr Ashford: Is it possible to break those down for us? It would be interesting to see what the ones you have received actually relate to.

Mr Clague: Just to follow on from James's comment, it is incredibly rare to say, 'There is a house here, at 22 Acacia Avenue, which somebody has moved into and possessed.' I do not think that I have ever seen an application like that. Possibly on a housing estate, the developers abandoned a bit of land, the development company has long been dissolved and the householder has maintained a block of land behind his house and taken possession of it. The original property company from the 1970s has long disappeared, so in registering or transacting their property they may transfer their property, which they have good root of title to, and there may be a small block of land behind the house or, as James said, a verge.

When we talk about adverse possession and we talk about some of those numbers, some of them are just clarifications of the boundary, which might be unclear, or, as I said, it might be a bit of development land that has been left over. If you go back on property that has not been conveyed for many decades, it is not unusual to see an agricultural holding – for example, Ballawatnot Farm, where the land to the north is bordered by Mr Moore, the land to the south is bordered by Mr Costain, and land to the east is bordered by Mr Clague – that has no boundary map. Therefore, an aspect of adverse possession comes in to clarify where those active boundaries are, because there has never been a boundary map, and, if there was, it has been lost in the mists of time.

We do have applications with aspects of adverse possession in them. Sometimes it is just clarifying where the boundaries are; it is not always a whole property.

Q20. Mr Peters: I do not doubt for a second that yours is a difficult job, and I am sure that you are doing your best. I am amazed at the low percentage of land in the Isle of Man that is currently registered. I find that shocking. How does that compare with neighbouring jurisdictions?

Mr Lowery: The reason is that our registration only became compulsory for the full Island in 2009 and it had already started to happen in 2000. A property has to change hands for value in order to trigger registration. A number of properties have not changed hands in the last 23 years. In some areas, it has been only 15 years.

Q21. The Chair: Are we making it as attractive as we should, perhaps, from the Registry's perspective, for people to want to register their land?

285 **Mr Lowery:** We are not, because we are complying with the Select Committee ruling that, if somebody is voluntarily registering their land, they will have to potentially advertise it and notify their neighbours. We do not make it compulsory for people to register their land on as many types of transaction as other jurisdictions do. Other jurisdictions have started registering their land a lot earlier, and they have more things that trigger registration of their land.

290 **Q22. The Chair:** On that, just before I pass to my colleague, what could we do better? I am not talking about what it says in the legislation in the UK or what the UK is doing, because I imagine that you will have looked at other jurisdictions apart from what England and Wales are doing. What does 'good' look like?

295 **Mr Clague:** I would say this, wouldn't I, but, as Registrar General, I think that land registration is very attractive. It gives you several advantages. It gives you a state-backed guarantee to your property. We reckon that we have a state-backed guarantee to property in the Isle of Man in excess of £5 billion. Once you get a certificate from the Land Registry that you have good root of title to a property, the state stands behind you. In a deeds registry, all it is is a deed between Party A and Party B, and the legal standing of that document is open to challenge. State guarantee is a very attractive thing for land registration.

300 In encouraging people to do that, unfortunately there is a hurdle to get to that state guarantee. There is a process where you have to go to an advocate, and the advocate has to give a certificate to say, 'Before the Government is going to take on the state guarantee that we will back your property, the Government wants a confirmation from an advocate to say that there is good root of title here.' That is the hindrance to get over, but there is no real, practical way of getting over that. If we, as a Government, stand four-square behind a property and say, 'That is definitely your property, and, if it is wrong and we have made a mistake, we will compensate you for that mistake', that is the biggest advantage of land registration. It also makes future conveyancing a lot simpler. If you have ever sold your house and it has not been registered, you get a document from your advocate where he says, 'You are buying this property from Party A, but I have had to go behind Party A to check that, when he bought it, he had it successfully from Party B, and Party B had it ...'

310 So it simplifies the conveyancing process and it gives a state guarantee behind property, but in providing those incentives to make you want to do it, unfortunately we need that advocate's certificate to get you on to the register for the first time. Unfortunately, that will, quite rightly, cost an amount of money. When people say, 'I am sitting in my house, I have my deeds to my house, nobody is challenging me', maybe that initial incentive is not there. The only option would be to say, 'We will do the research and title into your property', but I suspect that, if I were to go to the Treasury and say, 'Can I have another quarter of a million, please, to employ some advocates to prove root of title for our customers?', I probably would not get a very sympathetic response. So there are massive advantages to having your property registered, but there is that cost hurdle.

325 **Q23. The Chair:** Has nobody ever asked Treasury the question?

Mr Clague: I think if you go back to *Hansard* in ... Did we say 1984?

Q24. The Chair: As opposed to on the floor of Tynwald, on the hoof.

330 **Mr Clague:** There was that worry in *Hansard* at the time: do we create a department of lawyers who are going to verify title? That was a conscious decision at the time when the Bill went through.

That is why we ended up where we are, where we rely on an advocate's certificate to prove root of title to the property. I think, in fairness, that is in common with other jurisdictions – definitely the Northern Ireland and Irish experience.

Mr Lowery: We follow the Northern Irish legislation, basically. Our system is exactly the same as the Northern Irish one. Scotland is the most registered other jurisdiction, because they have made a lot of other transactions trigger registration and, to a certain extent, they also register internally. They do what is known as a 'keeper-induced registration', where they create a registered title and push the process, rather than being pushed by a transaction.

Q25. Mr Ashford: Following nicely on from the advantages of registration, while we all here find really exciting the topic of adverse possession and registration of land, I would probably bet my bottom dollar that, for most of the public, it is not something that has really crossed their mind apart from when it has an adverse effect on them, particularly those with agricultural holdings or odd bits of land here or there. So can I ask what has been done in recent years in terms of a campaign to the public pointing out what the advantages of registration are and, of course, what the pitfalls and problems are if land is not registered? Has anything been done to push that to the public? Government is good at pushing campaigns out there left, right and centre, but – apologies if I have missed it – that is not one that I have seen.

Mr Clague: You are quite right. I think 'We have not' is the straightforward answer. The closest we have come to that is that we invited the Manx National Farmers' Union to visit the Registry some time around 2015, when we extolled the values of land registration and the risks with it. It was a very informal evening when we invited them round. We could definitely do that with groups such as the National Farmers' Union, but 'We have not' is the honest answer.

Q26. Mr Ashford: Do you think it would not be to the advantage of getting that message out there?

Mr Clague: Yes, I think it would be.

Q27. Mr Ashford: Particularly if we are talking 60% to 70%, with 30% to 40% of land not registered, surely it is to everyone's advantage to get as much additional land registered as possible.

Mr Clague: Yes, I think you are right, and it is something we will definitely pick up on.

Q28. Mr Ashford: We have a wonderful comms team up in the Cabinet Office that, I am sure, could pull something snazzy up for the Registries.

Mr Clague: We have the agricultural shows coming up. Maybe it is time to get a tent at the agricultural shows. I hear that, and I think it is a sensible recommendation that we will take forward.

Q29. Mr Ashford: The second recommendation from the Committee in 2021 that went through Tynwald was:

That the requirements of the application process for the registration of land be reviewed with a focus on improvements that could facilitate the consistency, accuracy, efficiency and appeal of first registration.

The update that was given in 2022 said: 'The Land Registry is working to expand the online application process. The Land Registry is considering the legislative changes needed to further

widen the acceptance of online documentation and, with that, electronic signatures.’ The first obvious question from me is this: what changes have been made to the online application process for land registration over the past year, and have you seen any improvements since these changes have been implemented?

385 **Mr Clague:** I regret to say that we still have not got online applications. We do engage with Government Technology Services (GTS) to get adoption of electronic forms and digital signatures, but it is a complex area. We continue to engage with GTS on this area, but we have not got a process yet for receiving the applications electronically.

That said, we are making massive improvements to our processing times. I was looking at our statistics this morning before I came here. In October 2021, we were taking on average about 21 days to process an application through the Land Registry. We now process applications through the Registry in three days. We have also put a whole host of data online to make our process more transparent. If you go to gov.im/landregistrystats there is a dashboard that shows our processing times. Whilst we are on the record in *Hansard* I would like to congratulate my team – two of whom are in the audience today, Nigel Lowney and Martin French – who have made tremendous efforts on streamlining our processes, albeit the processes that were in place when the Committee first sat. Our processing times are significantly reduced and we continue to engage to get more use of electronic forms and digital signatures. To some extent, that is not in our hands, but we are having those conversations weekly, if not daily sometimes.

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Q30. Mr Ashford: You mentioned engagement with GTS: has GTS given any indication of what the issues are? Are there any timescales? Are there issues around, for instance, the complexity of it or the security of a system? Or is it purely down to time?

405 **Mr Clague:** All of the above, I think. I confess that I am outside of my skill set here. In the Digital Strategy, there is a workstream for paperless office and digital signatures. There is a level of complexity on that that, I know, people are looking at and working on. I do not know whether that answers your question, but we are trying to work with GTS to get those solutions in place.

410 **Q31. Mr Ashford:** Just before I bring the Chair back in, obviously, changes were made during COVID. (**Mr Clague:** Yes.) Did any of those changes stick, or were they all unwound? What was in place beforehand?

415 **Mr Lowery:** Advocates can still submit their applications electronically. There is an element of that, but it is still filling in forms and sending them to us electronically, rather than over the counter or by post. We have a vast amount more documents available for advocates to purchase online, so there is not the element that when they are trying to research a title on a property they have to come to the Registry to get copies of documents. There is much less attendance in our reception because everybody now gets everything that they need online, but we do not see a massive number of electronic applications.

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Q32. The Chair: I have a quick question about processing times. You mentioned 21 days: did you say October 2020?

425 **Mr Clague:** I am doing this from memory now. In October 2021 I think our processing times were, on average, 21 days from receipt in the Registry until they were out the door. Now, our average is three days.

Q33. The Chair: Did that have anything to do with COVID and a backlog?

430 **Mr Clague:** There were a number of factors, really. We have worked hard as a team to improve our processes and streamline that down. James has been very effective in dealing with some very –

435 **Mr Lowery:** I, personally, do not think that we had a backlog due to COVID, although that was before I started. Generally speaking, the conveyancing community just shut down during COVID, so they did not do anything. Nobody moved. There was no backlog because there were no transactions.

440 **Q34. The Chair:** I would imagine that it sped up somewhat towards the end of 2021 because things started to kick back in and people started to get in touch, so 2021 is probably not necessarily the best year to compare against. The figure from 2019 or 2018 would, perhaps, be the better one to compare against.

445 **Mr Clague:** I first started in the General Registry in September 2013. I think at that stage we had something like 1,200 applications outstanding, and it was not uncommon for an application to sit with us for a year, so we have made dramatic improvements over the past decade. There are a number of reasons for that. Land registration was introduced in earnest in the Isle of Man in 2009. Mr Peters says, ‘Why are we behind the UK?’ I think the English system started in something like 1872, from memory. When I started in the Registry in 2013, we had something like a thousand applications outstanding and it was not uncommon for an application to sit with us for a year.

450 I think we have improved as a Registry. I think that the conveyancing industry is more comfortable with the process now. I do not know the statistics off the top of my head, but I would guess that, in 2009, 90% of the applications that we received were first registrations. The whole process is maturing and streamlining. Hence, I think that we are in a better position now than in all the years of the Land Registry.

455 **Q35. Mr Ashford:** Just moving back to the online application process and the potential to have something along those lines, has there been a look to see whether any legislative changes are required; for instance, in order to accept digital signatures or online documentation? Will any legislation require amendment?

Mr Lowery: Yes.

465 **Q36. Mr Ashford:** Is that in transit? Obviously, regardless of GTS’s timescales, if GTS turned around tomorrow – I cannot see it happening, but if GTS did turn round tomorrow and said, ‘Congratulations. We have a slot. We can do this for you,’ you would not be able to move forward without the legislative change anyway, would you?

470 **Mr Lowery:** The intention would be to incorporate legislative changes in amendments to the Land Registration Act.

Q37. Mr Ashford: So it would be done at the same time. But those have already been identified?

475 **Mr Lowery:** Yes.

480 **Q38. Mr Ashford:** Just before I hand over to Mr Peters for the next section, I want to raise the topic of vexatious objections. From time to time, when you have applications for registration and when it comes to adverse possession, there will, unfortunately, sometimes be vexatious objections. I want to dig a bit into how those are handled, because, under the Land Registry Rules 2000 – I think it is section 119(3) – there is a clear process for how vexatious objections are to be

determined. How is that applied when an objection is received, and how long does it normally take to determine whether something is vexatious?

485 **Mr Lowery:** An objection to any application would be referred to me to deal with, and it would be my decision as to whether any objection was dismissed.

Q39. Mr Ashford: I am just wondering what criteria are looked at around that, because – it is the same in any walk of life – when you receive a complaint and you are looking at whether
490 something is vexatious, it can sometimes be a very fine line. Is there a set of criteria, for instance, that you would look at?

Mr Lowery: There is not a set definition. That section does not just refer to ‘vexatious’, does it? (**Mr Ashford:** No.) It refers to ‘without substance’. In my interpretation, it is about considering
495 whether all of that applies.

Q40. Mr Ashford: So it can be subjective.

Mr Lowery: Well, I believe that that section is for a subjective decision to be made by the Land
500 Registrar, and I have made the decision to dismiss a number of objections.

Q41. Mr Ashford: Yes, but there is no laid-out, set procedure to apply. Obviously, there will always need to be subjectivity in there, because you cannot have set criteria unless you wrote something that was 200 or 300 pages that would cover everything, but there are no set criteria
505 saying, ‘If a, b, c or d, that is definitely vexatious, that is definitely without substance’?

Mr Lowery: No, there is not. I think it would be difficult to do that on the basis that each application is on its own facts, so it would not be a scenario where you have a common objection. It would have to be dealt with on a case-by-case basis.
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Q42. Mr Ashford: How long does the determination on whether something is vexatious or without substance normally take?

Mr Lowery: It depends. My intention is to resolve everything within six months and to not have
515 anything that is older than six months.

Q43. Mr Ashford: In the past, have things gone longer than that?

Mr Lowery: We have had much older matters than that in the past, yes.
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Mr Clague: I think it is probably fair to say that we have very few genuinely vexatious claims. Often, people misunderstand what something means, and, generally, it is not mediation as such but James can sit down with the parties and say, ‘Maybe you have just misunderstood this.’ Some of the objections to registration are not objections for the sake of it; it is just a genuine
525 misunderstanding of what it means. It is a complex area. James is right: we really could not come up with criteria for what ‘vexatious’ is.

Q44. Mr Ashford: I do not think that you could either. What I am trying to get at – I said this before – is that you could never have criteria that cover everything, because there will always
530 have to be subjectivity in it, but surely ... I can speak from my experience as a Minister both in Treasury and DHSC. There were clear criteria, if complaints came in, as to what definitely was vexatious and what definitely was without substance. You would then have the others that did not necessarily meet those criteria but, with subjective review, would fall within them. Would it

not be helpful to have some sort of criteria, from an officer's point of view as well, because they would cover the officer if there was then a challenge in the future?

Mr Clague: I think the difference is that, when we come to land registration, I cannot object to your land registration just because I want to or because I want to create trouble: I must have an interest. Land registration tends to draw out the issues that are already there, but it does not give an opportunity for somebody to say, 'I just really do not like this policy', or, 'I just do not like this individual, therefore I am going to raise an issue just to slow the process down.' You could register an interest in land – I suppose, James – but, ultimately, that is catered for in the rules.

We talk about vexatious applicants in the wider political sphere, but the scope for those in land registration is very much reduced because you are talking about parties who have an interest in that land anyway, and the dispute will be over the interpretation of that. I cannot object to you registering your land just because I want to and just because I want to create an issue.

Q45. Mr Ashford: Again, I ask, because I love data, whether you have any statistics on how many objections have been classed as vexatious or without substance over the last few years and how long they have taken to resolve or get to that point where –

Mr Clague: I do not think we have that data, but I will see what we can put together.

Mr Ashford: That would be interesting to see.

I will hand over to Mr Peters to take us through recommendation 3.

Q46. Mr Peters: The third recommendation was:

That a central and collaborative online platform be developed which is capable of capturing and granting public access to a wide range of information in relation to land, including about local planning applications or developments which might affect the land's value or use.

Then, in 2022, there was an update: 'The Land Registry is working to add further to the information available publicly online in relation to both property data and also increasing the property information available to the public.' Has that programme been implemented?

Mr Clague: We are constantly trying to put as much data online as we possibly can. If you go on to www.gov.im/maps, you will see the Land Registry title locator that existed when this Committee originally existed. There are also the planning applications, so you can go on to the map and see any planning application. There is a fantastic layer from the Department of Agriculture that shows trees and flooding. There is an awful lot of mapping data on there. Again, we are constantly having conversations about what further data we can expose. A great prize for us would be if we could get a map with adopted roads. I think there are some technical challenges around that. The data has to be in a format that can be presented online and digitally, and my understanding is that not all that data is currently in a digital format. We are constantly trying to put data online. If you have not been there, I fully recommend that you go to www.gov.im/maps. If you do not spend at least half a day on there looking at the maps, I will be sorely disappointed.

Q47. Mr Peters: So you think that the job is going quite well, in terms of the online thing, but, from the earlier question, it is based on probably less than 50% of the land on the Isle of Man?

Mr Clague: Yes. Well, a bit more than that.

Q48. Mr Peters: It is of limited value, isn't it?

580 **Mr Clague:** No, I disagree with that. The great advantage of land registration in the Isle of Man is, whereas we have only had land registration all-inclusive since 2009, we have had a Deeds Registry going back to 1800-and-something. All deeds in the Isle of Man are in the Deeds Registry, which is unique in the British Isles. Generally, people keep deeds in the safe at home, so having a central repository of deeds in the Isle of Man is unique and something that we should be proud of.

585 We have undertaken an exercise of back-scanning all those deeds to about 1978, so almost half a century of deeds are available online at the touch of a button. We have deeds in the Registry going back to 1912, and, if your deeds are not there, you can request them online, and we will make those deeds available within three working hours. We have the historical deeds system.
590 Again, you should spend some time on that. It is a fantastic system if you want to do research on your property or your family history. For the mapping system, we have a downloadable data set of every transaction the Land Registry has undertaken since 2009, and that is a massive tool for people with a technical bent. You can download that data set, which is in an Excel format, and we have seen some people take our data and re-present it in some super-creative and wonderful ways.
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Q49. Mr Peters: So, from that answer, if somebody is a victim of adverse possession but they have deeds from the Deeds Registry that prove that they own the land, how does that work? Shouldn't that just negate the adverse possession claim?

600 **Mr Clague:** Well, no, and that is what we covered in the Committee, and I think it was explained in the original hearing. We could go into it now, but it is not a straightforward yes or no answer.

Mr Lowery: In essence, I think it is fairly straightforward. If somebody possesses property for 605 21 years and can prove that they have done so to our satisfaction, they will dispossess somebody's unregistered title.

Q50. Mr Ashford: On that note, being a bit controversial for a moment, isn't adverse possession a bit of an antiquated notion in modern society? It has a long history, but it dates back 610 roughly to the Statute of Westminster of 1275 when the ancient philosophy was that owners of land should be making productive use of it and, if you were not making productive use of the land, it was a form of wrongdoing. In this day and age, the fact that someone can dispossess someone ...

Mr Lowery: Again, that was covered in the original Committee hearing. I think it still has a place. Take the scenario that I gave before, where somebody has bought a house on a housing estate. The company that built the housing estate has long disappeared and there is a parcel of land behind the house that, essentially, nobody owns and is now *bona vacantia*. Strictly speaking, it belongs to the Isle of Man Government. Somebody takes that parcel of land into their house, takes care of it and possesses it. I think it is probably useful. In the scenario where a farm is conveyed that has not been conveyed for 200 years, the plans are, at best, 200 years old, if there is a plan. If I say this land has been farmed for 200 years by me, the title on it may be a little difficult to prove on paper, so it definitely has a value in a modern economy, unless we are going to see land abandoned, and that could happen.

625 **Q51. Mr Ashford:** Of course, there are the provisions of Crown land, which cover some of that as well, in certain circumstances.

Mr Lowery: Yes. I am not quite clear what that is, but, ultimately, there is a real, practical purpose at times for clarifying a title, so I would say that adverse possession still has a place in land registration. That was covered at length in the original Committee report.

Q52. Mr Ashford: What I am getting at is that surely the whole situation around adverse possession has changed now, compared with where it was, say, 100 or 200 years ago.

635 **Q53. Mr Peters:** I realise that this is a very complex area, and I am a very simple man. If I bought
a piece of lifestyle land – a field of a few acres somewhere – and decided that I was going to turn
it into a wildflower meadow, because that seems to be the thing these days, which means that it
is not tended at all, are you saying that, after 21 years, somebody could come and steal it from
me?

640 **Mr Clague:** No.

Q54. Mr Peters: Because?

645 **Mr Lowery:** That person would have to have possessed it and show how they have possessed
it.

Mr Clague: Before you can claim adverse possession, you have to say, ‘I have possessed this
land without challenge, in my own right and without secrecy.’

