

**17. Constitutional and Legal Affairs and Justice Committee –
Second Report 2020-21: Adverse Possession –
Amended motion carried**

The Chairman of the Constitutional and Legal Affairs and Justice Committee (Mrs Poole-Wilson) to move:

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.

[[GD No 2021/0052](#)] is relevant to this Item.

The President: We now move on to Item 17, the Constitutional and Legal Affairs and Justice Committee, Adverse Possession. I call on the Chairman, Mrs Poole-Wilson.

710 **The Chairman of the Constitutional and Legal Affairs and Justice Committee (Mrs Poole-Wilson):** Thank you, Mr President.

In November 2019, the Petition for Redress of Grievance of Mr Mark Jason Cleator was referred to the Constitutional and Legal Affairs and Justice Committee. I would like, on behalf of the Committee to thank him for so doing, as he has sought to have an area of law and practice looked at with the intention of seeing whether there is scope for improvement. This is very much within
715 at with the intention of seeing whether there is scope for improvement. This is very much within the scope of a Tynwald Committee's remit, whereas seeking a remedy at the individual case level is not.

Thus, before I begin to discuss our subsequent inquiry and the resulting conclusions and recommendations, I would like to make a few comments about Tynwald petitions.

720 Many Hon. Members will, at some point, have been approached by members of the public who, for example, have experienced legal difficulties and who seek a remedy for the injustice that they believe they have suffered. Petitions for Redress of Grievance are occasionally suggested as a potential way of inciting change in respect of relevant policy and legislation. This suggestion is not incorrect. However, since the establishment of this Committee, it has become clear to us that
725 there is somewhat of a misconception amongst the public as to what action a Committee of Tynwald can take as a result of a referred Petition for Redress of Grievance.

It is our responsibility, Hon. Members, to ensure that we help members of the public understand the possibilities but also the limitations of a Petition for Redress of Grievance and of the Committee to which it is referred. We must help them understand that a Petition for Redress
730 of Grievance is by no means the same as a petition of doleance, which is a judicial procedure in the Island's courts acting as an equivalent to judicial review.

Whilst Tynwald Court, once in its long history, did exercise some judicial functions, that is no longer the case and indeed it is important, from the perspective of the separation of powers and wider confidence in the independence of our judicial system, that Tynwald and its Committees do
735 not seek to interfere with the decision-making role of the courts. Thus, it is not the case that a Tynwald Committee has the ability to interfere with judicial decisions, to act almost as an alternative appeals court, or to conduct an inquiry into the petitioner's individual case. Tynwald and its Committees do not possess the power to overturn decisions of the courts. They are not able to order the granting of compensation. This essentially means that a Committee of Tynwald
740 is unlikely to be able to make any recommendations that could offer an individual petitioner a remedy for their personal case.

We have sincere sympathy for all of those members of the public whose lives have been disrupted by the legal battles they have found themselves in. (**A Member:** Hear, hear.) Whilst we cannot conduct inquiries into their individual cases, we thank them for sharing their stories with
745 us. They have enabled us to build a picture of the broader issues being faced in the legal and justice systems and have informed the wider context of our inquiries, including our inquiry into legal services.

What a Petition for Redress of Grievance can do, however, is act as a trigger for change that could prevent similar experiences being suffered by others in the future. It is the role of a
750 Committee, when referred a petition, to evaluate the existing policy and legislative frameworks and to recommend that action be taken, where appropriate, in order to improve the overall system for the greater good of the Island. This is what we hope the recommendations of the Report before us will achieve, if approved by Hon. Members.

This inquiry focused on the operation of the law of adverse possession in the Isle of Man. Adverse possession, commonly also referred to as 'squatters' rights', is a feature of land law whereby someone can gain a title to land by proving that they have held exclusive possession of
755 that land for a specified length of time. This feature of land law is not unique to the Isle of Man and can be found in many other common law jurisdictions.

760 There have been questions about whether the operation of adverse possession upsets Article 1
of the First Protocol of the European Convention of Human Rights and Fundamental Freedoms;
namely, that everyone has a right to the peaceful enjoyment of their possessions. In 2007, the
Grand Chamber of the European Court of Human Rights concluded by majority that the loss of
land by adverse possession had not upset Article 1. It has been questioned whether this decision,
in relation to an adverse possession claim in England and Wales, is relevant in the context of the
765 law of the Isle of Man. It is important to note that law reform in England and Wales, which I will
come on to talk about, had not taken place at the time of this case decision. Thus at the time of
this case, the operation of adverse possession was broadly the same in England and Wales as it
still is today in the Isle of Man. The Grand Chamber's decision was therefore made in respect of
an adverse possession claim that was fundamentally identical in operation to the law of adverse
770 possession in the Isle of Man, as such removing any doubt that the decision is not relevant to
Manx law.

Hon. Members, I will not rehash all of the specifics about the technical operation of adverse
possession, which is detailed in our Report. However, before I begin to discuss our
recommendations, it is important to understand a key difference between registered and
775 unregistered land. Registered land enables an owner to hold absolute title – that is, a title to land
that is undisputable and unimpeachable, guaranteed by the state. Unregistered land enables an
owner to hold a relative, customary freehold title at best. This type of title is evidenced by title
deeds lodged at the Deeds Registry, but critically, it can be disputed and is only good as long as no
one else comes along with a stronger claim. Therefore, registered land offers far greater
780 protection of title than unregistered land.

We make a total of seven recommendations in this Report, with a key emphasis on facilitating
and encouraging land registration, precisely because of the greater protection of title provided to
holders of registered land.

Our first recommendation is that the Island's Land Registration Act 1982 be amended to
785 introduce the same procedures in respect of adverse possession claims over registered land as
those contained in the Land Registration Act 2002 of England and Wales.

At present, there is no difference in the procedure for claiming adverse possession of
registered or unregistered land in the Isle of Man. A person must demonstrate that they have held
possession of the land in question for the limitation period of 21 years, after which they can submit
790 an adverse possession claim to the Land Registrar. The Land Registrar will then attempt to notify
any relevant parties, who will be given 21 days to respond with any objections.

This used to be broadly the case in England and Wales. However, the process there for claiming
adverse possession of registered land is now considerably different as a result of the provisions
introduced by the Land Registration Act 2002. That Act provides that a claim can be made after
795 10 years' adverse possession. However, importantly, the registered owner and any other
interested parties will be directly notified of the claim and, if an objection is submitted within 65
days of notice, the claim will fail to proceed save in exceptional circumstances. If no action is taken
by the registered owner to reclaim possession of the land within the following two years – for
example, by evicting the adverse possessor or establishing a contractual agreement with them –
800 the adverse possessor may reapply for title to the land.

As you can see, the provisions of the Land Registration Act 2002 make it incredibly difficult for
an adverse possession claim to succeed over registered land. It would require the registered
owner to demonstrate a significant unwillingness to protect the title to their land in order for an
adverse possession claim to succeed. At present, on the Island, there is little incentive for land
805 owners to voluntarily register their land. Many are reportedly discouraged from voluntary
registration due to the associated legal costs as a result of the application process.

However, by adopting the same procedures as those in the Land Registration Act 2002 of
England and Wales, registered land owners would be granted significant protection against the
risk of claims of adverse possession. This additional protection should act as a considerable

810 incentive for voluntary registration, in particular for the owners of non-residential land, who are at greater risk of being faced with adverse possession claims.

At this point I would like to briefly address the matter of adverse possession claims being made in respect of land which is held on trust. We have made no recommendation to change the law in respect of adverse possession claims specifically in respect of land which is held on trust. The
815 introduction of the provisions of the Land Registration Act 2002 for registered land would offer greater protection to land held on trust. It would arguably be a breach of duty for a trustee not to register land held on trust and to ensure that claims of adverse possession are prevented or disposed of where necessary.

In order to ensure that as many people as possible choose to give themselves this added layer
820 of protection, our second, fourth, fifth and sixth recommendations are all focused on trying to facilitate and further encourage the registration of land.

We believe that it would be sensible to review the current land registration application process in order to identify ways in which it could be made more attractive for voluntary registration, as well as ways in which the process could be improved to ensure greater consistency, accuracy and
825 efficiency. We also feel it could be helpful to consider whether a reduction in the fee for voluntary registration could encourage more people to register their land.

Making the registration of land compulsory is another effective method of increasing the uptake in first registration. A number of statutory triggers for compulsory registration already exist; however, we currently have far fewer triggers than our neighbouring jurisdictions.
830 Therefore, we recommend that consideration be given to introducing additional triggers, such as gifts on marriage and first charges.