650 **Mr Lowery:** For example, if somebody comes along after 21 years and says, ‘I have farmed this
land for 21 years, I have replaced all the fences, and here is my evidence that I have done that’, in
theory, yes, they will have dispossessed that land, but you should have noticed that your field had
been cut.

655 **Q55. Mr Peters:** Okay. Going back to the earlier point that such a low proportion of our land is
registered, I was at a DoI meeting with local authorities a week ago, and we were talking about
hedges and the fact that it is down to the landowner to cut back hedges that are overgrowing the
road. A couple of the local authorities said, ‘The trouble with that is that we often do not know
who owns the land.’ That seems crazy to me.

660 **Mr Clague:** There are other ways of finding that out. You could go to the rates database, I
assume, and find out who is paying the rates on that land. You are preaching to the choir here:
we definitely should encourage everybody to register their land. It would be a massive national
asset to have all the land in the Isle of Man registered in the Land Registry. We should encourage
the registration of land at every opportunity.

670 **Q56. Mr Ashford:** You mentioned bits of abandoned land, and I mentioned that there are
certain things that can be done with Crown land. Abandoned land is very different to situations in
which someone is trying to dispossess someone of land. They are surely two different things. Is it
not time for the law to be updated where it deals with abandoned land and what can be shown
to be abandoned land? Trying to dispossess someone of something, to me, feels wrong. It seems
like a completely outdated notion.

675 **Mr Clague:** I will let James answer that in more detail, because he is the expert, but it is not
about dispossessing people of land. What I am saying to you about adverse possession is if there
is a parcel of land here that has been abandoned and somebody has come and said, ‘I have
occupied that land without secrecy, I have occupied that land exclusively and I have occupied that
land without challenge’, once you can establish that, you can establish adverse possession.

680 We can talk about the finer points around that, but, ultimately, it is not about saying,
‘Mr Peters, I want your house. I am going to dispossess you of it.’ Ultimately, it is about saying,
‘Mr Peters, you bought this land 30 years ago. You have not been on it since, and, in the last
21 years, I have fenced this land and improved it.’ I am not quite clear what you mean by trying

to dispossess someone of land. It is ultimately about saying that land that has been abandoned
685 has been adversely possessed and putting that into a formal agreement.

Q57. Mr Peters: It is adverse in that we are saying that a trespasser who decides to come and
mess around with your property has rights, and that just does not seem fair, does it?

690 **Mr Clague:** Going back to the scenario of your wildflower meadow, as James said, if you had
not abandoned the land and were going down there every weekend to commune with nature,
you would have noticed if somebody had replaced the fences or done other things. The land has
to have been abandoned for 21 years. Somebody has to be able to say, 'For 21 years, I have
695 possessed that land exclusively, without challenge and without secrecy', so it is quite a high
threshold.

Q58. Mr Peters: It seems that you have to prove that you own something. You should not have
to prove that you own something, should you? You have to actively resist a challenge.

700 **Mr Clague:** No, not really; I do not think you do. You are not resisting anything, really. In your
scenario, you bought some property 25 years ago and, since then, you have abandoned that
property. As that property has been abandoned, somebody else has come in and made use of the
land. It is not dispossession. I hear what you say, but, ultimately, nobody can come on to your land
that you are actively utilising and say, 'I am going to dispossess you of this.' There has to be an
705 element of abandonment, and the person who is claiming the adverse possession has to pass
those three tests: occupied it exclusively, without challenge and transparently.

Q59. Mr Ashford: Do you accept that adverse possession can have negative impacts on people,
and that in some cases, where people are trying to take small parcels of land that, they feel, they
710 can take, the money can talk because people feel that they cannot legally challenge in such
instances without financially crippling themselves?

Mr Clague: That question is probably not best directed at me.

715 **Q60. Mr Ashford:** But you do accept that there can be cases where adverse possession is,
literally, adverse to people?

Mr Clague: I am aware that there have been applications for adverse possession that have
caused significant upset. Yes, I am aware of that.

720 **Q61. Mr Ashford:** I can only speak about my experience as a local representative, and I have
been around quite a bit between local and national government. I can honestly say that, in my
fifteen and a half years of service in elected office on the Island, I have never had anyone come
forward and say to me, 'Thank God for that adverse possession law. I don't know what we would
725 have done without it.' It has always been negative experiences.

Mr Clague: Generally, I suspect that people who are happy with the situation are probably not
going to tell you about it. Again, the householder who has taken a bit of land that has been
abandoned by the developer for 21 years is probably not going to come to you and say –

730 **Q62. Mr Ashford:** I have had cases of that. I live up on Governor's Hill, where various bits, even
though it is a modern estate, have been abandoned over the years by the then developer.

Mr Clague: The people who possess that land probably do not come to their local MHK to say,
735 'Thank goodness for adverse possession.'

Q63. Mr Ashford: I have had a couple, but I have always felt that something could be done by other means with things such as abandoned land, rather than by using what to me seems a very antiquated notion that dates back to the 13th century, but maybe that is just me.

740 **Mr Clague:** It is probably not for this forum, but what is the alternative? You could go to *bona vacantia* land and say, 'That land goes to the Government.' Strictly speaking, if land is owned by a company that goes into dissolution and still has assets, the land becomes *bona vacantia* and is owned by the Treasury. I do not know whether that is more attractive than adverse possession.

745 **Q64. Mr Ashford:** Of course, *bona vacantia* land can be sold on subsequently. If a verge, for instance, as we have talked about, became *bona vacantia*, it could be sold to the house owner and form part of their deeds.

750 **Mr Clague:** And for value, if you have a one-metre-square verge outside your house, it will probably be of value to you, but it will probably be of little value to anyone else. I do not know how cost-effective the process to deal with that would be if it came to the Treasury to deal with two-metre-square parcels of land and take it through the tendering process. We could talk about that one, couldn't we?

755 **Q65. The Chair:** I suppose adverse possession does not necessarily encourage good neighbourly behaviour between one party and another, does it?

Mr Clague: I do not think that it discourages it.

760 **Mr Lowery:** The notice procedure that we have at the moment for adverse possession encourages neighbours to be fully aware of what somebody is doing, so they are, generally, in contact.

765 **Q66. The Chair:** In contact, but not necessarily always in the best possible ways.

Mr Lowery: It is a question of whether they make an objection, and then a question of whether that objection is considered to be without substance or vexatious, subject to rule 119(3) of the Land Registry Rules.

770 **Q67. The Chair:** Clearly, there is a view from the Registry as to the approach. Obviously, other jurisdictions may approach it slightly differently. Has there been any cognitively complex look outside of itself at other jurisdictions to benchmark and see what they are doing and whether perhaps there might be a better way to do this?

775 **Mr Clague:** James has done that.

Mr Lowery: That is part of the consultation. I do not 100% think that the UK system is the one to hold out as the best –

780 **Q68. The Chair:** It is not always, no.

Mr Lowery: – on a couple of bases, really. They just prescribe that, if you are going to make a possession application of registered land, you notify the owner. If they do not respond, you get it. That is not entirely –

785 **Q69. The Chair:** When I say benchmarking ... Very frequently, I end up talking with people, particularly public servants, about the UK and what the UK is doing. I am not talking about the UK;

790 I am talking about other jurisdictions of a similar kind that are, perhaps, community based. We all live on an Island; there are 84,000 of us around. We have a different ethos and culture on the Isle of Man, and this seems to be slightly not ... I do not think that anyone would agree that this is perfect. My suggestion is that perhaps we need to look a bit further afield at communities that are like ours to find the right solution.

795 **Mr Clague:** We can do that. The land registration system that we operate in the Isle of Man is common with that used in the former British Commonwealth: it is called the Torrens system. We have looked at England, the Republic of Ireland and Scotland.

Q70. The Chair: Again, though, very big jurisdictions.

800 **Mr Clague:** Yes. The Scottish system is probably the most unique system and, to me, seems quite backward. If you want to possess some land, you can almost convey it to yourself, and, if nobody challenges that in 21 years – or 10 years, I think – it becomes yours. We have looked at other jurisdictions. It is in the consultation.

805 **Mr Lowery:** Personally, I think the Scottish system has a major benefit in that, at the very start of possessing somebody's land, you have to notify the Registry. If you want to get into a field and start cutting the grass, you have to put a deed into the Scottish registry saying, 'I am possessing this land.'

810 **Q71. Mr Peters:** But then you need to get in touch with the landowner, and the landowner might not be at the same address or might not see the advert in the paper.

Mr Lowery: No. With Scottish land, you can only possess unregistered land.

815 **Q72. The Chair:** Moving on to recommendation 4. Again, for those not in the room, the fourth recommendation was:

That the sufficiency of the current triggers for compulsory land registration be reviewed and that consideration be given to introducing the following additional triggers:

- Conveyance not on sale (including appointment of new trustees)
- Gift on marriage
- Assent (probate)
- First charge
- Freehold on registration of a lease
- Lower minimum lease term
- Receipt of Agricultural Payments

820 In August 2022, there was an update to the Tynwald decisions list that said that policy research had been completed and a consultation paper was being prepared: 'The policy paper does raise concerns regarding funding for registration triggers in certain areas, and, therefore, detailed consultation is essential.' What were the initial concerns that arose?

825 **Mr Clague:** I will start off on the final one: receipt of agricultural payments. That would mean that a tenant farmer who is not in a position to register the land would not be able to get agricultural subsidies, unless his landlord was prepared to register the land. That would be a significant hurdle. The Isle of Man Government is a large agricultural landlord, so it would mean that any DEFA tenant may become ineligible for support. I think it is a great idea, but there are some practical challenges in getting landlords to register. James will speak about that in more detail.

Incorrectly, in my view, some people see land registration as an additional burden with an additional legal cost. The rule currently is that 21 years must be left on a lease before we register it. We notice that some people do their leases for 20 years, because there is a perception that they will avoid land registration. If we were to bring it down to seven years, we might see people pushing back on that.

I think all these triggers are sensible and should be supported. I think there will be pushback, when we get to consultation, on agricultural subsidies and there are significant practical challenges around that, but all the other ones are good.

Q73. The Chair: Will the policy research that was done be accessible to the public to read at consultation?

Mr Clague: Yes, it will.

Mr Lowery: I have one comment. Triggering registration on a charge basically means triggering a registration if someone remortgages. Generally, there is quite a big cost jump between remortgaging and registering a property. That is quite significant, I think.

Also, freehold titles for blocks of flats is one of the major unregistered areas that we have at the moment. A lot of the blocks of flats on the Isle of Man have been with the same freehold owners for a number of years. Unless the freehold owner changes, the freehold of those buildings will never be registered. If an individual buys a flat in one of those buildings, how would we register the freehold of the building? The landlord would have to register the freehold of the building, because they have their evidence of title for it, and they would have to instruct an advocate and pay the fees to do that. They would only have to do it once, but it ties in with somebody buying a flat in a building ... You have two different parties in most scenarios. It is similar to the agricultural payment scenario, because you are obliging somebody else to do something because of buying a flat.

Q74. The Chair: All of that information and the research that has been carried out – in particular from stakeholders, any conversations that were pertinent – will be made available to the public to read at consultation. What are you looking to discover from the consultation?

Mr Clague: It is a complex area of law, so, as I said in the initial answer, I am not expecting to get 500 replies to the consultation. I think the consultation responses will be from a very narrow interest group. I hope that there will be good, technical challenges to the practicalities of the implementation of this law. We will be talking not about the broad principles but about fine details in the interpretation of the law and it will be really good to have people who have a close interest in the legislation come back and say, 'That will work', 'That won't work' or 'Have you thought about this, which is what they do in another jurisdiction?' That would be really good peer review, I think.

Mr Lowery: I would expect it to be quite negative but I would hope that it would not be too negative.

Q75. The Chair: Well, with every negative comes a positive, so I am sure that we will get some learning out of it.

On the Tynwald resolution, with this consultation, what kind of implementation are you looking for? What are the milestones or targets?

Mr Clague: There are seven recommendations. On the targets on the three legislative changes, I am hoping that, if we get the consultation done over the summer, we can come back with

recommendations on that in the autumn and then start the legislative process. On the other
880 recommendations about simplifying the process –

Mr Lowery: We have done recommendation 6.

Mr Clague: We have done recommendation 6, which is about reducing the fees. We work every
885 day on simplifying and improving the process; we do that constantly.

The other big recommendation is for the Government to consider registering its own land.
That, as I said, is being dealt with by Treasury and DoI. Hopefully, we will see proposals coming
forward on that. I understand that a paper is being prepared for the Council of Ministers
recommending an approach and costs on how to register government land.

890 **The Chair:** That leads on to David.

Q76. Mr Ashford: It leads very nicely, strangely enough, to recommendation 5. We spoke
about it briefly, but the fifth recommendation, as amended, was as follows:

That the Council of Ministers should adopt a target for the registration of the Government estate by 2030; and that
pending a report to be laid before Tynwald by February 2022, the Council of Ministers should defer any
consideration of issuing a statutory direction to Departments to register their land.

895 We were told in December 2021 that the preliminary meetings with the Registry and the
various Departments had taken place to fully understand the costings and action plans for
registration of the government estate. We were further updated in November 2022 that a draft
paper had been prepared by Treasury but was awaiting comments from the Department of
Infrastructure. You have alluded to it, but I will ask you directly: has the Registry had sight of that
900 paper?

Mr Clague: I personally have not had sight of the paper.

Q77. Mr Ashford: But someone somewhere in either of the Registries will have?

905 **Mr Clague:** I am aware that there have been conversations and email exchanges, but as for the
final paper or an early draft of it, I have not seen it. I am aware that there are conversations. We
have had conversations about the practicalities and whether we second staff from the Land
Registry to work at the Attorney General's to help with the process. I have not seen the paper, but
910 I am confident that there is a paper in circulation.

Q78. Mr Ashford: Would you expect the Registries to see that paper before it goes to the
Council of Ministers?

915 **Mr Clague:** I would expect to see it before that. The registration of government land is the
Registry's last link in the chain. Ultimately, the Department will have to identify its land and
instruct the Attorney General's to prepare the application form and do the research on the title
of the land. Only once all that has been completed will it come to the Registry and we will put it
on the register.

920 It will be a lot of land, so it will be resource intense ... to say, 'Would it be worth us seconding
people out of the Land Registry to go and work for the AG's, Treasury or DoI to help them with
the process?' We have had conversations, but the paper is not in a finalised state.

Q79. The Chair: Wouldn't dollars exchange hands in the application process, as the public have
925 to pay for these things from start to finish?

Mr Clague: There will be no land registration fees for Departments. Departments are excluded from land registration fees, so the land registration process would be free. Inevitably, it would involve officer time, and that would not be a small undertaking.

930 **The Chair:** I am sure.

Q80. Mr Ashford: Part of the recommendation was that the Council of Ministers should defer any consideration of issuing a statutory direction to Departments to register their land. To the Registry's knowledge, has that part of the resolution been successful?

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Mr Clague: To defer? (**Mr Ashford:** Yes.) I think your recommendation said that the Council of Ministers would direct Departments to do it, (**Mr Ashford:** Yes.) and until that report has come through from Treasury and DoI, the Council of Ministers still has that decision to make.

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Q81. Mr Ashford: As we said, there are always things that could come out of the woodwork to throw off timescales, but I am going to try to get you to nail your colours to the mast again, as I did at the very start. Assuming that the paper goes to the Council of Ministers in the sort of timescale that you envisage, is Government on course to have all its land registered by 2030?

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Mr Clague: I cannot comment on that. That is an area outside my control, because ultimately the decision to register ... I do not know how much land Government has – full stop. I do not know whether we have one acre or 10,000 acres, so the decision has to lie with the Departments. There is then not insubstantial work for the Attorney General's to prepare applications. Clearly, we are not on course to do it, because that report was meant to be ready in February 2022. When that report will be ready I cannot say, and how long it will take to register land once a decision is made I cannot comment on either.

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Q82. Mr Ashford: Just following on directly from that, how are the Registries gearing up for what could potentially be a very large influx of registration? As you said, some areas of Government will potentially know what their land is, because there are some small Departments out there. For instance, I know that the DHSC has a property register, which was instituted during my time as Minister. They have quite a comprehensive one. Once the paper goes through, you have the risk of the like of DHSC suddenly saying, 'There is our property register. Bang.' How are you gearing up for what could potentially be a very large influx?

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Mr Clague: We have not done anything specific yet, because no recommendations have come forward. I suggest, though, that with the property market cooling – and we are seeing turnover in the Registry down, year on year – now would be a great time for the Registry to be hit with a lot of internal applications.

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Q83. Mr Ashford: I am trying to draw out whether you will be looking at processes so that, alongside the government registration, you can still continue with the other registration so that you do not get a backlog. The last thing that anyone wants is for Government to hit the Registry with a lot of registrations, meaning that the general public's registrations end up being drawn out and backlogged.

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Mr Clague: It is difficult to anticipate, because I do not know how many applications we will be hit with, but I am as confident as I can be that, if we were hit with a lot of applications from Government to register its land, we could absorb that without significant disruption to our established service.

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Q84. The Chair: I can imagine, as, I am sure, Mr Ashford can, that you will end up with that sort of influx. Does it not make sense for you to have been involved in the entire project from the start and following it all the way through because it is such a huge project?

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Mr Clague: I think that the project struggled to get traction in Treasury and DoI. I do not think that it was their priority to get the document prepared, but we have regular conversations. We are not leading on it, but we have been involved. We have made offers of maybe releasing our staff to help other Departments of Government to prepare applications, because we know what a good application looks like.

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We are involved in conversations, so it is not to say that it is nothing to do with us. I am going round in circles. If it comes across as evasive, I do not mean to be. We have had active dialogue with Treasury and DoI about progressing the project. I do not want to speak for Treasury or DoI, but I think that there have been delays on their side as well. I am aware that the paper is in, at least, a very early draft. I have knowledge of some of the contents of the paper. I have not seen it personally, but I am hoping that it will be visible ... I expect that before it goes to the Council of Ministers I will see a draft of it. I fully support it: why wouldn't you want to register your land?

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Q85. Mr Peters: Recommendation 6 was as follows:

That a reduction of the fee for voluntary registration of land be considered,

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I think that you might have answered that earlier on, but just so I can explain, why would somebody be reluctant to spend £75 to register a piece of land? Is it because of the costs of establishing title?

Mr Clague: Yes, I think that is it. James.

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Mr Lowery: There is a statutory requirement that an advocate submits the application, so they have to instruct an advocate to submit the application.

Q86. Mr Peters: Right, okay. Is a review of fees one of the things that you looked at?

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Mr Clague: Yes. If I want to register some of my land that is unregistered, I have to go to an advocate, who has to give a certificate to the Registry and submit it. We charge £75 for receiving that application, which, given the amount of work that we do on our side, is significantly less than the cost of the effort that we put in. I do not think that the £75 is a significant disincentive to voluntary registration; the problem will be that £1,000, £2,000 or £3,000 – depending on the nature of the land that you are registering – cost of the advocate for running it all up. When we did the fees review, we put that into the mix, but we felt that that fee was already discounted and was not a significant disincentive to voluntary registration.

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Q87. Mr Peters: Who has the final say on setting the fees?

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Mr Clague: Treasury. Well, Tynwald actually. Tynwald has to approve it.

Q88. Mr Peters: What are the fees received during registration used for? Do they go back into Treasury, or are they ring-fenced?

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Mr Clague: I should know this figure off the top of my head. Central Registry turns a significant cash surplus. We will probably return about £15 million to the general reserve, and that goes into the Treasury general reserve to be spent as Treasury determines.

1025 **Q89. The Chair:** So the reduction in the fee is not going to happen.

Mr Clague: No.

1030 **Q90. The Chair:** Obviously, Tynwald has told you to do it.

Mr Clague: Tynwald said that it should be considered, and we considered it. After we considered it, it was felt –

1035 **Q91. The Chair:** How much consideration went into it?

Mr Clague: It went through the DfE board, it went to the Treasury board, and then it was laid before Tynwald.

Q92. The Chair: Right. Well, moving on, the seventh recommendation was:

That an inquisitorial process by the Land Registrar be formalised in procedure to decide disputed cases of land ownership in first instance and that the ability to offer preliminary opinions without prejudicing formal hearings be facilitated in statute.

1040 In August 2022, the update said: ‘A review of the legislation in the UK and other jurisdictions has been conducted by the legal officer and the Land Registrar. Instruction is being sought as to the nature of further consultation to be undertaken.’ We know where that is up to, to a degree, but can you expand a little on where it is up to, certainly for the sake of the public?

1045 **Mr Lowery:** Generally speaking, this is the recommendation that I have the most difficulty with and this is what I asked for some further advice from the AG’s about. I have gone forward and prepared a consultation on it, but, when you see the consultation, you will see that what I am consulting on is very wide. The first part is, basically, formalisation of the inquisitorial process by the Registrar. Well, it is already formalised, in my opinion. I think that there could be more
1050 guidance on how it is dealt with and, potentially, what the rules are. We would need a primary legislation change in order to issue guidance on the actual process.