The Government is currently the largest owner of unregistered land. We believe that it should lead by example and make a significant contribution towards completing the Land Register by registering its own landholdings. We recommend that the Council of Ministers use its existing
835 power under the Land Registration Act 1982 to direct all Government bodies to register their land – our Recommendation 5.

Registration of land not only offers greater certainty of ownership by allowing for absolute title and by enabling boundary disputes to be clearly and absolutely resolved, it also reduces the complexity involved in reviewing title as part of the conveyancing process in future transactions.
840 However, in order to truly benefit from the information that the land register has to offer, it must be presented in an accessible and user-friendly format. That is why our third recommendation is that a collaborative online platform be developed in order to capture and present a wide range of information in relation to land in a single, central source.

Our final recommendation is that an inquisitorial process by the Land Registrar be formalised
845 in procedure to enable first-instance decisions to be made in cases of disputed land ownership, as well as to enable the Land Registrar to offer preliminary opinions on cases without prejudicing a party's right to proceed to a formal hearing. We hope that this will reduce the need for many parties in land disputes to feel the need to engage in costly, contentious court proceedings and that preliminary discussions may help to address any misunderstandings and enable parties to
850 make well-informed decisions about the course of action they wish to take.

Throughout this inquiry, we have noted a concerning frequency of complaints being made about the quality of legal services in respect of land matters. The need for better education of Manx advocates on the unique features of Manx law, supported by up-to-date learning materials such as textbooks, is a matter that we considered in greater detail in our inquiry into legal services.
855 In this Report we have reaffirmed the need for reform and improvement in the training of advocates.

We have also noted concerns regarding how to effectively address complaints regarding conduct of some advocates. Again, this is a matter we looked at in our inquiry into legal services and we consider the Tynwald-approved recommendation that there be an independent review
860 into the regulation of legal services to be vital to bring forward proposals for reform and improvement in this regard.

In closing, I would like to thank Mr Cleator for bringing forward the petition that triggered this inquiry; (**Several Members:** Hear, hear.) for his public-spirited desire to highlight areas of concern and request consideration and proposals for reform. The Committee, in bringing forward our
865 recommendations, seeks to improve the position going forward and if, as I hope, Hon. Members can support these recommendations, I believe that not only can we seek to improve matters for others in the future, but we can give some well-deserved recognition to the efforts of Mr Cleator in highlighting this area for reform.

Mr President, I beg to move.

870 **Mr Thomas:** Hear, hear.

The President: I call upon the Hon. Member for Ramsey, Mr Hooper.

875 **Mr Hooper:** Thank you very much, Mr President. I beg to second and reserve my remarks.

The President: I call upon the Hon. Member for Arbory, Castletown and Malew, Mr Cregeen.

The Minister for Justice and Home Affairs (Mr Cregeen): Thank you, Mr President.

880 May I, first of all, say that as somebody who has actually suffered under an adverse possession claim how stressful and expensive these claims can be. So my thoughts are with Mr Cleator.

Mr President, I rise to thank the Committee for their Report on this complex and often contentious subject. They have considered the issues in depth and their recommendations and conclusions are sensible and well considered.

885 Before continuing, we must acknowledge that this Report arose from the Petition of Redress from Mr Cleator. The Report does not address the individual issue raised by Mr Cleator, but considers the wider policy and legislation issues relating to the issues raised by him. I recognise this is a source of frustration for Mr Cleator, but we must also acknowledge that a Tynwald Committee has no power to comment or to seek to influence the outcome of an individual case.

890 The Council of Ministers is supportive of all the recommendations in the Report. I will be moving some small amendments to clarify certain matters, but these do not detract from the overall direction of travel or the recommendations identified by the Committee.

The issue of adverse possession or squatters' rights is one that deeply affects those who are involved in such a claim. We should not underestimate the stress or the ongoing impact on those
895 who find that what they had assumed to be theirs is now subject to a claim by another person or body. The Committee, as I do, also recognise the fundamental and positive role played by adverse possession in unregistered conveyancing. The law is complex and difficult to understand for those who are not practitioners. That is why the Council of Ministers welcomes the changes proposed by the Committee. We have supported the recommendations of the Committee that the time for reviewing the triggers for registration has arrived. I have directed that the consultation on this will be far-ranging, and this will include an examination of the feasibility of linking evidence of ownership of registered land to interested party status in the planning system.