On the issue of deciding disputed cases of land ownership in the first instance and the ability to offer a preliminary opinion, in reality, we already decide ownership in the first instance. I make a decision. The difficulty that I have with that is that it is in statute that, if we make a decision, it
1055 is appealable, and it can go to a Land Commissioner, a Deemster, who can decide on an appeal. I find it difficult to think how there would be a benefit in making a first-instance decision, because that would just mean that I had made a decision.

Mr Clague: This is an area where we will really appreciate feedback from the consultees on the practicalities of implementing this. A hearing is to hear and determine. If you have already made a preliminary opinion before the hearing, it ends up with the position being ... what is the purpose of having a hearing if the Registry has already given a preliminary opinion? So, there are some practical difficulties around it. We will go out to consultation on this, and this will be really useful feedback on how people see that working in practice.

1065 **Mr Lowery:** The main thing that we need to do is to look at the process to put in some more detail on how things are dealt with. Practically, we do not run adversarial hearings. We have had only one hearing in the past 18 months, and that was a meeting of two advocates to discuss a legal issue in relation to a property. We need some more detail about the first-instance decision-making process, but I am not minded to really require the ability to give a first-instance opinion,
1070 because I think that that is just a decision.

Q93. The Chair: We are saying this and you are going out to public consultation in a couple of weeks' time, but we seem to have some preconceived ideas as to how we want the consultation to turn out – and I am not just talking about this one. Would that be fair to say?

1075

Mr Clague: If it is coming across that way, apologies, because that is definitely not what we want. We are genuinely behind this consultation. It is complex subject matter. Take recommendation 7, for example: we are supportive, but we are not clear in our own mind. We think that there could be some practical challenges to implementing it. When we go out to consultation, we will be genuinely interested in seeing what people perceive to be the benefits and challenges that we need to address in that. Apologies if it comes across at any stage that we are not behind this consultation.

1080

Q94. The Chair: Perhaps to a degree. What I do not like to see, I suppose, is, where we are talking about consultation and Government, basically ... I see an awful lot of very good practice in terms of consultations and then consultations feeding into whatever it is that you are consulting about, but the public do not get to see what I get to see. There are some examples across Government – and again, not to talk about different areas or anything like that, but some areas in Government go out to consultation on something and have an idea of how they want it to turn out. The public have input into that, because they have written in, and it will be read, but then they will proceed in the same direction regardless of it. I would not want to add to that public perception, because I think that there is an awful lot of good practice across Government – I have seen it myself – but what I am hearing is, essentially, that you have an idea as to how you want it to work or not to work and you are going out to consultation.

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Mr Clague: The Committee said what it wanted to happen, and we are going out to consultation on that. We are clear about what the recommendation is, and we are seeking to implement that recommendation. I am thinking particularly of recommendation 7. The Committee has recommended that there should be an opportunity to formalise certain aspects and also to give a preliminary opinion, so we are consulting on that. We make no judgement on that, but what we are saying is that we can see some really practical challenges in the delivery of it, because, if you give an opinion and, later on, you have a hearing, there is a possibility that somebody will say, 'You are already conflicted, because, when you held that hearing, you had already made your decision in advance.' We do not want that. Really, what we are saying is ... I suppose that it is a bit like a consultation, isn't it?

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1105

The Chair: That is exactly the point.

Mr Clague: What we are saying is that we are going out to consultation on it and we really, genuinely want to hear people's views on it and how best to implement that. On the other issues, like –

1110

Mr Lowery: The questions that I am asking in the draft are, 'Do you think that it would be advisable to formalise the Land Registry's role in relation to disputes?' and, 'How do you think disputes should be handled in the first instance by the Land Registry?' It is not prejudging any answers.

1115

Q95. The Chair: Yes. I am not suggesting that you are putting out a biased consultation. What I was suggesting, I suppose, is that, from some of your answers, it could be understood that maybe you already have an idea of a direction that you want to take. That is what I am suggesting.

1120

Mr Lowery: Yes. I handle disputes and have seen how disputes have been handled in the past, and I can see the way I would probably want disputes to be handled in the future, which is to try

1125 to resolve any disputes as economically and quickly as possible. That is our function: to deal with
registering land and any details regarding registering land as economically and as quickly as
possible.

1130 **Q96. The Chair:** Just moving on, have any instructions been formalised in relation to further
consultation following this, like targeted consultation across Government?

Mr Clague: We have just got to go with the public consultation on it.

Q97. The Chair: And also perhaps with the Isle of Man Law Society and those organisations.

1135 **Mr Clague:** We have done a targeted preliminary informal consultation with the Land Registry
User Group, where we –

Q98. The Chair: What kinds of people are on that Land Registry User Group?

1140 **Mr Lowery:** It consists of the advocates on the Island who do property law, generally.

Q99. The Chair: So just advocates then.

1145 **Mr Lowery:** Some government ... Some of the builders' advocates are also members.

The Chair: Right. Okay.

1150 **Mr Clague:** Going back to the issue of agricultural subsidies, for example, when we issue a
public consultation, I think it would probably be worth us as well ... Lots of people will see that
consultation on adverse possession and might just say, 'That is not for me', and park it or not read
it. We will also consider stakeholders if we feel it might be worth bringing it to their attention.
Again, just picking the random example of triggers for agricultural subsidies, that might be
something to put forward to the Manx National Farmers' Union to say, 'There is a consultation
here. It has a potential impact on you. You may want to make your members aware or you may
1155 want to consider it as an industry representative body.' So we will make specific parties aware of
it as well.

1160 **Q100. The Chair:** Just harking back to voluntary registration etc., would it not be worth,
perhaps, when you are going out to public consultation, maybe doing public consultation in a
different way, actually going out to the public and having those conversations in a more engaging
two-way conversation, as opposed to through the consultation hub?

1165 **Mr Clague:** We could do that, I suppose. There is no reason – yes, we will do that. We can have
some public sessions on it. I think this is quite a technical consultation, though, so I do not know
about the appeal, if we were to be in the Strand Shopping Centre on Saturday.

Q101. The Chair: I can understand that, yes, but with voluntary registrations.

1170 **Mr Clague:** We can do that. We can say, 'There is a consultation out. Please read it. We will
have an open session in the Registry at this time, if you want to come and talk to us.' We are happy
to do that if you feel it would be beneficial.

1175 **Q102. The Chair:** Just, I suppose, drawing to a close to a degree, where would you like to see
further improvement with the Land Registry process? What does 'good' look like with that process
to you?

Mr Clague: Shall I start off at a very high level and let James go into detail?

The Chair: Yes.

1180 **Mr Clague:** ‘Good’, for us, is a complete national Land Register. Ultimately, the Land Register
is a national asset, so I think ‘good’, for us, is a complete register or as complete as can be
reasonably expected. I think we have definitely got to do more digitally, and that means accepting
applications electronically with digital signatures. There are technical challenges around that, but,
1185 also, one of the issues is that people, on average, buy and sell a property maybe once a decade,
so people maybe actually quite like the idea of doing it in a paper-based format. It is definitely a
complete register, definitely more use of digital and definitely more transparency in our process –
transparency in our performance and transparency of the data so that people know what is out
there. I suppose one of the things that we could always do better that has been highlighted today
is that we could probably communicate a little bit better as well.

1190 James, anything on the legislation?

Mr Lowery: Obviously, the more registration the better, but we have to bear in mind that the
accuracy of our register is key as well as the number of properties that are registered. Bearing in
mind that, if there is an error in a registered title, the Government is potentially liable for costs
1195 lost in relation to that, accuracy is key as well as the number. We just need to be increasing our
efficiency in relation to all aspects of it, which includes dealing with disputes, dealing with
contested applications and dealing with objections. Again, we need to be as transparent as
possible and we need to continue to be as contactable as we are. I think we are very generally
contactable.

1200

Q103. The Chair: On that, would you say that the mechanisms in place at present are sufficient
for the prevention of adverse possession?

1205 **Mr Clague:** Are the mechanisms to prevent adverse possession ...?

The Chair: Are the mechanisms that you currently have in place sufficient for the prevention
of adverse possession?

1210 **Mr Clague:** I do not think we can have a mechanism that avoids it. Ultimately, adverse
possession is triggered by (a) land being abandoned and (b) somebody taking possession of that
land. I think that maybe an area of improvement would be, once all land is registered, that we
encourage people to keep their services addresses up to date but, ultimately, we cannot prevent
adverse possession.

1215 **Mr Lowery:** I have just one point. Obviously, we have never had a case of adverse possession
against registered land. The land has only been registered since 2000, and you need 21 years of
possession, so we have never seen an application against registered land. All adverse possession
applications are against unregistered land.

1220 **Q104. The Chair:** What about against potential vexatious individuals?

1225 **Mr Lowery:** The checks that are done on an adverse possession application are the most
stringent of all the applications we deal with. The evidential hurdle that the applicant has to pass
to get over that is more than anything. It will be notified to as many people as, we think, need to
be notified, and the evidence will be stringently checked. Of the five oldest applications in the
Registry at the moment, four are adverse possession applications.

1230 **Mr Clague:** In relation to vexation, land registration draws out the disputes that already exist; it does not create new disputes. You cannot have a vexatious application where somebody just says, 'I want to annoy you, and therefore, when you go to register your property, I will object to it.' That will quickly be filtered out, because they say, 'What is your interest in this land?' and if you cannot demonstrate an interest in the land, it is going to go no further. That will come out very early days. The challenge is where there is an interest and it is disputed. Depending on the history of it and how long it has gone unattended, that is not vexatious; that is just the nature of a dispute that may be simple or complex, but it is not vexatious in the sense that people will just object to an application just because they can. They must have an interest in the application.

1240 **Mr Lowery:** I think you are hanging on to the word 'vexatious' very strongly. That is not the wording of the relevant section: it says 'without substance or vexatious'. We are not making a decision on whether an objection is vexatious or not. If an objection is going to be dismissed, it is on the basis that it is either without substance or vexatious.

1245 **Q105. Mr Ashford:** Just on that point around adverse possession, it is a bit like comparing apples and pears, because different jurisdictions have different rules, but do we know how we compare to other jurisdictions in terms of adverse possession, the number of disputes that we see, the number of claims and how long resolution takes? Do we have anything around that?

1250 **Mr Clague:** Numbers on how long it takes, we do not. We have a really good relationship with the other land registrars in the British Isles. James meets them about twice a year to compare notes. They are generally fairly open to talk about their processes, but I would be surprised if they would share numbers to that sort of level.

Mr Lowery: I do not have any information on that.

1255 **Q106. The Chair:** Can I suggest speaking with Jersey and Guernsey, as we have such similar domestic issues at times? Perhaps it might be worth having that conversation, rather than assuming that they would not want to engage in it.

1260 **Mr Lowery:** I will come back to you on that, but I considered Jersey and Guernsey when I first looked at the comparative jurisdictions, and they have a completely different system.

Mr Clague: I think I am right in saying that Jersey and Guernsey do not have a land registration system. They are still on a deed sort of system.

1265 **Mr Lowery:** I cannot remember exactly, but I did not compare them because of the fact that they had a completely different system.

The Chair: Okay. Perhaps others, then.
Mr Peters.

1270 **Q107. Mr Peters:** A final question from me that you may or may not be able to answer. I have been an MHK now for under two years, and I have had three or four constituents who have been victims of adverse possession. It strikes me – this is probably a complaint about the legal system – that the people with the deepest pockets tend to win adverse possession claims. If I was a wealthy man and I had a good lawyer who was expert in property matters, I could steal land from all over the Island. Are the systems in place sufficient to prevent that happening? I am not a pauper, but I could not afford to spend an awful lot of money on lawyers. It strikes me that, if you can, you stand a much better chance.

1280 **Mr Clague:** I could not go to your house today, even if I had all the money in the world, and dispossess you of your property. I could not put an adverse possession on any of it. If you are living in your property and you go home every evening and I said, 'I am going for you now: I have very deep pockets and I am going to dispossess you of your property –'

1285 **Q108. Mr Peters:** Even if it was my wildflower meadow that has not been touched for 21 years, to save the bees?

1290 **Mr Clague:** As long as you are going down there most weekends and communing with nature. If you are going down to your wildflower meadow of a weekend, I would have to consciously do something for 21 years without challenge and without secrecy. Hopefully, within that period, you might notice me, but, if you did not ... The perception that I could go to your property and dispossess you as long as I had deeper pockets than you is just not correct.

1295 Where there is a dispute and there is a claim A and claim B, those claims are contentious and you go to law, you could argue that, once you go to law and there is an argument to be had, there is an element around that, I suspect, but, ultimately, there has to be an interest in it. You cannot just randomly say, 'I think I would quite like the St John's football pitch. I am going to do an adverse possession on that now.' You would have no grounds for –

1300 **Q109. Mr Peters:** I have anecdotal evidence from three or four constituents that that is what happens.

Mr Clague: Right, okay, yes –

1305 **Q110. Mr Ashford:** I think the point that Mr Peters is trying to draw out is that you can end up with counter-claims. For instance, using the wildflower meadow that Mr Peters has, he could claim, 'Well, I have been going down every week for 21 years and tending it', and the other person could contest that and say, 'Well, actually, for 21 years, I have been doing X on the land.' It is very hard to prove, one way or the other, whether Mr Peters has been going down for 21 years and tending to his wildflowers or whether this other person has – I do not know – been camping out
1310 on the land for 21 years, rather than actually five years. What then happens is that the lawyers get involved, and that is where you end up with a legal issue and money needs expending.

1315 **Mr Clague:** I would hope that, when you go down to see your wildflower meadow, you would notice somebody replace a gate, change the fences or cut the grass. You would notice that, and you would challenge them and say, 'Why are you cutting the grass in my meadow? Why are you replacing the gate?' That would probably give you an indication. Then, when they come back and say, 'For 21 years I have been mowing the grass, changing the fences, fertilising the land or building a hut on it ...' It is not just a matter of saying –

1320 **Mr Lowery:** Just one point. You referred to the cost of advocates and proceedings. I am pretty sure the matters that you are referring to are matters that have ended up in the court system. To be honest, that is beyond Land Registry control.

1325 **Mr Peters:** It is. I appreciate that.

Mr Lowery: It is beyond Land Registry control. There is legislation in the Act that says that, if an application is an adverse possession application, the objector can apply for it to be sent to a Deemster, so we do not even have discretion in that.

1330 **Q111. Mr Ashford:** I think that is the point that we are making. We are looking, obviously, at the wider picture, not just the Registries and what is actually with you gentlemen. As you say, you

can do your bit, but, ultimately, these things can actually end up in court, where money does talk in a lot of cases.

1335 **Mr Lowery:** There is a tier that a number of disputed matters will ... People can apply to have certain matters dealt with by a Land Commissioner as a Deemster. For certain other matters, there is a discretion to refer it to them and there is an ability to apply. Also, there is a power for the Land Registrar to refer any matter where he has a question of law or fact to the Land Commissioner. The costs involved in that, I am afraid, are out of our control, because that is a court system, and
1340 any question regarding court costs is a matter for the court. The provisions that will apply in those scenarios are that potentially either party is liable for costs.

Q112. Mr Peters: Okay. On the point that you made earlier on about the fact that the Land Registry is, effectively, legally ... What is the word? It is not 'obliged', but if the Land Registry gives
1345 expert evidence at a court hearing, are you liable if it is the wrong evidence?

Mr Clague: In a court case, the Deemster will take evidence from several people, and it is for him to take that evidence on. Are we liable? I do not think we are. I would be surprised if we were. An opinion is given and a Deemster must consider it, but I am not really in a position to answer
1350 about our liability on that.

Q113. The Chair: Just a final question then from me. Obviously, the Registry is part of a process regarding adverse possession. Understanding what you have said, it has a responsibility as part of that process. Would it be fair to say, therefore, that the Registry, on its own merit as opposed to
1355 by direction in Tynwald, needs to review its processes to ensure that they are sufficient for the modern day?

Mr Clague: I think that is fair to say.

1360 **Q114. The Chair:** Thank you.
Is there anything we have not asked about that you would like to talk to us about today?

Mr Lowery: Just one thing. You seemed to be intimating that you would quite like us to review whether we think adverse possession as a whole should be removed.
1365

The Chair: Just investigating, asking questions, which, I think, is exactly the right thing to do.

Q115. Mr Ashford: Can I come in, because that, obviously, came off the back of a point from me? Obviously, that is going to be a political issue. All that I was trying to do was sound out, from
1370 your point of view as the Registries, your views around whether it actually had a modern place in law. Obviously, I would not want to put government officers on the spot and be trying to make up policy, because that is for us politicians to decide. I was simply sounding out, from a Registries point of view, whether you believe that it has a modern place in the world, and I think you answered quite categorically that you believe it does.

1375 **Mr Clague:** It does. I have one of the actions here, which is to provide you with information on adverse possession applications that we have had in the Registry. When we have some practical examples where it is a parcel of land, a verge, a farmer whose family have occupied the land for 300 years but without a title plan, there are real, genuine practical cases to say that adverse
1380 possession is a real, sensible thing to have. How else – ?

Q116. The Chair: Actually, my question was a little wider than that, I think. You have recommendations off the back of the adverse possession report from a couple of years ago.

1385 Therefore, you are going out to public consultation. Actions are moving forward and everybody is perhaps having a look at their online functionality and how they can improve practices, but would it not make sense for the Registry to do that off its own bat and at certain intervals – I suppose every five years or every 10 years – to make sure that its practices are still relevant to a modern society?

1390 **Mr Clague:** Yes. I think there is a responsibility on all public services to review their services and check that the service is as good as it can be, whether that is just improving a form or redrafting legislation. I think that is something that we do, not to say that we cannot be better. Yes, definitely, one hundred per cent.

1395 **The Chair:** Are there any more questions? No. Okay. I will draw this meeting to a close. Thank you very much, Mr Clague and Mr Lowery. Your time today is much appreciated. I am also thankful to those who attended in the gallery.

We will now sit in private.

The Committee sat in private at 5.25 p.m.

10th June 2024 – Evidence of Mr Ed Clague, Registrar General and Mr James Lowery, Land Registrar



**STANDING COMMITTEE
OF
TYNWALD COURT
OFFICIAL REPORT**

**RECORTYS OIKOIL
BING VEAYN TINVAAL**

**PROCEEDINGS
DAALTYN**

**CONSTITUTIONAL AND LEGAL AFFAIRS
AND JUSTICE COMMITTEE**

LAND REGISTRY

HANSARD

Douglas, Monday, 10th June 2024

PP2024/0178

CLAJ-LR, No. 1/2023-24

All published Official Reports can be found on the Tynwald website:

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*Published by the Office of the Clerk of Tynwald, Legislative Buildings,
Finch Road, Douglas, Isle of Man, IM1 3PW. © High Court of Tynwald, 2024*

Members Present:

Chair: Miss T M August-Hanson MLC
Mr D J Ashford MBE MHK
Mr S G Peters MHK

Clerk:

Mr J D C King

Assistant Clerk:

Miss E Duncan

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Standing Committee of Tynwald on Constitutional and Legal Affairs and Justice

Land Registry

*The Committee sat in public at 3 p.m.
in the Legislative Council Chamber,
Legislative Buildings, Douglas*

[MISS AUGUST-HANSON *in the Chair*]

Procedural

The Chair (Miss August-Hanson): Good afternoon and welcome to the public meeting of the Standing Committee of Tynwald on the Constitutional and Legal Affairs and Justice Committee. I am the Chair, Tanya August-Hanson MLC, and with me are David Ashford MBE MHK and Stu Peters MHK, and the Clerk to the Committee, Dr Jonathan King.

5 Before we begin, can you please make sure that your mobile phones are all off or on silent and for the purposes of *Hansard* ensure that we are only speaking one at a time.

Today we are welcoming representatives from the Land Registry. This session follows on from similar sessions, but one that we held on 21st July 2023.

EVIDENCE OF Mr Ed Clague, Registrar General; and Mr James Lowery, Land Registrar – Land Registry

10 **Q1. The Chair:** For the benefit of *Hansard* and anybody listening, please can you introduce yourselves, giving your job title and how long you have been in your current role.

Mr Lowery: James Lowery; Land Registrar; and I have been in the current role since October 2021.

15 **Mr Clague:** Hello. Ed Clague; Registrar General; and I have been in this post since June 2018.

Q2. The Chair: Since we spoke in July 2023, how many new property registrations have taken place?

20 **Mr Clague:** I do not know that precise figure off the top of my head, but it would be in the region ...

Mr Lowery: Just give me one second.

25 **The Chair:** Yes, not to worry.

Mr Lowery: I may be able to extract the data, but it might take a while.

30 **Mr Clague:** We get about 300 applications a month. Not all of those are conveyances, some of them are putting a charge on or a burden on that, but if we work on 200 conveyances a month, that would be 2,000, 2,400 a year?

The Chair: Okay, thank you.

35 **Mr Lowery:** However, not all of those are new registrations. So I would have to extract that data.

40 **Q3. The Chair:** I am assuming that you will be able to provide the Committee with that information as soon as possible after the oral evidence session?

Mr Clague: Yes, that is fine.

The Chair: Thank you very much.
Is there anything that you have prepared before attending today? Any statement or do you
45 want me to go straight into questions?

Mr Clague: No, we have not.

50 **Mr Lowery:** No, I have not prepared –

Mr Clague: No, just straight into questions.

Q4. The Chair: Lovely, thank you very much.
So just to start, then, on the 2023 consultation, in August of 2023, you published a consultation
55 on Land Registry legislation. Can you remind us what the main themes were in the consultation to start?

60 **Mr Lowery:** There were three main recommendations of the previous Standing Committee that were dealt with in the consultation, which were that the Manx legislation regarding the operation of the Limitation Act should be amended to mirror the changes contained in the England and Wales Land Registration Act; that sufficiency of the triggers for compulsory land registration be reviewed and consideration be given to introducing the following additional triggers – I will not list them all; and the inquisitorial process by Registrar be formalised in procedure to decide
65 disputed cases of land ownership in the first instance and the ability to offer preliminary options without prejudicing formal hearings to be facilitated in statute.

Then the consultation also dealt with some items of updating to the Land Registration Act.

Q5. The Chair: Okay, thank you.
In September, you hosted a number of drop-in sessions. How did that go? What was the public
70 uptake like?

Mr Lowery: The public uptake was generally only by farmers, because –

75 **Q6. The Chair:** Right, okay; and how many?

Mr Lowery: There were about 10 farmers who turned up.

Q7. The Chair: Right, okay. So was that a valuable exercise?

80 **Mr Lowery:** It was valuable in relation to they raised some valid points. Generally speaking they were not interested in anything in the consultation apart from widening the triggers to include agricultural land. And obviously the feedback was very negative, although most of them were not against registering land, they felt that placing the burden on the agricultural community was excessive and that they were not happy with being forced to do it, potentially.

85 **Q8. The Chair:** How did you respond to those concerns? Have you consulted wider?

Mr Lowery: In reality, some of the issues they raised had a valid point to it to a certain extent, one of those particularly being ... well, there are two, really. What about if we rent land off the Government; are they going to register their land? And also, what happens if it is a tenant farmer who is claiming an agricultural subsidy; what is going to happen there? How are we going to force the landlord to register his land just so that his tenant can claim subsidies? We made the decision that we were not going to pursue that trigger on the basis of the feedback we had because of those two factors and the practicalities of administering it would be too difficult.

95 **Q9. The Chair:** We will talk about the registration of the Government estate a little bit later on, but with the consultation, what was the overall response, what were the figures, what was the data, on how many people had responded to the consultation and how valuable was it?

Mr Lowery: It was fairly poorly responded to. We had about, I think 48 responses, of which a majority were from either farmers or the legal profession.

Q10. The Chair: What were the general trends throughout?

105 **Mr Lowery:** In relation to ... I apologise that I have not ... the summary document has been published.

Mr Clague: Can I pick up on that, if I may?

In recommendation 1, that we should adopt an adverse possession process similar to that in England and Wales, I think that was broadly supported. The major difference though is they want to see that 21-year period before you can claim, which in the UK is 12 years, I think, is it, Mr Lowery?

Mr Lowery: It is either 10 or 12 years, depending on the –

115 **Mr Clague:** Extension of triggers I think Mr Lowery has already touched on. Broadly people were accepting of it, thought it was a good idea, with the exception of the practicalities around agricultural subsidies, and Mr Lowery covered that in detail.

And a third issue about being able to offer an informal opinion before having a hearing, I think people raised a lot of questions saying how would you deliver that in practice. So people said, 'Yes, but in practice how do you want to implement that? How would that be implemented?' That probably recommends what we suspected the feedback might be when we last met you.

125 We never expected a massive feedback, this is a fairly specific technical piece of law, so we have had feedback from the legal community, feedback from the agricultural community, I think that is probably what we were expecting, those areas there. So broadly speaking, I would say we are satisfied that the consultation reached people who we would expect it to reach.

Q11. The Chair: In terms of adverse possession legislation then, can you give us a little bit more on what the response then from Registry is?

130 **Mr Clague:** The response to the Registry? (**The Chair:** Yes.) Yes –

The Chair: *From the Registry; like what are you going to do about it?*

Mr Clague: So if I can read from our consultation document, which is now available on the website –

135

Q12. The Clerk: So while you are going through it, can you just explain which website, where we would find it?

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Mr Clague: It is on the Consultation Hub website. So on the consultation website it says ‘We Asked’ and then there is a second part saying ‘We Did’ and we put a document on there now which gives some nice charts on the feedback we had, some snip bits of what people said and our actions.

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Q13. The Clerk: When was the response document published?

Mr Clague: About a month ago, was it, Mr Lowery?

Mr Lowery: It was published last Friday, I think. (**The Chair:** Last Friday?) Yes, I do ... I –

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The Chair: Not very long ago, then?

Mr Lowery: Not very long ago. (**The Chair:** No.) I had it prepared in around April, but then did not realise I needed Department approval and all sorts of other things that took a bit of time.

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The Chair: Mr Ashford.

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Q14. Mr Ashford: Just on the responses, it was mentioned there about agriculture. It was obviously a very low sample, because we are talking particularly in relation to the trigger of registration of farmland, 45 responses received to that question, but it was actually quite close, isn’t it? Twenty-one responses came back as yes and 24 no. It sounds like there is actually quite a split over the agricultural registration. So are there any plans to go out for wider consultation because, of course, it was only a 45-response rate in relation to that?

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Mr Lowery: Our thought, and what we say that we will do, was to have legislation which gives us a power to wider triggers at a later date if we consider it to be necessary. At that point we will probably consider further consultation. Our thought was to just go with the obvious triggers.

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Mr Clague: So just within that sample group that we talked there, one of the biggest feedback ... I think we had formal feedback from the National Farmers’ Union and the National Farmers’ Union will claim they represent 80% of farmers on the Isle of Man. So it is one response, but for a fairly large lobby group, I would say.

175

And as Mr Lowery says, what we are saying at this stage is we are not ruling out any future triggers. The problem we have now is to change a trigger, it is primary legislation, with all that entails. So if in an amendment Bill we can say, ‘Bring in these new triggers and enabling powers to bring in further triggers via an order’ that will make the process in the future a lot simpler.

Q15. The Chair: Right, okay. Is that a process that has already started, the initiation of the policy development regarding that?

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Mr Clague: That is right. That is what we are recommending in our feedback from the consultation. When we go to the legal drafters ... So where we are now with the consultation is we have had the consultation, we have published the findings and the feedback – and apologies

it has only been on the website a week. Our next exercise now is we have requested permission, or we are in the process of requesting space on the legislative agenda, and then we will prepare the legal drafting instructions, which will be fairly complex – we think that will take us about three months – and then we will have to come back for consultation on the detail on that as well.

The Chair: Right, okay. Go ahead.

Q16. Mr Ashford: Just to clarify there, if I may, because you said you have not ruled out any triggers at this stage, but part of the response under the We Did section of the consultation is in relation to agricultural subsidies:

The Land Registry does not propose adding triggers in relation to agricultural subsidies and in relation to the freeholds of apartment buildings at this stage.

But although it is badged as ‘at this stage’ I assume that means, since you would be looking to come forward with legislation formulating now, it is not going to be in the next round of legislation. So you would effectively be ruling out any such triggers in the medium term?

Mr Clague: In the initial term, yes, but if the position changed, that would mean that once new legislation comes through, bringing in future triggers would be a lot simpler. But yes, exactly right.

Q17. Mr Ashford: Would the plan be then for additional triggers, rather than being written into primary legislation, to be undertaken by secondary?

Mr Clague: Yes.

Q18. The Chair: So it would be, as you said, enabling legislation. Is that sufficient, do you think?

Mr Clague: I think so, yes. We would not suggest it if we did not think it was sufficient. We are just trying to shorten that process time down. If we come back to agricultural triggers, for example, really the biggest hold up there will be tenant farmers saying, ‘This is really disadvantageous to us, because our landlords aren’t prepared to register the land’ – and one of the biggest agricultural landlords in the Isle of Man is the Isle of Man Government. ‘If they are not prepared to register their land, it is unreasonable for us as tenant farmers to be excluded from subsidies.’ So when we bring that trigger in is very much dependent on how quickly landlords register their land.

So it just leaves us more options for moving forward, where there are several influences on the policy.

Q19. The Chair: Yes. It sounds like there are an awful lot of things that are dependent on Government registering its land then.

Mr Clague: I would say this, wouldn’t I, but there are lots of advantages for Government registering its land and we have covered that in the original hearing when we met here last year. But yes, that is one of the big things hanging on registration of Government land, definitely.

Q20. The Chair: How further forward are we with that?

Mr Clague: That is with DoI at the moment. DoI did answer a Tynwald Question last November and I have not been able to get an update since that position statement in Tynwald last November, which I think they are saying they are struggling with identifying resources to move it forward at the moment. But there is a formal Tynwald response on that.

Q21. The Chair: Yes, that is November and this is today. (*Mr Clague:* Yes.) It seems like perhaps Registries might need to keep a track of that and understand exactly, at all times, where that is up to, seeing as it is so key (*Mr Clague:* Yes.) to everything else.

235 **Mr Clague:** That action is not an action on the Registry. It is an action on DoI and the Treasury to progress that. We do try to influence wherever we can to get that moving forward but, ultimately, if the Department is saying it does not have the resources to move it forward, that is outside of my scope of influence unfortunately to push that forward. We do –

240 **Q22. The Chair:** I would imagine it is a cross-departmental, cross-Government thing, as opposed to something that any one or two Departments in isolation should perhaps be moving towards, especially if it affects policy and affects the way that things are rolled out within Registry.

245 **Mr Clague:** The issue with land registration is ultimately the landowner must volunteer his land for registration. The Registry cannot oblige anyone to register their land. So the onus is on the Government to say we want to register our land. There are a lot of factors stopping that, if it is resources, whether that be officer time or hard cash that influences that.

There is a power, which the Council of Ministers have, that they could oblige Departments to register their land. In response to the original Committee recommendations, CoMin held off from using that power, choosing to get Departments to come up with a plan, and that plan has not come forward. So I suppose that is always an option available to the Council of Ministers to say maybe it is time now to use those powers within the Land Registration Act to oblige Departments to register their land.

250 I am not trying to deflect it. We are really keen to see all-Island registration. We have offered staff time, we have offered to second members of our office to work for other Departments to help them prepare applications, but ultimately the decision to register the land sits with the Government Departments owning the land and I cannot influence ... It compromises the role of the Registry if we are going ahead registering Government land. It has to be the Departments that have to initiate that process.

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Q23. The Chair: Yes, understood, thank you.

Did the results of the consultations reflect an overall faith that the Isle of Man has strong protection against false adverse possession cases?

265 **Mr Lowery:** Overall, the response to keep a 21-year period prior to any possession being registrable was positive. Generally speaking, the certainty of the Registry was debated by advocates in their response.

Q24. The Chair: Could you elaborate on that, please?

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Mr Lowery: A number of the advocates' responses were questioning the accuracy of registrations historically and that is a current issue that we have, that there are a number of rectifications of titles being pursued, where it is going back to what was registered in the first instance, which is to be expected to a certain extent, because 20 years ago how things were done is different to how they do it now, our mapping now is different to how it was 20 years ago. So we are expecting that to happen at some points. But then –

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Q25. The Chair: Are all of those from 20 years ago or are those more recent cases?

280 **Mr Lowery:** It varies.

Mr Clague: Can I come back on that? What we cannot do is we cannot prevent adverse possession. So if land is abandoned and somebody possesses that land and meets all the criteria, there is nothing we can do to prevent land being abandoned and other people making a claim on it. If we look back on the original hearing evidence, what the Committee originally found is the measures around adverse possession in the Isle of Man, in many ways, were superior to that in our neighbouring jurisdictions. In the Isle of Man, you have to possess that land for 21 years before you can make a claim; in the UK, it is 12 years. So ultimately almost double the amount of time you must possess that land before you can make a claim on it.

What the original Committee also found out is there were some benefits in the UK system where there were more steps to go through before you can make the claim. One of them was notifying the parties and the right for the parties to object. So what we are doing and what we propose, and that is what we are intending to go forward with, is bringing into our legislation similar measures as in England and Wales, with the exception that we would still look for 21 years.

So I think once this goes through we will have a fairly robust mechanism for adverse possession to make sure that if somebody says, 'Actually, I am still in possession of this land and I am using it regularly' that they should be notified of it; aware that that process is going on. But we cannot prevent adverse possession. What we can say is that process for gaining adverse possession is robust and thorough, which I think it will be after this.

Mr Lowery: Could I just –

Q26. The Chair: That is if the Council of Ministers Legislative Subcommittee, which I am on, just so that we are clear, agrees with the time slot for the legislation to be progressed.

Mr Lowery: Sorry, can you say that again?

The Chair: Is that right? Yes. (*Interjection by Mr Clague*) That is if the CoMin Legislative Subcommittee agrees to the slot being agreed on the legislative programme, yes?

Mr Clague: Of course, yes.

The Chair: Yes.

Mr Lowery: Just going back on that, our practice since the Report of the Select Committee on the Registration of Land – that is reference PP2016/0078 – has always been an element of advertisement for all possessory title applications, as far as I am aware, on the basis that that Select Committee made two specific recommendations, one of which was that where the same advocate acted in a sale and a purchase they should advertise that, because it was not really a sale for value. If the same advocate is acting on both sides, two different advocates are not checking the title.

And the second point was that where people were doing a voluntary registration, then the advertisement should have been done, because there has not been a change of ownership as such. A voluntary application is somebody just deciding to register their land. They may well have bought it 15, 20, 30 years ago.

So there has always been that element since that Select Committee Report and we do treat a possessory title application as a voluntary application, because it is a voluntary application, if you see what I mean? It is somebody voluntarily putting in their application to possess the land.

The Chair: Okay.
Mr Ashford.

335 **Q27. Mr Ashford:** Yes, it probably comes in nicely here. One of the things that – unless I have missed it in the response to the consultation – was not mentioned, although I appreciate you cannot respond to absolutely everything, or it would be as long as the consultation, is one of the most decisive answers to the consultation came under question 6, which asked, ‘Do you think that any element of public advertisement of possessory title applications is necessary?’ and that was 91% to 9% saying yes. Obviously again with the usual caveats, it was a 44% sample, what plans are there to move forward with that?

340 **Mr Lowery:** It is already in place.

Mr Ashford: So it is already there?

345 **Mr Clague:** We already do it discretionarily, but we will bring it into legislation.

Q28. Mr Ashford: That is what I mean. So it is planned to go into legislation?

350 **Mr Clague:** But we do it today anyway. But we will triple lock it –

Mr Ashford: But it is planned to put it on legislative footage?

The Chair: Okay.

355 Go ahead.

Q29. Mr Peters: I have a constituent who is a victim of adverse possession and he was told that actually the legislation here, the 21-year rule, is better than the UK legislation. He feels very strongly that actually the UK legislation is much stronger, albeit for a shorter period. I cannot remember, to be honest, whether it was because in one set of legislation one had to prove that you had held possession of the land and used it and in the other that was not the case. But I wonder if could you just tell us whether or not you think the UK legislation is better?

Mr Clague: I wonder if I could quote you from what this Committee said in the original hearing. (Mr Peters: Yes.)

15. Whilst explaining the differences between the limitation periods of these two jurisdictions, Mr Arculus argued that, as a result of the longer limitation period, it is both harder to lose and to acquire land by means of adverse possession in the Isle of Man than it is in England and Wales. We agree that, when comparing the requirements for a claim of adverse possession of unregistered land in England and Wales with that of both registered and unregistered land in the Isle of Man, it is objectively more difficult to succeed with such a claim in the Island.

16. However, the requirements in respect of registered land in England and Wales are different and ... [a present] system that places significant barriers in front of those hoping to claim title to land by adverse possession.

365 So that is what the original inquiry said. There are some things that make it more difficult in England and Wales, but ultimately the Committee, I think, felt the Isle of Man process was more stringent. (Mr Peters: Okay.) That is paragraph 15 of the original Report.

370 **Q30. The Chair:** Just to go back to the consultation, the consultation feedback has obviously then prompted this rethink of legislation and whether or not we need something that is a little bit stronger, with a bit of flexibility in terms of what you are planning on bringing in by order, the enablement as well, in the legislative provisions. How long is this expected to take? If the CoMin Legislative Subcommittee agree to the slot being taken by the Registry, then how long are we expecting this is going to take? Within this administration that perhaps you might bring this forward; is that the plan?

Mr Clague: We would have to work that. We think it will be quite a substantial Bill. We think it will be about a 20-clause Bill, do we estimate, Mr Lowery? (**Mr Lowery:** Yes.) So that will be a –

380 **The Chair:** Medium-sized Bill.

Mr Clague: Yes. That will take us, we think, about maybe three months to prepare the drafting instructions. So I cannot answer that question directly for you, but we think it will be a medium-sized Bill, it will take a considerable amount of drafting for us to do it and when that fits into the
385 legislative timetable we will do it as quickly as we can. Because the other issue is trying to get hold of drafters' time, of course. (**The Chair:** Yes.) I do not know if that answers your question. Again, it is one of those things that we will start drafting very soon, the drafting instructions, but we lose control of it beyond that, because it goes into that pool of other resources.

390 Sorry, I feel I have answered that question poorly, but I cannot give you the answer that you need.

The Chair: No, that is quite all right. That is fine.

So moving on to the registration of Government estate then, I will hand you over to my colleague, Mr Ashford.

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Q31. Mr Ashford: Yes, so we have already briefly touched on this and the fact that you were saying you are effectively in the hands of DoI and resources, and obviously that the Land Registry cannot compel Government to register its land and Government Departments to register its land. The Written Answer that came in December 2023 from the Minister for Infrastructure to ... I think
400 it was an Answer to a Question from Mr Speaker, said that Land Registry was involved with Treasury and the Attorney General's Chambers in developing a project plan. (**Mr Clague:** Yes.) Can I ask what progress has been made on the project plan side?

Mr Clague: Yes. I have not been directly involved in this.

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Mr Lowery: Can I answer that? I –

Mr Clague: Oh yes, sorry, go on.

410 **Mr Lowery:** My involvement was limited, because I think I need to play some form of Chinese wall between ... If a Government application for registration comes in, I will generally be looking at it, so I cannot have involvement in both camps, but I was involved in the early meetings where it was discussed that they were going to, with the AG's and DoI, have a trial of a number of properties to establish the resources that would be required on a larger scale. But as far as I am
415 aware, that has not started yet, due to resources. And they were talking of a trial of five to 10 properties.

Mr Clague: What the Land Registry offered to do is we had offered to do some of that ... So when you go to register a property, you must find a good root of title. If I want to convey a
420 property, I have got to go through the historic deeds of that to find a 21-year good root of title. So we had offered resources from within the Registry to assist with that resource. If my memory serves me correctly, they were to identify five pilot sites, and we definitely did one, but I do not think they have come through with the other pilot sites yet.

425 **The Chair:** Right.

Q32. Mr Ashford: Because the plan was for the trial to last, that it was expected to last, between six to 12 months, (**Mr Clague:** Yes.) depending upon the properties that were located. So has there been any feedback from DoI to the Registries around that offer to help?

Mr Clague: We have offered that help, and it is there, and it is still hanging there, but I think it is waiting for DoI and Treasury to come back with the sites to identify, if my understanding is correct.

Q33. Mr Ashford: Just to be clear, when was the offer of help? Was it pre- the Answer given to Tynwald in December 2023?

Mr Clague: From memory, I think it was October, November time, where we were having meetings, Mr Lowery? It was before this Question, I think.

Mr Ashford: Yes.

Q34. The Chair: Those were the initial preliminary meetings? When did the meetings begin?

Mr Clague: There have been conversations going on via email for a long time. I have not got the precise timetable on it, but I can come back to you with more detail if you like on that –

Q35. The Chair: Are we talking years?

Mr Clague: The registration of Government land comes from this Committee back in – when was the original Committee? – 2021 and that was one of the actions that Government was meant to come forward with a project plan for registering all Government land, and the project plan was meant to come into Tynwald by February 2022. That still has not materialised.

So I think that conversations have been going on, to a greater or lesser degree, really since this Committee made its initial recommendations.

The Chair: It seems like an awful lot of talk has taken place.

Mr Clague: It does, yes. (*Laughter*)

Q36. Mr Ashford: Just to clarify there on something you mentioned before, about the potential trial of the five properties, your understanding is they have not even selected yet what the five properties would be?

Mr Clague: Mr Lowery, are you able to have a ...? There was talk about Andreas airfield I recall, I think there was another site in St John's potentially. But I think –

Q37. Mr Ashford: Nothing has been firmed up –

Mr Clague: Nothing has been firmed up.

Mr Ashford: – as far as you are aware? Though I appreciate there are Chinese walls –

Mr Clague: Could I just make ...? (**The Chair:** Yes.) I have not been directly in close to this, so I am not 100% on it, but I can respond to you latterly, if that would be ... I am just scared I am going to lead you down a blind alley.

The Chair: You do not want to get it wrong.

Mr Clague: Yes.

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Mr Ashford: That is why I caveated it 'as far as you are aware', because I appreciate there will be Chinese walls –

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Mr Clague: It is just that I have not been involved in conversation. But what I will do is I will drop you an email to the Committee after this just to say, 'This is our involvement up to now', if that is okay?