900 Finally, the Council of Ministers' Sub-Committee on Justice has also agreed with the Council of Ministers that all planning applications will in future require the applicant to identify their interest
905 in the land on which the planning approval is sought and whether they have notified the owner of the proposed planning application, and if they have their consent. This small step will, I believe, assist in increasing transparency of land transactions.

910 Once again, Mr President, I thank the Committee for their work in this area. Recommendation 1, I beg to move the motion standing in my name that the recommendation is amended:

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’;

This amendment would reflect the advice from the Land Registrar, in that the most appropriate way to secure the changes sought by the Committee is to amend the Land Registration Act 2002 to strengthen the protection of registered landowners by disapplying the Limitation Act. This means that the Limitation Act itself will not need to be changed and this amendment clarifies that.

915 Recommendation 5. Mr President, the issue of Government registration of its own land is one which has been in existence since the Land Registration Act was brought into force. Given the size and nature of Government holdings, this is not a simple task. It is also not without costs. With that said, Council of Ministers does recognise that the bodies of the Government should grasp the nettle and in aggregate, as the largest landowner in the Isle of Man, take their responsibility seriously. The Committee has agreed that the deadline for this piece of work should be no later than 2030, with an action plan to achieve this submitted by February 2022. This amendment confirms that position. With that, Mr President, I beg to move the amendment standing in my name:

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’.

The President: I call upon the Hon. Member for Peel and Glenfaba, Mr Harmer.

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The Minister for Policy and Reform (Mr Harmer): Thank you, Mr President.

I beg to second the amendment, but in doing so, I just want to again congratulate the Committee for their work. There has been excellent scrutiny in this Court, and this is very much part of it, and I am aware of those both in many different roles, in the constituency and so forth, that this is a real and live issue, and to tackle something and have the bravery to do that, and to see this resolved is absolutely critical.

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Although 2030 seems a long way, it is actually a *massive* job and I know in terms of the Departments, the lack of registration in some areas is, well – quite strong words – in a sense it is almost quite frightening in some respects. So I think it is something we need to address and thank the Committee, and I beg to second.

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The President: I call upon the Hon. Member for Douglas South, Mr Quine.

Mr Quine: Thank you, Mr President.

940 Like many Hon. Members, I have received correspondence from several people on the issue of adverse possession; correspondence which has highlighted to me the repeated sharp practices of one notorious serial litigant, probably well known to many in this Hon. Court, who, thanks in no small measure to his hefty bank balance, would appear to derive a particular high degree of personal satisfaction in seeking to purposefully use this method to acquire land and then to thwart any challenge to any such acquisition through often ethically questionable methods. (**A Member:** Hear, hear.)

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So the revisions and amendments as recommended by the Committee and the fact that the Council of Ministers acknowledges their conclusions and is supportive of the recommendations is particularly welcome, and hopefully will serve as a trigger for changes referred to by the Hon. Member of Council, Mrs Poole Wilson, the mover.

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There are issues and practices which one particular correspondent has, with understandable displeasure, brought to my attention and on whose behalf I feel honour bound to bring to this debate for the consideration of this Hon. Court. Namely, how the Land Registry checks land claims made by a person, what would appear to be the woefully inadequate legal framework available
955 to an ordinary individual of modest income to challenge the type of sharp practices and the mechanisms for such individuals to challenge a claim under adverse possession; which is clearly nonsensical, because, Mr President, as one particular person who has contacted me ardently contends, whoever is supposed to reject claims made under adverse possession which are clearly fantasy in nature would appear to be failing in their duty – certainly when the correspondence I
960 have read was taken into consideration.

Thank you, Mr President.

The President: I call upon the Hon. Member of Council, Mrs Lord-Brennan.

965 **Mrs Lord-Brennan:** Thank you, Mr President.

As the Member who picks up the petition for Mr Cleator about adverse possession, I would like to put on record my gratitude to the Members of the Constitutional and Legal Affairs and Justice Committee and the staff in the Clerk of Tynwald's Office who have supported this inquiry which has led to the recommendations. A great deal of work has been done and a huge volume of
970 evidence considered. I am very happy to support all of the Committee's recommendations and those amendments brought forward by the Hon. Member for Arbory, Castletown and Malew, Mr Cregeen, which seek to address the core points raised in the petition.