The Chair: That would be great, thank you very much, yes.

Moving on then, I do not know if you have got any more questions, Mr Ashford?

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Q38. Mr Ashford: Just one more, Chair, if I may, on this. Obviously in the Written Answer, and we discussed it before, about adequate resource being in place, what adequate resource, as far as you are aware, is it waiting for?

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Mr Clague: For the registration of Government land? (**Mr Ashford:** Yes.) Yes. So it will put a burden on first of all the Department to identify its land, and I think that the other burden will be on the Attorney General's department, which will have to prepare the applications. So I think that is where the costs, either in hard cash terms or officer time, will be. Once the application is prepared and it comes through to us, we will see a peak in workload, but we should be able to absorb that within our current resources. Now would be a fantastic time for us actually, because the property market is quiet at the moment.

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Again, sorry, I have not answered your question completely, but I do not know what resources will be, but it will be at the Attorney General's department and within the landowning Departments.

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Q39. Mr Ashford: With my former private sector head on, when you are developing a project plan, which the Written Answer said was being developed in conjunction with the Land Registry, Treasury, Attorney General's and Infrastructure, part of that surely then would require a resource plan. (**Mr Clague:** Yes.) Are you aware if a resource plan is being developed as to how they would resource it?

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Mr Clague: I think that was the idea around the pilot, because at the moment it is very much a finger-in-the-air sort of exercise. So the idea was if they could do a pilot on five applications, that would give a feeling of how much officer time it would take, because I do not think that has been identified yet.

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Q40. Mr Ashford: But the suggestion with how long this is rumbling on, if it was, say, October last year when these conversations were happening, (**Mr Clague:** Yes.) suggests that they have not got the resource in order to do the trial for the resource plan. (**Mr Clague:** Possibly, yes.)

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So again, I understand you are not involved in all the conversations and everything else, but is that your impression, that they have not got the resource to move forward the trial?

Mr Clague: Yes, I think so. It is like lots of things in Government: there are lots of good projects out there, it is just identifying the resources and where that sits and within a Department's priorities.

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Q41. Mr Ashford: Can I ask then, with the limited involvement that Land Registries appear to have had, where was it being expected that resource would come from in Government Department terms? I appreciate there would be resource in the Attorney General's Chambers. Was it expected it would be DoI that would have to provide that resource?

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Mr Clague: Yes. My understanding is DoI are responsible for co-ordinating it and bringing it together, but yes.

Mr Ashford: Thank you.

The Chair: Right. Mr Peters, public engagement.

Q42. Mr Peters: I would like to talk to you about public engagement. We spoke last year about what you have done to campaign for the advantage of registration. Did you engage with the public through a stall at the Agricultural Show, as was mentioned in July last year?

Mr Clague: No. So the Agricultural show has not been since ... well, I think there was an agricultural show in August. We did not do it this year, but I have made some tentative enquiries for ... So did not do it in 2023, but I have made some tentative enquiries for doing it in 2024.

Q43. Mr Peters: Sorry, why did you not do it last year?

Mr Clague: Because by July, the agricultural tents are all booked up by now.

Mr Peters: All booked up?

Mr Clague: The shows are planned several weeks in advance. **(Mr Peters: Okay.)** Yes, so just logistics there, but we will try and get something for this year.

But we have done outreach. As part of the consultation we held ... How many open outreaches did we have, Mr Lowery, on the consultation? Several. *(Interjection by Mr Lowery)* We went out to the public when we went to the consultation, talking about the adverse possession consultation, so we have done outreach on that bit there. But answering your specific question, we did not go to the Agricultural Show last year, we will endeavour to do so this year.

Q44. Mr Peters: Has anything further been considered in terms of online applications for land registration?

Mr Clague: Yes, we have been working hard on that. I am hopeful, touch wood, that I will have a demonstration in the next 14 days of an online system where people will be able to make online applications, electronic, with digital signatures, paying online. So we will hopefully have a demo very shortly and hopefully have a pilot in the autumn.

Q45. Mr Peters: Is that going to reduce your workload or is it not going to make much difference?

Mr Clague: It will reduce our workload. What we would hope, there will be less physical handling of paper. We also hope, by having an online process, we can get rid of the clerical errors; of somebody forgets to tick a box or something like that, which means that we have to refer the application back. So that will be better for the advocates we hope. It will be better for the advocates, making it a simpler process. It will be better for us, less scanning, and hopefully the quality of the applications that come in will be better as well, because there will be less room for just administrative errors on the forms.

Q46. Mr Peters: Okay. Have you done anything else to promote or to simplify registration?

Mr Clague: We are always trying to make tactical improvements where we can. We continue to make improvements to the mapping system. If you look at the mapping system now, we have

added more data on that. We now have how many properties are owned with a mortgage and how many are without, we have our income projections on it, but all the time we are trying to make things as improved as best we can. Small tactical changes, a bit like the British cycling team: small tactical changes lead to big improvements. And that is what we are doing in the Land Registry all the time.

But this online application, or these electronic applications of first registration, which we hope to have this autumn, or this year anyway, should be a major improvement for everyone.

Mr Peters: Thank you.

Chair.

Q47. The Chair: Thank you.

Incentivising registration. (**Mr Clague:** Yes.) I am sure that you expected this particular question, but in 2023 we talked about the possibility of creating incentives for land registration and a lot of the conversation ended meeting a bit of a dead end. So what incentives do you think can be explored to increase engagement for those that are unaware of the importance of voluntary registration of land?

Mr Lowery: The problem we have is that we are bound by the Select Committee judgement that I referred to previously, which states that if somebody is voluntarily registering their property then we have to consider that they have to advertise it. We make a decision on a case-by-case basis as to what we require, but in some cases that means that you are going to have to put an advert in the paper to advertise the fact that you are voluntarily registering your land.

That is as a protection that came out of a case that went to a petition for redress that then went to a Select Committee and we are bound by that. And it is a protection for neighbours, so somebody cannot just put in a voluntary registration and nobody will know about it, but that is a disincentive to people to voluntarily register their property, because there is a cost element involved. There is also the cost element involved of advocates' fees. We have a fee, it is £75. It is *de minimis* compared to the cost of advertising a property or the cost of paying an advocate to do it.

Q48. The Chair: So if you know that that is a disincentive, and you feel that is a disincentive, what have you done to try and highlight the fact and change the way that things are currently done in order to create incentives?

Mr Clague: There are massive incentives to register your land ultimately. I think I said this last time: the Government currently stands as guarantor of over £5 billion of property in the Isle of Man. So if your land is registered and something comes up on that title which affects your registration in a negative way, there is a route there for compensation from Government.

So the incentives for registering of land are for having a definitive title there which is backed by a Government estate guarantee. It is hard to make that any better really. As Mr Lowery says, though, the hurdle to get there, because you have to have that first registration signed off and verified by an advocate, and that is going to cost you £1,000, £2,000, £3,000 depending on the nature of your title, other than us paying the people's legal fees, that is the biggest barrier there.

Again, I do not feel I am answering your question. It is very limited what I can do to incentivise land registration more, because we only charge a £75 fee, which does not cover our cost for first registration. So we are already delivering that at below cost. The other costs are outwith the Registry and unless I am going to offer a grant scheme for people to register their land, there is little more that I can do than that, other than raise the benefits of registering your land, which we do at every opportunity that we have.

635 **Mr Lowery:** The conveyancing community are incentivising voluntary registration themselves to a certain extent. Our numbers have increased quite significantly in the last 12 months and it is because advocates are requesting that people who are selling their properties register it in some cases. So that is happening on the basis that they want the certainty of a registered title before they buy it.

640 **Q49. The Chair:** That market is slowing as well though at the moment, is it not?

645 **Mr Lowery:** But we have had a large increase in the number of voluntary applications. Although it is not ... Up to about 30 or 40 in the last six months compared to, I think the statistics I had in 2022 was seven, three in 2023, when I came to the hearing in July. So the numbers are now for 20, 30, 40.

Q50. The Clerk: Sorry, may I just ask Mr Lowery to explain that a bit more? I was under the impression that if you were going to sell a piece of land it would be mandatory for it to be registered? But you said that –

650 **Mr Lowery:** No. You can sell a piece of unregistered land to a buyer and then the buyer will register it. They are obliged to register it. But in this case, what some advocates are requiring when they are buying a property or acting for a buyer is they will say to the seller, 'Will you voluntarily register it and then we will buy the registered title after that?'

655 **Mr Clague:** Can I just add some context to that? On average, it takes about six months to buy and sell your property. That is by the time you have been to the estate agents, you have engaged your advocates, things have been resolved. What we are finding on complex transactions is people saying, 'Oh, I've got a buyer' and then they are getting into the conveyancing stage and the advocates say, 'Oh, we've identified a problem with this title here, that's going to delay the process by another three months whilst we get to the bottom of this issue.'

660 So as Mr Lowery says there, what some agents are saying is voluntarily register your land before you get it on the market, that way we are washing your title through the Registry, that when you do eventually get a buyer, that transaction will go through the conveyancing chain at a quicker pace. So it is flushing all the trouble out of your title before you actually sell the property. With large estates or properties that have been passed down by wills and things like that, that is probably good advice.

670 **Mr Lowery:** However, when people are voluntarily registering properties, a number of those are because there is something that they want to resolve. There could be something they are not quite sure is correct. There are a number of scenarios where voluntary applications that have been advertised have elicited neighbour objections in relation to certain ... Of the number of cases that I have got, and looking at the moment, more than 50% of them are objected-against voluntary applications, because there was something doubtful with the application or somebody has come up and said, 'Well, your boundary's not there, your boundary's here.'

The Chair: Right, okay.
Mr Ashford.

680 **Q51. Mr Ashford:** Just following on from that in terms of the process people have to go through, you have identified – and you did in your first time you came to see us as well – around the cost of advocates and so on, and people have to engage in order to get the advocate certificate that is needed. Has any thought been given to discussions across Government to the creation of an advocate role within the Land Registry that would be able to assist people with that? Or you

685 mentioned half-jokingly about paying people's fees, but has there been any consideration of subsidising the fees?

Mr Clague: There has been no consideration of subsidising of fees. Mr Lowery, you are probably best in that position to answer that question about hiring an advocate within the Land
690 Registry.

Mr Lowery: When the Act came in, the Tynwald discussions, the Act came in in 1982, but it was actually amended again before it gained Royal Assent, and when that amendment was coming in, one of the key parts of that amendment was it amended one section and the specific
695 amendment was basically to add section 28(3) to the Land Registration Act which says:

Without prejudice to subsections (1) and (2), the Registrar may, if he is of the opinion that any further or other evidence is necessary or desirable ...

That is the wrong section.

Mr Clague: Whilst Mr Lowery is looking that up though, this was considered at the time, but ultimately, if you are going to say Government takes responsibility for proving proof it had ... that
700 would be a very big commitment. If you think there are a dozen firms actively doing conveyancing on the Isle of Man, if you were to take that work into Government and for Government to pay for that work, it is a lot.

Mr Lowery: Yes. I cannot find the actual section, but a specific section was put in that basically
705 allowed us to accept a title certified by an advocate and the debate around that was who is going to fund the Land Registry. We cannot afford to have somebody checking all of the titles that come in. That was the specific decision as to why that was put in and there is the debate around it. That is why that specific amendment was made. If we were to do it ... [*Inaudible*] be certifying our own title. It just would not have a separation.

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Mr Clague: Yes. Again, figures on the back of an envelope, but if we are bringing in 250 conveyances a month, and let's say conveyancing fees would not unreasonably be £1,000, (**Mr Lowery:** Yes.) so £250,000 a month for us to do that, looking for a bigger budget increase.

715 **Q52. Mr Ashford:** Of course one of the areas within the British Isles where things are done a bit differently is in Scotland. Could keeper-induced registration benefit the Island?

Mr Clague: It could. Keeper-induced registration was on the back of a political agenda, I think. They wanted a policy, 'Who owns Scotland', and I think they still had a lot of land that was
720 unregistered. But yes, keeper-induced registration, registrar-induced registration, is an option. But all these things come with a cost.

Have they dropped keeper-induced registration in Scotland now? I have not heard so much of it.

725 **Q53. Mr Ashford:** As far as I am aware it is still in force. It came in with the 2012 Act in Scotland.

Mr Clague: Right. I know it was a tool they were using, but they set themselves an ambitious target – and again I am doing this from memory – they had an ambitious target set by government to register all land in Scotland by a period, something like 2030 or 2035. I think also in Scotland as
730 well, the land mass is very different, because you are getting whole estates, several thousand acres, owned by one person as well. Because I think they were worried about foreign investors

and things like that. But yes, of course it is an option, it would be good for completing the Register, but it comes with a cost.

735 **Q54. Mr Ashford:** Yes. Also, the last time you came to see us, you mentioned about the cost of advertisements in newspapers and possibly it being around £500. The Clerk of Tynwald's staff I know have gone away and kindly tried to look that up for us, but have not been able to locate information about how much those costs actually are, around the £500 mark. I was just wondering where you got that from, that it costs about £500 to advertise in the newspaper?

740 **Mr Lowery:** It is from the Attorney General's in relation to advertisements that they have put in for Government land; some of them.

745 **Q55. Mr Ashford:** Of course you also mentioned that people *potentially* have to advertise, so I was just wondering what is meant by potentially; the circumstances where they do not have to advertise?

Mr Lowery: I make a decision on a case-by-case basis in relation to a voluntary application.

750 **Q56. Mr Ashford:** What sort of circumstances would they not they have to advertise in?

755 **Mr Lowery:** It would depend on the property, the neighbours and what other advertisement they have done. For example, if it was a terraced house, say in Douglas, which has a neighbour left, right and to the rear, we would generally just direct that they put a notice up on the property and notify their neighbours. So we would not always require the full advert in the paper. But if it is a farm in the middle of nowhere, obviously they cannot realistically notify their neighbours easily and they cannot easily put a notice on the property, so then in that case it is more likely that there would be a requirement for a newspaper advertisement. It is just a ...

760 **Q57. Mr Ashford:** So the more urban areas of the Island – I do not want to put words in your mouth – would not generally have to go down the advertising route? (**Mr Lowery:** No.) It would be more the rural areas and the more isolated properties that we are talking about?

765 **Mr Lowery:** Yes. It would normally be on a case-by-case basis. Sorry, that is a very vague answer, isn't it?

Q58. The Chair: Might that cause a little unfairness in the system, do you think, with people who perhaps cannot afford it having to advertise?

770 **Mr Lowery:** Yes, but the risk is on ourselves in relation to registering the land. We are taking the risk and giving the guarantee, so the Act gives us the power to require the steps to be taken as we decide. I can see your point, that we do not have a policy that is consistent for everybody, but I think there would be more criticism if we just required everybody to do it and then it would be even more of a disincentive to people.

775 **Q59. The Chair:** Do you think perhaps there might be some other way of doing it that does not necessarily require people having to advertise, to create a degree of fairness in the system that currently does not exist?

780 **Mr Clague:** It is a recommendation from this Committee that it should be advertised in the first instance –

Mr Lowery: Well, actually the recommendation is that we should do along the lines of what Planning do, which does not necessarily require advertisement in a newspaper. That step is more extreme, so that is why it is not used in all cases. That is the discussion that we have had with Government in relation to registering their land, is we have informed them that we would not necessarily require you to advertise every single property that you are going to register. We would have been looking at some sort of a circular and then some sort of a website page. And on our website we have adverts where these properties may not necessarily be globally advertised, they can just be notified on our website and then notices to neighbours.

Q60. Mr Ashford: You mentioned there about the keeper-induced registration, that it could be of benefit. Is it something that actually has been explored before? Is it something that you think going forward we should therefore be exploring; and, if so, how is going to happen?

Mr Lowery: It is considered in the consultation, mainly in relation to how are we going to deal with freehold of buildings that are flats, basically; development flats or apartments. It is considered. It was neither positively nor negatively responded to. Practically, we just do not think we can proceed with it because of the resource element to it.

Mr Clague: As the person who has to meet the annual budget submissions, I have not given it a lot of thought, because it would come as a cost. **(Mr Ashford: Yes.)**

But as Mr Lowery says there, there are some practical issues. Just to bore you with some of the details, if you own maybe a former bed-and-breakfast hotel and you convert it into three flats, when you sell those flats, you sell the leasehold off. If you have owned that property since the 1980s, that property still is not registered and that causes certain issues.

So we have considered maybe some sort of keeper-induced or registrar-induced registrations around freehold properties where there are leases out of it, but in the context of copying or replicating something like Scotland has done, we are aware of it, we think it is a tremendous thing, but we have not given it serious consideration up to a business case proposal, because it would cost and I do not think we would get that money. I think the scenario is slightly different; the political drivers behind it in Scotland probably do not exist in the Isle of Man.

Q61. The Chair: When you say that it comes at a cost, do you have any understanding of how much it might cost?

Mr Clague: Again, if we say £1,000 per conveyance, it depends on how ambitious you were to register your land. If Tynwald made a resolution that, say, within the next 10 years all land must be registered, then we would have to work out how many titles were there then and we would have to build a cost on it. But we are not talking a couple of hundred pounds, you are talking of hundreds of thousands of pounds, millions of pounds, thousands of pounds for Government to take the responsibility for registering all land in private ownership, or all remaining land in private ownership which has not been registered. So nothing that cannot be done, but it comes with a substantial cost.

Q62. Mr Ashford: We asked this at the last hearing, but I will ask it again – I doubt it has moved much – what percentage of land registered are we now talking? What is the current percentage of registered land?

Mr Clague: It will be about the same and I think I said last time ... I do not have those precise figures. After the last hearing, we sent you some maps, didn't we? And we had that map of the Isle of Man which was really red, then we give you a close-up of Douglas and a lot of that was red. And what sticks out, and I do not want to harp on, but the big gaps tend to be Government properties.

835 On a day-to-day basis of applications that come through our door, between 60% and 70% of applications for registration on conveyance for a sale of a house are properties that have already been registered at least once. So what we are seeing now is properties are registered once, and that is on a second, third or fourth visit back to the Registry changing its ownership. And between 60% and 70% of properties that convey are now being registered at least once before. So of that property that regularly transacts, we are getting quite high now.

Q63. The Chair: And of the 30%, 40% that are not?

845 **Mr Clague:** That would be property that has never been transacted; the first time it has been sold since 2009. So being careful not to quote statistics, because generally they are wrong, but my understanding is a property generally, on average, transacts every seven to 10 years. So where the first registration comes in, it is just a property that has not transacted potentially since 2009. And that happens with older properties. They are always going to happen there.

850 **The Chair:** Mr Peters.

Q64. Mr Peters: A question about process, really. We have noticed from the information on your website that the process of first registration seems to take some considerable time. For example, there is still an outstanding application from 3rd April last year, so 14 months. Why has this process not yet been completed? What are the factors behind that?

860 **Mr Clague:** As I said, statistics are dangerous things. Most first registrations, we are dealing with within a few weeks. So if you give me just two seconds, if you look on the website, I think you will see most first registrations are taking about a month; it depends. Where you get outliers, though, and when you see things that are a year old, that will be an outlier because there will be some sort of dispute around that application. But generally, for the bulk of applications, they are going through in a few weeks. But do not be ... There is always an outlier.

865 **Mr Peters:** Okay.

Mr Lowery: I would dispute one is 14 months old, because I am pretty sure there is nothing that is older than a year.

870 **Mr Clague:** There is some stuff from April last year, isn't there, I think? (**Mr Lowery:** Is there?) Yes. So I think there are three or four from last year still, but –

Mr Lowery: The application that you are referring to is with the Land Commissioner as a dispute. And –

875 **Q65. Mr Peters:** Right.

Adverse possession, then. Are you aware of any new cases of adverse possession coming to light since the last time we spoke?

880 **Mr Lowery:** Yes. There have been approximately seven. I have not fully updated the table that I sent previously, but there are seven applications. One is with the Land Commissioner – that one – one has been rejected and there are four that are pieces of garden annexed to somebody's property. I think that is it.

Q66. Mr Peters: Are the litigants all different people in these seven cases?

885 **Mr Lowery:** Yes. Well, they are not litigants, they are applicants. (**Mr Peters:** Applicants, yes.)
The applicants are, yes. They are all individuals and all different properties all over the Island.

Mr Peters: Okay, thank you.

890 **Q67. Mr Ashford:** Just on adverse possession, when we last met, when you kindly came to give
evidence to us, we spoke about protections that are in place for objectors and one of the things
we talked about was rule 119 of the Land Registration Rules. Just going back to rule 119, where
we said that was a chance for people who objected to have some protection, because it gives
895 them the process of objection and how that then flows, can you just go through the process of,
when you receive an objection, how rule 119 is then applied?

Mr Clague: Mr Lowery.

Mr Lowery: If an objection is received to an application, the objection is sent to the applicant
900 as the first step, and then –

Mr Ashford: So in terms of the provisions of rule 119? I will clarify a bit more. So –

Mr Lowery: I have provided a full response to this previously.
905

Q68. Mr Ashford: Yes. I am just wanting to go through it in a bit more detail. When an objection
is received, in relation to rule 119, is it the case that obviously excluding the fact that some could
be found to be vexatious and so they are just dismissed out of hand, if –

910 **Mr Lowery:** No objection is dismissed out of hand. We cannot, because we do not know
whether it is vexatious until we have made further investigations.