Alongside the diligence of the Committee, it is to the credit and to the strength of the will of Mr Cleator and his representations via the petition process, which will, if supported lead to our
975 law being changed in respect of adverse possession, as expressed in Recommendation 1, which proposes to this Hon. Court:

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.

As this law is hopefully changed and as this is pursued via drafting and via progress in the Branches, for the sake of the record, I wish to highlight two particular points raised with me by the petitioner. To keep this on the record, I am putting these forward just on his behalf really.

980 Firstly, that such amendment to our Land Registration Act 1982 should attend to matters as relating to trusts and different classes of beneficiary. I do believe, however, that this point has been raised by the Hon. Jane Poole-Wilson, the Chair of the Committee, and so I would defer to the Committee's evaluation on this – and she has mentioned it in her speech.

985 Secondly, amendment should address matters regarding retrospective adverse possession, so as to be in line with the law in England and Wales, which has updated provision in these respects. There will, of course, need to be other changes too, but it is obviously not the place of this Court to outline every single change that would take place in that proposed bit of legislation, so I take assurance from the fact that this inquiry has identified a range of issues and it can then be remedied through the Branches in the future. I hope that this will serve on the record as a
990 reference for the legislative changes needed in the future.

Finally, Mr President, I feel I must acknowledge the position and the difficulty, of course, in not being able to solve or address individual cases via petitions (**Two Members:** Hear, hear.) or committees, and whilst this is known and accepted, I feel it must take tremendous strength to push for a change on a wider issue, especially if it affects you personally and deeply. I want to
995 recognise that and stress that it is the duty of this Court and the Branches to try and identify and fix the broader issues, laws and processes.

Some of this is already in train, again, with the work of the same Committee that has carried out work on this petition with regard to their recommendations and inquiry on the legal services.

1000 So I would suggest again this is a further addition and interaction with that, and I hope that the
petitioner and others involved take comfort that that work is already being done and reform is on
the way in that respect. (*Interjection*)

So I commend, once again, the petitioner for that strength and also commend the careful work
of the Committee in this complex matter of land law, whilst acknowledging the limitations of these
processes in terms of what might be considered full resolution for any individual.

1005 Thank you, Mr President.

A Member: Hear, hear.

The President: I call upon the Hon. Member for Douglas Central, Mr Thomas.

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Mr Thomas: Thank you, Mr President.

I join with the congratulations and also the comments of experience from previous speakers.
A few questions for the Chair and the mover, if she does not mind, Mr President.

1015 The first one is, I heard one clear message, I think, in what the mover said and obviously having
had the chance to reflect on this over some months, I wanted to make sure that I had heard the
clear message correctly. One clear message I heard was that the purpose of a Petition for Redress
of Grievance was to help others and to get better public policy and law. I just want to make sure I
understood that correctly. There are other ways of doing that, but there are tribunals and the
legal system for sorting out individual situations. I think I heard the very important message was
1020 about the use of Petitions for Redress of Grievance, and if that is the case presumably that is
something that the hon. mover would recommend that the Standing Orders Committee take up
and use all the resources we have to build on that message to avoid any disappointment that
might be out there.

1025 The second clear message I heard was that there seemed to be a passion for registering land
because it makes everything else simpler. So I think I heard if you do have unregistered land,
unregistered property, think about getting it registered, (**A Member:** Hear, hear.) and you try to
make that as easy as possible through some of your recommendations. So I wanted to confirm my
understanding that that was a passionate plea that was going out there.

1030 To move to the two other points, which I am very interested in. The first one is around
Recommendations 3 and 4. What I think has gone on is that, basically, we have now got a very
efficient Land Registry system; you can go online and see whether your neighbour's property is
registered; you can get information from the tithes online. We are actually doing something really
attractive inside that Land Registry place which is beneficial to everybody. So my question is,
building on something that Minister Cregeen actually said when he talked about linking this to
1035 planning applications for interested parties: does the mover agree with me that somebody in the
next administration should take this forward to put everything to do with property in a similarly
accessible place? So we think about landlord registration and lease registration and all the other
sorts of things that need to be there so that we can have a one-stop shop, a place for good
information about property and to avoid misunderstandings or miscreants' actions later on in the
1040 future, because information and sunshine on that information is the best way to get rid of
infection and disease inside property arrangements.