Q69. Mr Ashford: Yes. Sorry, subject to those further investigations, is it the case that then, if
it is not found to be vexatious, it is always either the case that a hearing is convened under rule 120
915 or referral made to the Land Commissioner?

Mr Lowery: Yes.

Q70. Mr Ashford: And what timescales are there around that on average? I know it is difficult,
920 because –

Mr Lowery: I cannot. It is different on every case basis.

Q71. Mr Ashford: But is there an average? Or what is the longest that is outstanding?
925

Mr Lowery: Historically, there has been a case that lasted for a number of years, (**Mr Ashford:**
Yes.) but in relation to my experience, most of these have been resolved within six months to
a year.

930 **Q72. Mr Ashford:** But it is always the case that obviously if there is an objection received and,
after investigation, it is not seen to be vexatious, that it goes to either the Land Commissioner or
rule 120 kicks in and –?

Mr Lowery: Yes, and my interpretation of rule 120 is that you move towards a hearing, which
935 means that further information is gathered from the parties. (**Mr Ashford:** Yes.) I have not actually
held a hearing in my period, because in the information-gathering process, generally speaking,

the matter is resolved or referred to the Land Commissioner. So it is a question of just gathering the information to decide whether this is capable of being resolved in any way or, if not, then it will be referred.

940

Q73. Mr Ashford: I because will get nub of ... the reason I am asking is obviously in relation to the longer-term process, if an objector is unhappy with what happens under rule 119, i.e. the hearing is held, they are content, they have the right to object to the Land Commissioner, but they cannot do that until such time as they have actually got a result under the rule 119. So obviously if the rule 119 and the hearing being convened drags on for several years, in the meantime they are stuck in terms of the process.

945

Mr Clague: I think Mr Lowery makes a very good point: ultimately, often, lots of objections are ill-founded and in that process of discovery, a hearing is never required, because people get that moment of clarity and go, 'Oh, I don't need ...', so not every objection to an application ends up at a hearing ... [*Inaudible*] Ideally, the parties, between themselves, (**Mr Ashford:** Resolve it.) resolve it.

950

Q74. Mr Ashford: I am just wondering, because having looked at it, it seems to be it can be a very long, drawn-out process, (**Mr Clague:** Yes.) with appreciation that, like I said, after investigation, some might be found to be vexatious, some might get resolved between the parties in the meantime, but for those that do not, it can be very laborious.

955

Mr Lowery: Can I just stop you on one point? The rule does not deal with just vexatious (**Mr Ashford:** No.) objections. It is vexatious objections without substance and I think there is ... [*Inaudible*] as well. So the whole nature of an objection would be considered.

960

Q75. Mr Ashford: Yes, it is vexatious or frivolous, the actual wording of it under part (3) is –

965

Mr Lowery: Or without substance.

Mr Ashford: – yes, or without substance – he shall either 'convene a hearing under rule 120' or, 'refer the objection to the Land Commissioner under section 6(2)'.

970

Mr Lowery: Yes. As I have already said to you, in my reply in relation to one particular matter, we have considered this detail and provided a response in detail to yourself.

Q76. Mr Ashford: Yes, I am not worried about one particular matter. I am looking at the whole process. It does seem to be, certainly from my point of view – and this is only my point of view – a rather cumbersome process, particularly if you have got someone trying to go through it at the time. So is the Land Registry happy that the process and rule 119, as it stands now – because of course it is, what, 24 years on since these Rules came in – is still effective and functioning correctly?

975

Mr Lowery: In relation to the dispute resolution element of the recommendations, this is an area that we would consider changing, because it is not clear.

980

Q77. Mr Ashford: Yes, because the view I am coming more and more to, looking at it, is for both parties, that it can be quite cumbersome for yourselves as the Registry as well, with the process you are having to go through when these objections come in.

985

Mr Lowery: Yes. It is part of the dispute resolution amendments that we are proposing in our consultation and have proposed, and that was addressed in the consultation.

990 **Q78. Mr Ashford:** Can I ask as well, while we are on adverse possession, obviously over the years this is not something new, it has been around a long time, and there have been various judgments within the Isle of Man courts at various points. I was wondering how the Registries apply any judgments that the Isle of Man courts may have come to when they are looking at objections?

995 For instance, one of them in particular is Deemster Williamson, with a judgment back on 20th February 2002, where Deemster Williamson rather helpfully laid out five conditions that must be satisfied for a successful adverse possession claim. Just for the record, so it is on the *Hansard*, the first was:

... the claimant must have had possession of the land (2) that possession must have been exclusive (3) the paper owner must have been dispossessed or must have discontinued possession (4) the claimant must have had the intention to possess the land (5) possession must have been adverse possession in the statutory sense

I was just wondering how, when these things are being considered, as well as alongside what is in the Rules, any judgments that have been handed down are considered?

1000 **Mr Clague:** Mr Lowery, do you want to ...?

Mr Lowery: Yes. The answer to that is the case law on adverse possession is considered in relation to each adverse possession claim.

1005 **Q79. Mr Ashford:** So those five conditions laid down by Deemster Williamson are applied when a case is considered?

1010 **Mr Lowery:** We consider the evidence that is provided in relation to the possession and whether that satisfies the requirements for adverse possession.

Q80. Mr Ashford: As laid down by the judgment?

1015 **Mr Lowery:** Yes. There is a raft of case law in relation to possession and what amounts to possession. Each of those five requirements have then got further case law behind them.

Q81. Mr Ashford: Yes. And that is Isle of Man case law, yes?

1020 **Mr Lowery:** It is a combination of Isle of Man case law and application of UK case law. The UK law is referred to in the Isle of Man judgments.

Q82. Mr Ashford: Yes. So just to be clear, it is UK case law that has been referred to in the Isle of Man courts?

1025 **Mr Lowery:** Yes.

Mr Ashford: Yes. Thank you.

1030 **Q83. The Chair:** I think, unless there are any further questions from yourself, (**Mr Ashford:** No.) Mr Ashford, is there anything that we have not asked about that you would quite like to get across?

1035 **Mr Clague:** Not me. I would like to extend that invitation for you all to visit the Land Registry at some stage and just see the work we do firsthand. I think you would probably find that really interesting. So if could see you sometime at the Registry, that would be really good, I think.

The Chair: Thank you.
Mr Lowery?

1040 **Mr Lowery:** No, I have got nothing further, thank you.

The Chair: Okie doke. In that case we will close and the Committee will sit in private. Thank you very much, Ed Clague, Registrar General, and Mr James Lowery, Land Registrar.

1045 **Mr Clague:** Thank you.

Mr Peters: Thank you.

The Committee sat in private.

16th September 2024 – Evidence of Hon. Tim Crookall, Minister; Ms Emily Curphey, Chief Officer; and Mr Brett Woods, Department of Infrastructure; Hon. Alex Allinson, Minister; Ms Sarah De-Yoxall, Deputy Chief Officer; and Mr Andrew Sidebottom, Director of Strategic Asset Management and Valuation, Treasury



**STANDING COMMITTEE
OF
TYNWALD COURT
OFFICIAL REPORT**

**RECORTYS OIKOIL
BING VEAYN TINVAAL**

**PROCEEDINGS
DAALTYN**

**CONSTITUTIONAL AND LEGAL AFFAIRS
AND JUSTICE COMMITTEE**

Land Registry

HANSARD

Douglas, Monday, 16th September 2024

PP2024/0167

CLAJ-LR, No. 2/23-24

All published Official Reports can be found on the Tynwald website:

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Members Present:

Chair: Miss T M August-Hanson MLC
Mr D J Ashford MBE MHK
Mr S G Peters MHK

Clerk:

Mr J D C King

Assistant Clerk:

Miss E Duncan

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Standing Committee of Tynwald on Constitutional and Legal Affairs and Justice

Land Registry

*The Committee sat in public at 3.45 p.m.
in the Legislative Council Chamber,
Legislative Buildings, Douglas*

[MISS AUGUST-HANSON *in the Chair*]

Procedural

The Chair (Miss August-Hanson): Good afternoon, everyone. Welcome to this public meeting of the Standing Committee of Tynwald on Constitutional and Legal Affairs and Justice. I am Tanya August-Hanson MLC, I Chair this Committee, and with me are David Ashford MBE MHK and Stu Peters MHK.

5 Before we begin, can we make sure that mobile phones are all switched off or on silent and for the purposes of *Hansard*, can we ensure that only one person is speaking at any one given time.

Today we are welcoming representatives from the Department for Infrastructure and also from the Treasury, to discuss the registration of the Government estate. This follows a recommendation made in a 2021 report on Adverse Possession published by the former iteration of this Committee. Welcome.

10

Just to start, I think Mr Peters has something that he would like to declare.

15

Mr Peters: Yes, as a potential conflict as a Member of DoI, if anybody is unhappy, I will quite happily recuse myself from this hearing. I do not think so, I think we are all pretty much on the same hymn sheet, all looking for the same outcomes; but I just wanted to make it clear that there is a potential conflict and I am happy to step out if anybody requires.

Happy with that, Chair.

EVIDENCE OF

**Hon. Tim Crookall, Minister; Ms Emily Curphey, Chief Officer; and Mr Brett Woods,
Department of Infrastructure;**

**Hon. Alex Allinson, Minister; Ms Sarah De-Yoxall, Deputy Chief Officer; and
Mr Andrew Sidebottom, Director of Strategic Asset Management and Valuation,
Treasury**

20

Q84. The Chair: For the benefit of *Hansard* and anyone listening, can each of you please introduce yourself; first giving your job title, how long have you been in the current role and then summarise the role the Department and also Treasury has in the registration of the Government land. Can you also provide a figure of how much the Government estate is currently registered for.

If you would start, please, Ms Curphey; we might as well go from one end to the other.

25 **Ms Curphey:** Okay. I am Emily Curphey, I am the Chief Officer at the Department of Infrastructure. That is a role that I have taken on for the last 18 months.

The Minister for Infrastructure (Mr Crookall): Tim Crookall, Minister for the Department of Infrastructure, a role I have been in for about a year this time.

30 **Mr Woods:** Brett Woods, head of Commercial and Public Estates and Housing. I have been in this post for just under nine years.

Q85. The Chair: Before we move on to Treasury, can you summarise what role the Department has in the registration of Government land?

35 **Mr Woods:** In summary, we have met with Treasury on a number of occasions, and we have worked out a plan of attack, one might say, in how we are going to deal with what is a very large project. Our role will be to provide the resource to collate all the information regarding deeds, regarding easements, regarding all the things that will affect the suitability of properties that are in Government ownership to bring forward those properties that are not currently registered for registration. We will be the hub managing the day-to-day processes.

The Chair: Thank you.

45 Moving on to Treasury; Ms De-Yoxall.

Ms De-Yoxall: Sarah De-Yoxall, Deputy Chief Financial Officer; I have been in the role for just under a year.

50 **The Minister for the Treasury (Dr Allinson):** Dr Alex Allinson, Treasury Minister, and I have been in the role since May 2022.

Mr Sidebottom: Andrew Sidebottom, Director of Strategic Asset Management and Valuation. I think I have probably been in the role about five years.

55 **Q86. The Chair:** Thank you.

And again the same.

60 **Dr Allinson:** In terms of a Treasury perspective, I suppose there are several different aspects to registration of Government land. One is, part of Treasury is obviously looking at strategic assets right across Government and looking at the best use of those; there have been similar moves to try to get a central registration of all Government lands rather than lying in various Departments. Previously Treasury was put forward to be the custodian of that in terms of Government assets, but that has not been realised yet as a firm policy commitment; there is that side of it.

65 Also, in terms of any disposals of land or development of land, that comes under the Strategic Asset and Capital Investment Committee. And so we work with DoI quite closely, looking at various pots of land that are available for either development or for disposal and obviously the registration would be part of that.

70 In combination with that, on the back of the previous Committee report, Treasury have been working with the Department of Infrastructure to look at the possible costs and cost options for registration of Government land and seeing how much that would be in terms of resources and where those resources will come from.

Q87. The Chair: Thank you.

75 I suppose this question would be to the Department for Infrastructure, then, in that case; but can you provide a figure on how much of the Government estate is currently registered?

Mr Crookall: How much of the ...?

The Chair: Percentage wise, do we know?

80

Mr Woods: I cannot think of an exact figure. (*Ms Curphey:* No.) No, sorry.

Q88. The Chair: Right, okay, thank you.

I will give you both an opportunity, Ministers or anybody else who has a statement. Do you
85 have a statement that you wish to put to the Committee today at all? Would you like to talk around
separate Department issues regarding why this has not yet ... or even the pilot project has yet to
be realised?

Mr Crookall: I have got no prepared statement, Chair, but both Departments have been
90 working together probably for the last two years, and we explain as we go along why we are where
we are at the moment and not more has been done. But there is no prepared statement.
Thanks.

Dr Allinson: I mean, what would I like to say is both Departments have produced a letter to the
95 Committee (**The Chair:** Yes.) outlining some of the history of this and some of the work that has
been carried out, some of the work that has not been carried out for various reasons. I would be
more than happy, if you would like me to, for anyone who is listening in and for the benefit of
Hansard to read that letter out. I think that is completely up to you, whether that is put down in
terms of your evidence.

100

Mr Ashford: The letter has been published.

The Chair: The letter has been published, so it is already out there, I think, well enough. Thank
you though.

105

Mr Ashford.

Q89. Mr Ashford: This is for either the Department of Infrastructure or Treasury; just in relation
to the way that the project is being undertaken, can I ask, how is it actually being decided what
logical order it is going in? Because when we say that it is a massive project, there are some areas
110 of Government that, for historic reasons and just for the way that things have been administered
over time, have a lot better grip and grasp on what they own. So there are some parcels of land
that Government may own that are a lot easier to register.

I am going to give an example, for instance – it is not a very good example because we are
about to flog it – but at Crookall House, for instance, the parcel of land there. You know exactly
115 what the boundaries are, it has been established back to the 1920s or early 1930s when it was
built, so there are lots of parcels of that.

So is it being done in a strategic way, the registration, where you are looking at those parcels
of land that may not be registered, but there is no dispute around boundaries, it is absolutely clear
cut because it has been like that for 50, 60 years and looking to get them registered first? Because
120 they are the ones that are likely to cost less to end up registering because you are not having to
do the research and everything else behind in as much depth. Is there a strategic approach being
taken?

Dr Allinson: If you wouldn't mind me answering that first, because I have been involved with
125 Crookall House, and actually, even at Crookall House, some of the boundaries were a little bit
indistinct and there needed to be quite a bit of work done with the Attorney General's office to
look at some of the rights of way, where exactly some of the boundaries were done, for exactly
the same reasons that the previous Committee highlighted in terms of things like the original plans

that were done, sometimes a considerable time ago, and some of the ways that the plans were drawn up.

In terms of Treasury, one of the things that we have been very keen on doing is to have an accurate assets register looking at all Government land, and this is essential for the Government accounts to actually have this down under reporting standards. I think that has led to look at those key strategic assets that would benefit from registration or that are identified as fit for development because they are brownfield sites fit for disposal because there is no further use for them, and they have got an economic value by going into the private sector and looking at and prioritising the registration in those terms. That has happened a number of times.

There have also been occasions where much smaller – probably not strategic – bits of land have been identified as needing registration. Here we are particularly talking about, for instance, parts of disused railway lines that when things like the Heritage Trail are being developed, it is suddenly realised that somebody has taken a claim over a bit of land that has laid dormant for years, but now has been deemed to be useful for Government to provide a thoroughfare for people to advance the use of active travel.

I think you are right that rather than a blanket approach of trying to register every bit of land we can identify as being under Government ownership, it is more looking at those bits of land that have a strategic value, are ready for development, for economic benefit; but also working with the various parties involved in terms of neighbours and either the Departments involved or the outside sectors involved, such as private developers.

Q90. The Chair: So just going a little bit wider, and for context, Tynwald resolved in July 2021 that the Council of Ministers should adopt a target for registration of the Government estate by 2030. The Department for Infrastructure: do we have an estimate for how much this project could cost at all, a figure?

Mr Woods: We prepared an estimate at the time that we entered into discussion, very serious discussion, with Treasury about how we would manage the resource that would be required. We arrived at a figure at that time based solely on our estimation of how much such a thing as a mean registration time may take, and it was £7.88 million.

Dr Allinson: If I could say that that was really looking at doing the bulk of the registrations in-house, (**Mr Woods:** It was.) looking at, for instance, the staffing costs in terms of how many officers you would need to hire or appoint; how many conveyances you would need; any external professional support and also quite a considerable advertising bill in terms of the procedure for registering land. So that totalled over a period of time and that was really looking at over 20 years at being around about £7.8 million.

Also it was considered whether to outsource this, but it was felt very much that outsourcing this to the private sector would probably increase that bill quite considerably in terms of the costing. Although we have not looked, obviously, at a formal procurement exercise for that.

Q91. The Chair: Alright. You said the bulk in-house; does that mean that there was an amount that was budgeted for going externally to experts?

Dr Allinson: Yes, there was. That was looking at external professional support for difficult applications and site surveys as required. But I am also looking at advocate time as well.

The Chair: Alright, okay, thank you.
Mr Peters.

Q92. Mr Peters: I would just like to thank both Ministers for the letter that was circulated this morning, I found that very helpful and it showed me things that I did not know. Because as far as

I am concerned, this all came from the previous iteration of this Committee and the report to Tynwald that suggested that a way to avoid adverse possession in future was to make sure that land was registered, and that to try and encourage members of the public to do that, because it is going to be a cost to everybody that wants to do it, it would be best for Government to lead by example.

I take it from the letter, and I am not trying to hold anybody's feet to the fire on this, that we are all in agreement that it would be a nice thing to do, but there just is not the resource or the money to do it. Is that a fair assumption?

Mr Crookall: Yes, I would think it would be at the moment.

Dr Allinson: In essence it is a big job. Whilst I completely understand that the recommendation, which was approved by Tynwald, would perhaps reduce some of the cases of adverse possession when it is directly involved with Government land. It would set a precedent that registration would be very helpful for the Isle of Man.

When we have looked at some of this work, we have identified over 2,000 properties. The Government estate is very wide; it can be very small parcels of land, or it can be large estates, particularly under DEFA control, where the boundaries are literally a stone wall, and where there perhaps is not any particular difference of opinion about ownership.

Often with adverse possession, it can be to do with the personalities involved, rather than the actual property itself, and the way that the current legislation and also the current procedures, historical procedures, give the opportunity for some people to do things that the rest of us would really view as being abhorrent.

Mr Peters: Yes. Thank you.

The Chair: Mr Ashford.

Mr Sidebottom: I think that what the letter and the trial tries to get across is a full understanding of what we are taking on with this project. It recognises that if we are going to do it, we need to do it properly, and that would therefore need to be resourced because to do it today would be on the side of a desk and would be a far less positive product, it would take much longer. It is trying to explore fully what those costs are so that we can give a really honest and accurate message of what would be needed to do it.

Dr Allinson: And again, that is not an excuse or a reason not to do it, but it is to put it in the whole, particularly in terms of what other priorities there may be for the public purse and for Government, looking at all the different Departments involved.

Going on from that, what both Departments have started and initiated is a trial, looking to try to substantiate the costs, both in terms of time and money and staff time. Look at a range of different examples whereby you would register the land, how much time would that take and what actual resources are needed to do that, so that then that can be extrapolated to the wider Government estate.

Q93. The Chair: Would you say that trial is ... we have had, obviously, some evidence sessions prior to this one, that have suggested that trial has come to somewhat of a standstill because of resource. Would you like to comment on that?

Mr Sidebottom: No, it is actively happening now, we have started the process. We have got about 30 hours of working to identify in the first three, the start of the first three of the five proposed to try and understand the title deed. So it is under way, it did have a lull in the middle, where we were probably concerned about some other factors that were ongoing in the

background, some of the Committee reports which are mentioned in the letter there. But no, it is actively under way.

Q94. The Chair: Okay. So that group is back together and moving again as of what point in time?

Mr Sidebottom: The group, as a whole, probably met again virtually about two months ago, probably, maybe a little bit more. The group is not back together at the moment because of the work being carried out for the trial; at present it is more around the titles from the specific Department. It is the DoI, Treasury and DEFA working together, to look at three specific properties at the moment, then that will then roll on to another two.

The Chair: Thank you.
Mr Ashford.

Q95. Mr Ashford: One question for DoI and one for Treasury. In relation to DoI, can I ask, on a basic level, is the housing stock that DoI holds all registered?

Mr Crookall: No, I do not think it is.

Q96. Mr Ashford: Because I would have thought again, apart from some very old ones, they would be quite easy in terms of boundaries.

Mr Crookall: You would think they would be quite easy, but I am not sure that is quite the case. As you heard before about Crookall House, which we think probably –

Q97. Mr Ashford: But in relation to housing, you tend to own houses that are together.

Mr Crookall: Yes, but even fairly recently I know in my own constituency we had issues regarding lines up footpaths and boundaries and all sorts, so I am not sure it is that easy. Mr Woods is probably in a better place to tell.

Mr Woods: Yes, we have come across some anomalies; naturally, you would expect it where web development takes place, and there are marginal areas which might be green public open space or footpaths between buildings. But that is part of the registration process that we find these things and we correct them. Then we have certainty with the registration and what is actually shown on the register.

We have certainly come across a number of anomalies in my time in the Department where we have had issues regarding, for example, unadopted footpaths between two terraces of buildings where there was uncertainty about ownership, simply because they either had not been adopted or they had been part adopted, or they had been left to grow wild. So there is quite a bit of work in it.

I suppose one of the great questions that we would have to ask is, how would we register groups of buildings which are in the Department's ownership? Would we do it by terrace, by estate, individually? That is yet to be confirmed, about the most efficient method of dealing with it. But you are right, it could be one very big, simple exercise.

Q98. Mr Ashford: Has, though, there at least been an assessment done of the DoI's housing stock, so that the ones that have not got those complications can be registered?

Mr Woods: We have got a complete survey of the entire DoI housing stock by footprint and by demise. The boundaries indicated on the drawings should all be correct. As we did the same thing

285 with and for the local authorities as well, in 2015, 2016, 2017; which was obviously an extensive project.

We are fairly confident that what we have picked up and shown on the drawings for all those public sector housing for rent developments should be broadly accurate. It is impossible for me to say at this stage whether they are all accurate. There will always be small segments of land that fall outwith or are included where they should not be, but the registration process should clarify all that, because we will do a complete resurvey of every site, and we will do it as quickly as we can if we have the resource.

Dr Allinson: One of the aspects of it, if you do not mind me, Chair, is from a SACIC point of view, some of these small pockets of land only become an issue if they are either valuable to somebody or if they become a burden to somebody. If they suddenly become overgrown, and people say, well, whose job is it to actually deal with maintenance, then ownership becomes an issue. Or if somebody wants to extend their house and find out who owns the bit of land at the back of their garden, then it becomes an issue.

Q99. Mr Ashford: In terms of Treasury, can I just ask the Treasury Minister; you mentioned there about the legislation and procedures, and if I have written it down rightly, given the opportunity for people to do what some others might see as abhorrent, can I ask, is that an expression of view that the legislation and procedures are out of line and need change?

Dr Allinson: It is, I suppose, a reflection on the reason this Committee was set up in the first place; that there have been cases whereby people have been financially and emotionally disadvantaged by adverse possession. There seems to be no recourse to correct that under the current legislation or to deal with the potential for future cases as well.

It is important that, the work of this Committee is important, to look at how we can try to minimise that as much as possible. I am not sure, given the complexity of some of the land registration and the history of it, whether you will ever be able to eradicate it completely. Hopefully in time you will, with new technologies, mapping techniques, and better registration of land.

Q100. Mr Ashford: Is that something that Treasury has had conversations with the Land Registry about? In relation to the legislation and procedures?

Dr Allinson: I have not myself; I am not quite sure whether my predecessors have.

Q101. The Chair: Twenty thirty, is it a reasonable time frame, do you think? Or is there another date, perhaps, that might be more reasonable to look at?

Mr Crookall: If I have to be honest, as we sit here at the moment, I would say probably not with everything else that is going on in the world and in the Departments, and it is probably not the highest priority, although it is very important to do it, absolutely. It is on that priority list to get done, but I think with everything else going on in the Department at the moment, unless there are some changes somewhere and how this is handled and done, I would think 2030 for over 2,000 properties would be quite an ambitious target.

Q102. The Chair: So a little bit of additional time, perhaps, from the Infrastructure side of the fence—?

Mr Crookall: Things can always change, and resources can be put to it. So it could be, it can obviously be done, but it is just a case of what is made available, people-wise and money-wise to do it.

The Chair: Mr Sidebottom.

Mr Sidebottom: That is another reason for the trial, to be honest. We have talked with all the people who have been involved: Land Registry, Attorney General's Chambers, Mr Woods and his team, about experiences of doing these things in the past to try and get a feel for the time scale for each individual property and how long it may take.

If you extrapolate the experience to date, I do not think the 2030 is achievable based on the number of properties and certainly not on the resource that we would allocate to it at the moment. The key thing for me that comes out of registration of property is that many people may think the registration of a property is a registration of exactly that: a property. But it is not, it is the titles that make up that property.

Crookall House was mentioned; I have been involved in that and I think it was in the region of four titles that went with that registration piece, one or two of which were more complicated than others, so that takes a lot more time. Another property or two or three properties may sit with one title, so accelerate the process. That is really what the trial aims to do, is to get a really clear figure. It is a small number, so it is not going to be absolutely accurate, but it gives us that starting point to understand both the time and the resource required.

Q103. Mr Peters: I suppose that there is a big difference between registering different plots of land in that some, to Mr Ashford's point earlier on, should be fairly straightforward and simple, low hanging fruit. Others might be an awful lot more controversial, so doing a sample of five might not give you that full range, might it?

Mr Sidebottom: It might not. We picked five out that were live at the time, ones that we knew might either come up for disposal or ones that we thought were strategically of interest. It was a random choice, but ones that we felt were relevant to make sure that the work was not abortive for any reason –

Q104. Mr Peters: So they are not all difficult cases?

Mr Sidebottom: Absolutely not.

Mr Peters: Right.

Q105. The Chair: Before we move on to Mr Ashford, I have got a question. How long would you suggest the project take? Are we talking 2035, 2040? When would be sensible, do you think?

Mr Sidebottom: Until we have got that data, I could not honestly say.

Dr Allinson: I think it is reasonable to say that if you were to go out and register every single bit of Government property, you are talking about decades, even putting all the financial resources and human resources into it.

Mr Crookall: Yes, how long is a piece of string? You can try and do it, and then somebody will object to it, and there might be an appeal against it or whatever the case may be. You can argue over a plot of land for probably years, I would imagine, in the courts if somebody wants to object to it. They say it is theirs, you say it is ours.

Q106. Mr Peters: So 2030 was an unrealistic target to set?

Mr Crookall: Yes ...

390 **Dr Allinson:** It was a target set without doing some of the background work about the complexity of some of the properties. As Andrew Sidebottom said, the complexity where you have got multiple titles, some of which are conflicting, some of which can go back a long period of time. And that is particularly bits of land that have been parcelled off repeatedly, as we do find on the Island.

395 I think it is a lot easier when you have got, for instance, a big estate that has been built from scratch, and you can figure out exactly which fields it was on. If you register that in its totality, that is fine, but if those houses have then been sold off to individual people, then it becomes sometimes a lot harder to find out exactly where the demarcation between one and the other is.

The Chair: Thank you.

400 Mr Ashford.

Q107. Mr Ashford: Can I ask, where does this sit on the Government risk register? In relation to a potential risk and exposure to the taxpayer?

405 **Dr Allinson:** That is a very good question. We have tried to ascertain over the last couple of years how often this has become an issue through registries and through Government. The answer for that is it is actually incredibly rare that this happens.

I think it is right that we have identified, I think, five cases where there has been some difference of views in terms of ownership over the past five years or so. But not all are due to adverse possession, they are due to probably quite a reasonable dispute about where a boundary should lie.

410 So in terms of the overall risk, the number of cases involved is relatively small. It is difficult to know the human consequence of this, but in terms of the financial risk is relatively small as well. Although these involve quite a lot of time and effort and obviously hold up development of the sites as well, which has a knock-on cost in terms of delayed infrastructure costs and everything else that can sometimes be associated with a parcel of land.

Q108. Mr Ashford: It is not a trick question, I actually do not know the answer to this; I am genuinely asking, and you may not know either. Can I ask, has there ever been an adverse possession case against Government land? Because I am not aware of one.

425 **Mr Sidebottom:** There have been claims. In my experience, the vast majority of those claims have been resolved by negotiation, ultimately. So, yes, I am not aware of an adverse possession claim succeeding, but I do not necessarily know everything.

Mr Woods: We have had one or two where there has been a claim for continuous use for 12 years. And the onus falls on the claimant to demonstrate that has been the case and in one case, they could not do that. In the other case, as Mr Sidebottom just described, we had what was felt to be a fair settlement for the value of the land, it was a *strip* of land adjacent to a highway. So in the end, we ... That is the only one I can think of that could have become difficult.

430 We have had one or two others where there have been differences of opinion between neighbours, but it has not led, I do not think it has ever, in my experience ... I have worked elsewhere in years gone by where I saw the results of confrontational, adversarial possession, a very difficult situation. It does happen, but not in the last nine years, to my knowledge, in Government.

440 **Q109. Mr Ashford:** Just switching slightly. One of the reasons for doing this was to actually build up a proper database of Government land, because, to be frank, a lot of it was sketchy. Over the years there has emerged parcels of land that Government perhaps was not quite aware that they actually held ownership of.

So from that point of view, it was also not just around insulating Government from anything in the future or making sure that Departments had accurate boundaries, it was ensuring they knew exactly what they had as well and the potential for their use of that land in the future. So again, where does that sit strategically with Government in terms of that delivery?

Mr Sidebottom: From my perspective, that has been a significant amount of work that has been done around the asset list. We have worked with Departments really closely to try and develop that and get it better. There *were* some gaps in it, but they were perhaps overstated at the time and we have done an awful lot to get it much better.

The work that we have done around the infrastructure needs assessment piece actually supported that, because it makes it very real to the Departments what the asset list is actually doing. It supports that wider piece of work, and the interest and engagement around that has certainly helped to fill in some of the gaps that were there. I do not think those gaps are at all significant now.

Q110. Mr Ashford: Final one, I promise, from me. Another type of land, of course, that has Government involvement, that is not necessarily Government land, is not necessarily public land either, is Crown land. Can I ask in relation to when you are holding Crown land, how is that dealt with in terms of registration and boundaries?

Mr Woods: *Bona vacantia* –

Q111. Mr Ashford: It can be *bona vacantia* or there are other technical forms of Crown land as well. Can I ask how that is recorded and held as an asset from Government's point of view?

Dr Allinson: In terms of *bona vacantia* land, you are right, that sometimes comes up, often because people again want to extend their property, or we have a parcel of land that is becoming overgrown and becoming an eyesore. When that is identified to Treasury, we then need to do quite a lot of work to figure out whether there is ownership to it or whether it is true *bona vacantia* land. Often that involves going through titles and deeds.

Again, all the bits I have been involved with have been private development, where there is a small parcel of land that has not been sold off, and then the developer no longer exists. So it is a historical remnant, and in those cases, I think it would be right to say, we have tried to go through the registration process to substantiate exactly what land it is, make sure there are no other claims for possession of it.

Mr Sidebottom: I think, ultimately, that is reactive work because a company, when it is dissolved, Treasury does not necessarily know all of its land holdings, and nor would it until the case is made by somebody that this may be.

Q112. Mr Ashford: But what I am getting at is the way that it is registered is it is registered on the asset register, in the same way as you would register Government land. In terms of monitoring what it actually is as a parcel of land.

Mr Sidebottom: The few parcels that we hold are, but probably more commonly they are disposed of at the point of realising there is not a huge portfolio of *bona vacantia* land that is held.

Dr Allinson: Rather than register them with Government and then register them on with somebody else, because again, often it is somebody saying, 'I would like that land, please, I am interested in purchasing it. I just need to know who to talk to about purchasing that.' Then often an agreement would be made, and that land would then be registered with the new owner.

495 **Mr Woods:** It is probably worth adding that we have had a couple in the last two years, one of which eventually found its way to Treasury. One was for a lane, which is very close to this building, where there was a claim made, exactly the same process, by a third party. We were fairly certain that it was *bona vacantia* but actually turned out to belong to the Church of Scotland. So the lane is fairly obvious, which is next door to Saint Andrew's, and that actually was in their ownership at all times, right through the life of that footpath, but nobody was aware of that fact. So it was after much ... eventual discovery. So that fell away.

500 It is not a common event, and I think when they have come to Treasury on very rare occasions, on the register then, of course, aren't they, as –

Mr Sidebottom: If they remain –

505 **Mr Woods:** – Crown land, if they remain in ownership.

Q113. Mr Ashford: Because in my experience, the things that are not common events tend to be the things that sometimes can cause you the most trouble when they do occur.

510 I did say it was the last one, but I lied, there was another one. When we had a hearing with the Land Registry back in June 2024, it was stated that the Land Registry had offered staff time and secondment of officers to work with other Departments to help them prepare applications. Has this actually been considered, this offer?

515 **Mr Sidebottom:** We did look at that and that was part of the discussions between the Departments to look at how we got this trial going. They have been really helpful, they have been really supportive; we have worked closely together in understanding that there are some careful conflict of interest rules that need to be put in place so that we do not cause any problems for ourselves with that. But they have worked with us, not in terms of secondments, but in terms of supporting some of the title work and advisory work to make it more efficient for us.

520 **Mr Ashford:** So you are taking them up on the offer, basically.

Q114. The Chair: Would it be fair to say that perhaps communications could have been a little bit better with the Registry over the course of the last year?

525 **Mr Sidebottom:** I do not think I can really comment on whether it is fair or not. It has taken some time to get through, but that is just trying to work through it with all the other priorities. I think we have been working as hard as we can in the background to keep it moving, we have not had a lot to report to them for a little while. But however the trial is going, we have been back in touch and engaging.

530 **Q115. The Chair:** Okay, thank you.

535 Sorry, I am just trying to make my computer work. We were updated in November 2022 that draft paper had been prepared by Treasury, but this was waiting for comments from the Department of Infrastructure. Has this now been finished?

540 **Mr Sidebottom:** The principles behind it are finished and, again, that is why the trial is now running. Where the paper goes now that the trial is there, we may as well complete the trial and use the data from the trial to put a bit of uneducated paper forward rather than an options paper.

Q116. The Chair: Is that likely to be brought before Tynwald, or is it not? Is it just a cross-departmental paper, as it were?

Mr Sidebottom: I think ultimately it will be a cross-departmental paper that goes to –

545 **The Chair:** It is not a criticism, I promise.

Mr Sidebottom: *[Inaudible]* ... to work out the best avenue. Okay.

The Chair: Okay.

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Dr Allinson: The original paper was very much an options paper in terms of various models and assumptions on costs. What we hope that the trial will do is substantiate that to give some clearer idea of not just how much it will cost to register all Government land, but how long it would take as well in terms of the hours and months and years and give a better estimation going forward to then see where that lies on the priorities for this administration.

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The Chair: Mr Peters.

Q117. Mr Peters: Again, it seems as though everybody has got a common aim in this, and everybody thinks it is a good idea to progress this, and the problem is lack of funds. I appreciate that you are doing a test at the moment.

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Once you have established some figures about the likely cost of this, is Treasury likely to be able to fund this? Because it is all very well looking at what has happened and what has not happened, but is there a way forward for this? Or, we all know the constraints that the Government is under at the moment, if it turns out that it is going to cost £8 million to do this in 10 years, are we going to do it?

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Dr Allinson: We would need to substantiate the costs and get a better estimate. The ballpark figure was around about £400,000 per year; that would also lead to the employment of several other substantive posts in the Department of Infrastructure. At a time when Government is trying to control headcount and also expenditure, you have to say where does that lie on a list of priorities as a separate piece of work, to the reactive work that is really going on in terms of registering those bits of land that come to our attention, or those bits of land that are causing issues and problems.

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I think we will certainly work on the recommendations of previous Tynwald Committee reports. We will do the work, but it will come down to looking, from a Council of Ministers' perspective, in terms of this would be an ambition at some point; but how we would arrive there and what sort of timescale and cost could be afforded, given the numerous other priorities that are faced by Government at the moment.

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Q118. Mr Peters: I do not think any of us would like this to end up in the long grass, but there is a great chance that might happen, isn't there?

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Dr Allinson: I think in terms of an overall all-encompassing programme, there have been delays in looking into the exact way it would be delivered and hopefully with the trial will answer some of those questions. But that does not distract from the ongoing work that is there looking at land registration as and when issues arise; whether that be brownfield site development, whether that be disposal of land, whether that be looking at the asset register on a proactive basis rather than on a uniform, Government wide basis.

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Mr Peters: Thank you.

Q119. The Chair: Would it be fair to say, though, that if the people of the Isle of Man as and when they move property, and in other circumstances, are expected to register their property,

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that looking at Government and what Government has managed to achieve thus far, there is an element of the hypocritical in that, that it is not a good look?

600 **Mr Crookall:** It is fair to say it might appear so, but it is certainly not meant to be that way.
(**The Chair:** Yes.) It is just something that has not been done over the years, I suppose, and something needs putting right as soon as possible.

The Chair: Yes.

605 **Q120. Mr Ashford:** Just to ask, of the project that has been done so far, where is it actually being funded from?

Mr Sidebottom: It is managed out of existing resource.

610 **Ms De-Yoxall:** [*Inaudible*] ... resources.

Q121. Mr Ashford: That is what I am trying to get to, so it is coming out of the individual Departments day-to-day budgets.

615 **Ms De-Yoxall:** Yes.

Q122. The Chair: I think that we have probably covered all of the questions that we wanted to ask. Mr Peters, unless there is anything else from you, Mr Ashford, from you? Mr King?

620 **The Clerk:** Did you ... [*Inaudible*]. I might have missed it.

Q123. The Chair: I think that was covered (**The Clerk:** Okay.) under legislative changes. Unless there is anything else to add on whether or not there is any additional legislative change, be it primary or secondary, under any of this that might be forthcoming or planned?

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Ms De-Yoxall: Not at the moment, but that is part of what this trial will identify, whether there are any limitations within the existing legislative framework that we would then want to see changes made. At the moment, there is nothing that has been identified.

630 **Q124. The Chair:** We are aware that the Registry is planning on updating legislation fairly imminently, so perhaps that might be a conversation that you may have with them.

Unless there is anything else, is there anything else that perhaps you would like to put on the record then before we close today?

635 **Mr Crookall:** I do not think so, Chair, just thank you for your time.

Dr Allinson: Thank you very much for your time and your interest in this. As I said, I apologise for the delays, and we are getting going forward working together with DoI to look at the scope of the issue and a range of options to try to address it. But I also have to be realistic in terms of the size of this problem in terms of registration and the commitment of both Departments to act promptly when problems arise, in terms of registration of Government land to actually put that right.

645 **The Chair:** Thank you very much.

With that, we will close the meeting today. Thank you very much, all of you, for your time, I shall not go through individually, but thank you very much, all of you, for your time. I appreciate it.

Witnesses: Thank you.

650 **The Chair:** The Committee will now sit in private.

The Committee sat in private

Written Evidence

Appendix 1: 18th September 2023 – Submission from James Lowery, Land Registrar

Archived: 17 June 2025 14:33:37

From: [Name Redacted]

Sent: 17 November 2022 10:21:19

To: [Erin Duncan]

Subject: RE: CLAJ Adverse Possession Report | Request for Progress Update

Sensitivity: Normal

Good morning Erin,

A draft paper has been prepared by Treasury and we are awaiting comments from the Department of Infrastructure.

Kind regards,

From: Erin Duncan <e.duncan@tynwald.org.im>

Sent: 11 November 2022 15:58

To: [Name Redacted]

Subject: CLAJ Adverse Possession Report | Request for Progress Update

Caution: This email is from an external sender. Please take care before opening any attachments or following any links.

Good afternoon [Name Redacted] ,

I write to you on behalf of the Constitutional and Legal Affairs and Justice Standing Committee of Tynwald.

In July 2021, the Committee published a report on Adverse Possession [[PP 2021/0106](#)]. The recommendations within this report focused on the way in which improvements could be implemented within the land registry process. One recommendation was allocated to the Treasury:

Recommendation 5- That the Council of Ministers should adopt a target for the registration of the Government estate by 2030; and that pending a report to be laid before Tynwald by February 2022, the Council of Ministers should defer any consideration of issuing a statutory direction to Departments to register their land.

There has not been a progress update on the Tynwald Decisions since December 2021 whereby it was written that 'preliminary meetings with Registry and the various Departments [were] taking place to fully understand the costing and action plans for registration of the Government Estate'. Would you be able to find the latest status on this recommendation for me at all, as the annual decisions report has not yet been published?

Kind regards

Erin Duncan

Assistant Clerk to the Committee

Research and Scrutiny Support Executive

Office of the Clerk of Tynwald

Telephone: 01624 651500

Email: e.duncan@tynwald.org.im

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No employee or agent is authorised to conclude any binding agreement on behalf of any of the Departments or Statutory Boards of the Isle of Man Government with any party by e-mail without express written confirmation by a Manager of the relevant Department or Statutory Board.

RAAUE: S'preevaadjagh yn çhaghteraght post-l shoh chammah's coadanyn erbee currit marish as ta shoh coadit ec y leigh. Cha nhegin diu coipal ny cur eh da peiagh erbee elley ny ymmydey yn chooid t'ayn er aght erbee dyn kied leayr veih'n choyrtagh. Mannagh nee shiu yn enmyssagh kiarit jeh'n phost-l shoh, doll-shiu magh eh, my sailliu, as cur-shiu fys da'n choyrtagh cha leah as oddys shiu.