1045 The final question builds on 5-, 6-, 7-type recommendations, which are about education and
information and improving the process of making it easier and reducing the fee and having a sort
of preliminary opinion as part of the process. It is a very simple question: if this works, if we do
improve the process and we come up to have preliminary opinions by somebody, the cost of these
things is often not the fee, the cost is the advocate, so can we envisage a day when you can do
more of this yourself? (**A Member:** Hear, hear.) Can the system develop so this sort of process for
simple cases can be a process that could be done directly between somebody in the Land Registry
rather than through an advocate?

1050 Thank you, Mr President.

The President: I call upon the Hon. Member for Onchan, Mr Callister.

Mr Callister: Thank you, Mr President.

1055 I just want to put on record my sincere thanks to the Constitutional and Legal Affairs and Justice
Committee for a very diligent piece of work. I read the Report in great detail. Again, like
Mr Cregeen, and I know Mr Thomas is very similar – I think one of the conversations me and
Mr Thomas had many years ago was on land disputes, a long time ago. My heart goes out to
Mr Cleator and others that have found themselves in this position.

1060 I think, as the Committee know, we bought our current home back in 2007, and at the time we
knew property was going to be registered at some point, it would become compulsory, so we took
the opportunity to register our property and we used the land that we thought was ours for eight
years, no problems at all, and then suddenly overnight we found ourselves very much in a land
dispute, and it was incredibly difficult. It was probably the most stressful time and I think you,
1065 Mr President, I remember you came around my house to try and help me, and others did as well.

Before we realised, without any sort of understanding, we found ourselves sucked into this
legal system. I felt at the time, and I have said it many times since, that we were seriously let down
by the Land Registrar because he had a duty there to do it and for some reason he did not. Before
we realised he just passed us on to one of the Deemsters; I think it was Morris at the time.

1070 Before we realised, we were inside the legal system, even though we were trying at the time
to understand what was going on because we had put our faith in the estate agents at the time.
We then put our faith in the advocates at the time, and I would love to name and shame the
advocate, because I would never use them again; I will not, but I will never use them again,
because we put our faith in that advocate and we got sucked in.

1075 As soon as we realised that we were in a land dispute for no fault of our own, I went back to
the advocate to ask them to resolve the problem, and to say their language at the time was pretty
appalling because they pretty much said to us, whatever was left at the end of it, they would take
the rest if we go after them. It was the worst experience. I do not think my wife and I have gone
through a more stressful time. It nearly cost us our home for no fault of our own.

1080 So I understand the passion and I read Mr Cleator's correspondence, and fortunately for us,
the land in question was so tiny, we are talking just a couple of thousand pounds. It really was not
significant at all. And very quickly on, where the difference between myself and Mr Cleator, we
worked on, we realised the fact there was a 21-year rule and the fact was the cost of it just for
getting advocates just did not balance itself out.

1085 So in the end we decided, with no experience ourselves, we had to put together our skeleton
argument, we had to respond, and we went through a period of 18 months where we just did not
want to go home, we did not want to open our mail and again we put our faith in the system and
the system let us down time and time again. Every single correspondence, anyone who knows me
and my partner, my wife, would know that we are honest people and every correspondence that
1090 we submitted was actual fact. But every correspondence that we received back was a grey version
of what actually the facts were. We were never trying to steal land, we were never trying to obtain
the land, we basically bought a property in good faith, we thought the land was ours and we used
it correctly.

1095 I am on the opposite side of Mr Cleator, because his was his land, and he is absolutely right to
fight for that. I did go through everything on behalf of Mr Cleator, because I realised exactly what
the pitfalls were. I saw the 21-year rule, and it was very clear, but in our case we had used it only
for eight years. So what we had to do then, because we were in the legal system, is fight our way
back out again, and I want to put on record my sincere thanks to the Isle of Man Courts and a
gentleman called Paul Coppell, because that gentleman saved our house, because he realised very
1100 quickly that the other side were trying to financially ruin us, to get to a point where we had lost
our home, and he spotted it – absolutely fantastic. So instead of us losing our home or getting a
legal bill of possibly anywhere between ... from the other side, not from our side, because we were

1105 representing ourselves. So the courts were fantastic, they were understanding. We spent thousands of hours having to put together skeleton arguments, having to bring people in, explain exactly what we had done on this land and I just realised it was the most traumatic time in the world. But at the end, we came out of it, we lost £8,000, but it could have been our home. I am extremely grateful to the costing officers in the courts, because they actually realised what was going on and what was the aim of the other side.