Cha nel kied currit da failleydagh ny jantagh erbee conaant y yannoo rish peiagh ny possan erbee lesh post-l er son Rheynn ny Boayrd Slattyssagh erbee jeh Reiltys Ellan Vannin dyn co-niartaghey scrut leayr veih Reireyder y Rheynn ny Boayrd Slattyssagh t'eh bentyn rish.

Appendix 2: 17th November 2022 – Submission from Treasury

Submissions of the Land Registrar to the Constitutional and Legal Affairs and Justice Committee: Adverse Possession

These submissions take the form of an update as to progress on the seven recommendations made by the Constitutional and Legal Affairs and Justice Committee (the Committee) carried by Tynwald Resolution on 22nd July 2021.

INTRODUCTION

By way of introduction and to provide a brief background. I am an English qualified solicitor with over 20 years of experience mainly in property law. I have practised on the Island for approaching 6 years, in private practice and at the Attorney General's Chambers as a legislative officer. I started my current role as Land Registrar and Legal Officer in October 2021.

Summary

Potential changes to primary legislation arising from Recommendations 1, 4 and 7 have been researched, advice has been sought from the Attorney General's Chamber, and there has been preliminary consultation with the conveyancing community. A public consultation document has been prepared which should be available for release within two weeks.

Recommendations 2, 3, and 6 have been addressed.

Recommendation 5 is being progress jointly by The Treasury and Department of Infrastructure.

Actions are set out in more detail in this document.

CHRONOLOGY

As far as I am aware, work on the recommendations was not started in earnest until I started my role in October 2021. At the time of the Tynwald Resolution, my predecessor had accepted a temporary position as Registrar of Land with the Turks and Caicos Islands Government and I understand he was attempting to deal with a number of outstanding applications and to ensure a smooth handover to myself before his departure. In essence, acting on the recommendations was left to myself.

In July 2021, there were approximately 40 applications with the Land Registry that were more than 1 year old; when I started in October 2021 this number had decreased to approximately 20.

I am sure you understand that my role requires that I consider various Land Registry applications on a day-to-day basis and it is crucial that these are dealt with in a timely manner. I am pleased to advise you that currently the Land Registry's oldest application is only nine months old, received in November 2022. This is an application for possessory title.

Clearly when starting in a new role I required a period of acclimatisation. I needed to familiarise myself with the workings of the Land Registry on a day-to-day basis and the relevant legislation before I could consider progressing these recommendations. I estimate that I started looking at them around February 2022. I note from minutes to the Land Registry User Group that brief mention was made that consultation was shortly to be considered on the recommendations.

I carried out a review of relevant legislation in comparative jurisdictions, England and Wales, Scotland, Northern Ireland and the Republic of Ireland. On review of the recommendations and the legislation, I considered there was one issue where further clarification should be sought.

In relation to recommendation 7, I had concerns that a procedure to give an ability for the Registrar to give a preliminary opinion in first instance would be detrimental to the Registrar's ability hold a hearing and make a decision without any perception that any decision would be unfairly influenced by the earlier opinion, increasing the chance of an appeal to the Land Commissioner.

I sought guidance from the Attorney General's chambers in August 2022 together with the Registrar General Mr Edward Clague in relation to this issue and following this meeting formulated the areas to consult upon. An initial consultation presentation was prepared and delivered to the Land Registry User Group on 14th September 2022.

Feedback from the profession has been incorporated into the preparation of the draft consultation.

A review of Land registration fees, which among other things addressed Recommendation 6, resulted in my work on the other Recommendations being put on hold.

The fees review was a complex undertaking requiring me to lead with drafting instructions, reviewing draft orders, amending Land Registry forms, producing practice guidance notes and preparing amended fees calculators.

This was essentially a six-month project and I have only been able to progress with a public consultation since the fees order was completed in May. A draft consultation paper has just been completed and I am hopeful this should be live this month. This was further delayed by two weeks due to compassionate leave.

DETAILED UPDATE ON INDIVIDUAL RECOMMENDATIONS

Recommendation 1

The Manx legislation regarding the operation of the Limitation Act 1984 to registered land should be amended by changes to the Land Registration Act 1982. The Department for Enterprise will consult via the Land Registry on the implementation of such a reform. This will include a system under which the same or similar application, notification and response procedures as contained in the Land Registration Act 2002 (of Westminster) is implemented in respect of adverse possession claims over registered land

Update

A draft consultation has been prepared for public consultation; some stakeholder consultation has already taken place with the conveyancing community with positive results. We hope to go live with this in the next two weeks.

Recommendation 2

That the requirements of the application process for the registration of land be reviewed with a focus on improvements that could facilitate the consistency, accuracy, efficiency and appeal of first registration.

Update

The Central Registry has reviewed its process and maintains an active dialogue with the conveyancing community via the Land Registry User Group (LRUG) to review processes and identify process improvements. Our present statistics show that applications are being processed by the Registry efficiently. In relation to accuracy we are working with the Law Society to arrange delivery of profession wide training.

A more in-depth picture of the Registry's performance figures can be seen here: <https://www.gov.im/landregistrystats>. You will see the Registry's processing time has reduced from an average of 21 days to 2 days since 2021.

Recommendation 3

That a central and collaborative online platform be developed which is capable of capturing and granting public access to a wide range of information in relation to land, including about local planning applications or developments which might affect the land's value or use.

Update

The Central Registry continues to develop its public online infrastructure providing a wide range of access to its records. The map based Land Registry Title locator

allows easy identification of all registered titles and a mechanism for the purchase and download of title documents. It also allows visibility of ongoing applications and historical maps.

The Deeds, Probate & Land Registry document search and download provides instant access, for a fee, to all Deeds from 1978 onwards, and probates from 2006. Older Deeds and Probates are available via a scan-on-demand service within 3 working hours.

An online dashboard displays the status of all applications received by the Registry as well as a wealth of easily access information on property transactions, and a downloadable dataset provides details of all property transactions recorded in the Registry.

The Central Registry also has plans to increase online services further, such as submission of online forms and possibly allowing infrastructure maps such as adopted roads and utilities information to be available. Work with Government Technology Services (GTS) is ongoing.

Useful links:-

<https://www.gov.im/maps>

<https://services.gov.im/deeds-probate-land-registry-document-search/>

<https://www.gov.im/landregistrystats>

<https://www.gov.im/about-the-government/government/open-data/economy/land-transactions/>

Recommendation 4

That the sufficiency of the current triggers for compulsory land registration be reviewed and that consideration be given to introducing the following additional triggers:

- Conveyances not on sale (including appointment of new trustees);
- Gifts on Marriage;
- Assents;
- First Charge;
- Freehold on registration of lease;
- Lower minimum lease term;
- Receipt of Agricultural Payments.

Update

A draft consultation has been prepared for the public; some stakeholder consultation has already taken place with the conveyancing community. We hope to go live with this in the next two weeks.

Recommendation 5

Council adopts a target for the registration of the Government estate by 2030. Pending a report to be delivered in February 2022 Council defers consideration of issuing a statutory direction to departments to register their land with the Land Registry.

Update

The Treasury and the Department for Infrastructure are leading this action. I am told that the Treasury is preparing a paper for the Council of Ministers, which will cover the approach and resources required to deliver on the commitment.

By way of background information, there was a written Tynwald question (reference W-202301-0330) by Mr Speaker regarding what progress has been made in each of the last three years in registering title to Government land. The link to the answer is:- <https://www.tynwald.org.im/spfile?file=/business/BusinessHansardIndex2126/W-202301-0663.pdf>

Recommendation 6

That a reduction of the fee for voluntary registration of land be considered.

Update

The Land, Deeds and Probate registration fees were reviewed during 2022 and 2023. The aim of the review was to i) to influence the market in favour of owner-occupiers and Isle of man residents; ii) to reduce some market pressures being driven by investors and buy-to-lets; and iii) to raise additional revenue.

The Committee's recommendation was also considered as part of this review. It was felt that the voluntary registration fee of £75 was significant below the costs incurred by the Registry for the processing of this type of application and a further reduction in fees was not warranted. A reduction of the fee was unlikely to deliver a material saving to the applicant. The vast majority of the cost incurred with a voluntary registration will relate to advocate's fees and advertising if required.

The Land, Deeds and Probate Registries Fees and Duties Order 2023 which was laid before the March 2023 sitting of Tynwald, introduced the following changes with effect from 1st May 2023:

- Increase in the threshold at which owner-occupier properties become exempt from the variable fees from £190,000 to £230,000;
- Increase fee and duties for non-owner-occupiers from 1% to 2% for properties up to £500,000;
- Introduce a new fee for off-Island buyers of an additional 2%; and
- Update fixed fees to reflect general inflation since 2019.

Recommendation 7

That an inquisitorial process by the Registrar be formalised in procedure to decide disputed cases of land ownership in the first instance and that the ability to offer preliminary opinions without prejudicing formal hearings be facilitated in statute.

Update

A draft consultation has been prepared for the public, some stakeholder consultation has already taken place with the conveyancing community with positive results. We hope to go live with this in the next 2 weeks.

Further information

The potential primary legislation changes to action recommendations 2, 4 and 7 will also encompass an update to the Land Registration Act in relation to a number of other areas such as acceptance of online documents, simplification of the system for rectification of errors and updating processes.

[Signed: James Lowery]

James Lowery,
Land Registrar & Legal Officer,
Deputy Registrar General,
Solicitor (England and Wales).
18th July 2023

Appendix 3: 19th July 2023 – Submission from James Lowery, Land Registrar

Archived: 17 June 2025 14:34:56

From: [James Lowery]

Sent: 18 September 2023 13:29:43

To: [Erin Duncan]

Cc: [Ed Clague (Central Registry)]

Subject: RE: Post CLAJ Oral Evidence Hearing

Sensitivity: Normal

Attachments:

[Attachments Redacted]

Dear Erin,

I can now reply In relation to the first question raised on 24th July, namely - What percentage of land on the Isle of Man is registered?

The response from GTS is as follows:-

We have extracted the title land parcel polygons, dissolved these to eliminate overlaps and calculated the percentage of total land cover that is registered. We have used the Mean High Water Mark as the extent of the island land area.

The overall percentage of land registered based on those parameters is 25.86%.

This is the percentage by area, I attach 2 images which show in red the approximate areas registered on the Island and a more detailed extract showing Douglas.

I hope this is helpful.

Can I also ask whether the committee members would like to arrange a visit to the registry as discussed following the oral evidence hearing?

Best regards

JAMES LOWERY

LAND REGISTRAR • SOLICITOR (England & Wales)



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www.gov.im/landregistry

From: Lowery, James (DfE)

Sent: 11 August 2023 09:43

To: 'e.duncan@tyrwald.org.im' <e.duncan@tyrwald.org.im>

Cc: Clague, Ed (Central Registry) <Ed.Clague@gov.im>

Subject: RE: Post CLAJ Oral Evidence Hearing

Dear Erin,

I write with an update on the questions you raised following the hearing.

- What percentage of land on the Isle of Man is registered?

We are liaising with GTS to extract this data. I understand this requires coordination with the provider of the land registry mapping system ESRI and may take 2-4 weeks to process.

- Can you break down the types of adverse possession cases that you have received over the past few years? (What type of land or property do they pertain to?)

I attach a breakdown of the adverse possession applications that have completed since 2020.

Overall since 2002 there have been 160 titles added to the register with possessory title.

I have added the detail confirming any objections received in relation to these applications.

- Can you provide any information on vexatious or unsubstantiated objections?- How many have there been?

In relation to objections in general I cannot extract that data. The objection is recorded against the specific application and not recorded centrally.

Objections can be received in relation to any application so are not limited to possessory title applications.

Clearly objections are more common when an applicant is required to advertise the application or provide notice to interested parties.

This would be possessory title applications, voluntary first registration applications, title rectification applications and applications containing requests for prescriptive rights of way mainly but not exclusively.

There are currently 4 current land registry applications subject to objections and one request for costs adjudication relating to a previously objected land registry application. All of these are currently being dealt with and cannot be commented on. In relation to objections dismissed I can summarise the nature of some that have been within the last year or so.

- Objections to registering a right of way by prescription in a terrace in Ramsey. Dismissed on the basis that there was adequate evidence of a historical right.
- An objection to the voluntary registration of a property on the basis that the objector had a claim for possessory title of the property. Dismissed as without substance as there was insufficient evidence of possession and subsequently appealed and the appeal dismissed by the Land Commissioner.
- An objection to a voluntary registration of a property on the basis that trees on the boundary needed cutting down. Dismissed as without substance as this is not relevant to the application.

Regards

JAMES LOWERY

LAND REGISTRAR • SOLICITOR (England & Wales)



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www.gov.im/landregistry

From: Erin Duncan <e.duncan@tynwald.org.im>
Sent: 24 July 2023 16:46
To: Lowery, James (DfE) <James.Lowery2@gov.im> ; Clague, Ed (Central Registry) <Ed.Clague@gov.im>
Subject: Post CLAJ Oral Evidence Hearing

Caution: This email is from an external sender. Please take care before opening any attachments or following any links.

Dear Mr Lowery and Mr Clague,

I am following up from your Friday hearing with the Constitutional and Legal Affairs and Justice Committee of Tynwald regarding adverse possession. The Committee would like to thank you for your time in attending the hearing and in writing the submission ahead of time. During the hearing, the Committee requested a few items, which I will happily receive and distribute to the Members when you are able. There is no specific deadline in mind for this, but by the first week of September would be appreciated:

- What percentage of land on the Isle of Man is registered?
- Can you break down the types of adverse possession cases that you have received over the past few years? (What type of land or property do they pertain to?)
- Can you provide any information on vexatious or unsubstantiated objections?- How many have there been?

If you have any further questions, please do not hesitate to ask!

Kindest regards,

Erin Duncan (she/her)
Assistant Clerk to the Committee
Research and Scrutiny Support Executive
Office of the Clerk of Tynwald
Telephone: 01624 651500
Email: e.duncan@tynwald.org.im

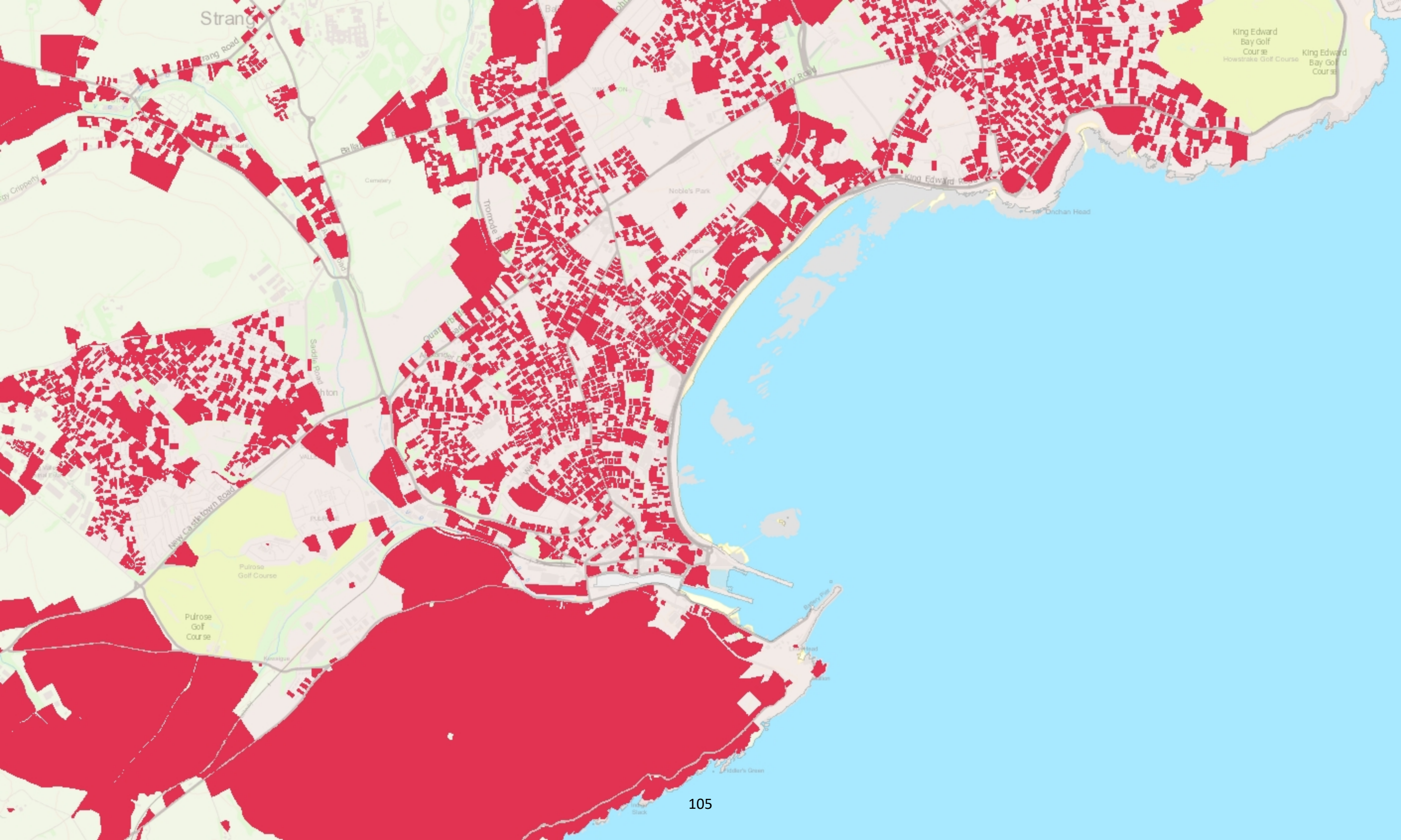
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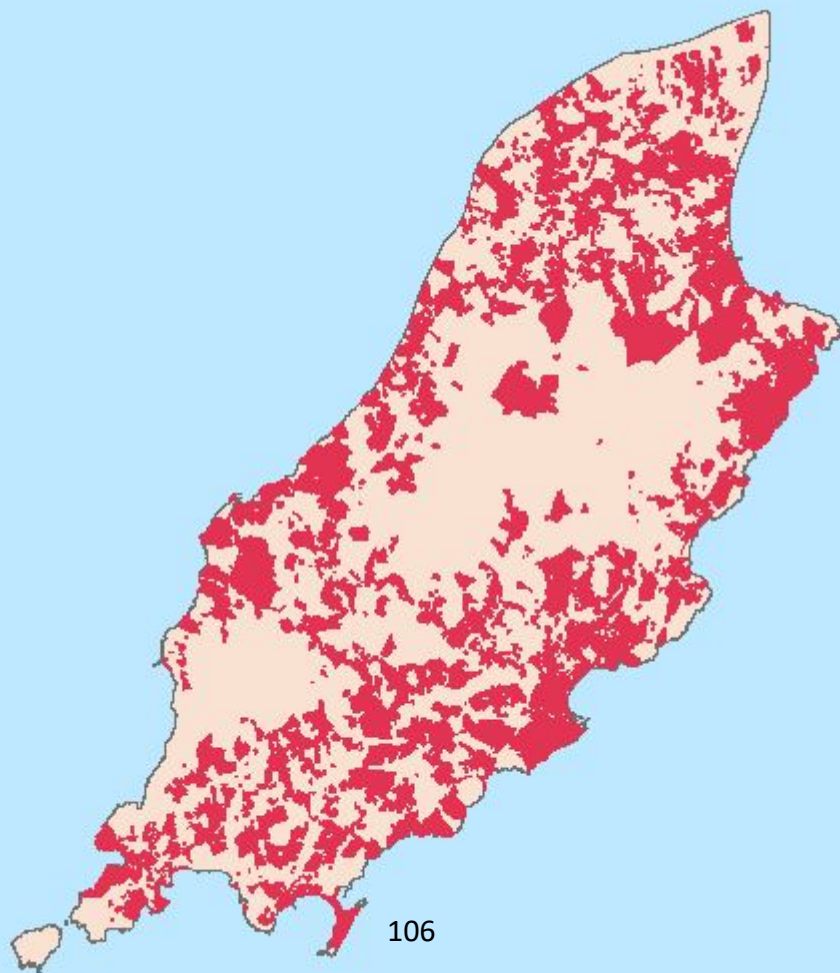
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RAAUE: S'preevaadjagh yn çhaghteraght post-l shoh chammah's coadany'n erbee currit marish asta shoh coadit ec y leigh. Cha nhegin diu coipal ny cur eh da peiagh erbee elley ny ymmydey yn chooid t'ayn er aght erbee dyn kied leayr veih'n choyrtagh. Mannagh nee shiu yn enmyssagh kiarit jeh'n phost-l shoh, doll-shiu magh eh, my sailliu, as cur-shiu fys da'n choyrtagh cha leah as oddys shiu.

Cha nel kied currit da failleydaghy ny jantagh erbee conaant y yannoo rish peiagh ny possan erbee lesh post-l er son Rheyynn ny Boayrd Slattyssagh erbee jeh Reiltys Ellan Vannin dyn co-niartaghey scrut leayr veih Reireyder y Rheyynn ny Boayrd Slattyssagh t'eh bentyn rish.





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September 2025