1110 As I say, my heart really does go out to Mr Cleator and others who have found themselves in ... I have been able to help other people by very quickly going through the deeds and just looking for those little pitfalls which are there, and just helping people not to find themselves in this thing.

So I absolutely support the work of this Committee, I absolutely support all of the recommendations, and I hope in the future that people who find themselves in this situation can actually look for the trouble spots before it is too late.

1115 But again, I thank the Committee and I thank you, Mr President.

A Member: Well said.

The President: I call upon the Hon. Member for Middle, Mr Shimmins.

1120 **Mr Shimmins:** Thank you, Mr President.

I would also like to thank the Committee for their excellent Report and it is clear that they have spent a great deal of time getting under the hood on this legal issue which is very technical, it is very complicated. The registered/unregistered land in trust – there are lots of aspects to this and it takes quite a while to work through the Report, which is I think well prepared and provides some very helpful recommendations, which I fully support.

1130 I would also like to thank Mark Cleator for bringing his Petition to Tynwald. That in itself is a daunting prospect, but that was just the start of a very long journey for Mr Cleator. But as a result, Mr Cleator has driven positive change. He really should be incredibly proud of what he has achieved, because I am sure it will lead to a positive update to the Land Registration Act and the other recommendations will help move us to a better place, and fix what I think is a very problematic loophole in our law.

1135 I would also like to thank Mrs Lord-Brennan for picking up the Tynwald Petition and for bringing the motion to refer this Petition to the Legal Affairs and Justice Committee. For me, this shows that it is worthwhile, very worthwhile, for Hon. Members of this Court to pick up petitions. I know that we are all very busy, and having picked up a petition myself, I know that this can be very time consuming, on top of all the other things that we are juggling. But I do think it is very worthwhile. So well done to Mrs Lord-Brennan and hopefully others will follow in her footsteps.

1140 I am, as I said, very grateful for the Committee's work, but I am also very concerned about Mr Cleator and his family and the exploitation of the current legal process, (**Mr Quine:** Hear, hear.) the loophole. It has devastated this family. Regardless of the flawed legal position, I do not think that this situation reflects well on the Isle of Man Law Society and some of their members, who have profited, really, from aiding others' misery, frankly. (**Mr Quine:** Hear, hear.) These are often vulnerable people, Hon. Members. (**A Member:** Hear, hear.) These are not people with legal expertise or the wealth necessary to fight prolonged court battles.

1150 So I feel very strongly about ... I am mixed in views, I guess. I am so pleased that actually, as a result of Mr Cleator, this will get resolved ... to stop this happening, but there are mixed emotions, really, because I feel it is very difficult. I was interested in what my hon. friend, Mr Callister, was saying about how it had impacted him and how he almost lost his house. He said that his land was tiny. The land issue for Mr Cleator was also tiny – much smaller than this Hon. Court. The size of a lorry, basically. But the costs that have been awarded against him are horrendous, Hon. Members, and the family is facing financial ruin and –

Mr Quine: Would the Hon. Member give way?

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Mr Shimmins: Certainly, yes.

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Mr Quine: He is quite right in what he says, because so often the amount of land concerned is tiny, but it is planned in such a way as to cause maximum inconvenience and maximum expense to the person who is left to fight that.

Thank you, Mr President.

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Mr Shimmins: Thank you, Mr Quine.

So we are talking about the financial issue, but this is also incredibly traumatic. It has a devastating effect on people's health.

So I do not know the answer, Hon. Members. I have been wrestling with this for many months as I have been involved in this. So my only question really, for the Chair of the Committee, my hon. friend, Mrs Poole-Wilson, is what could be done for Mr Cleator and his family? There is no doubt in my mind that they have been failed; that the system has failed them.

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So thank you, Mr President.

Mr Callister: I agree.

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The President: I call on the Chair to respond.

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Mrs Poole-Wilson: Thank you, Mr President, and I would like to thank all Hon. Members who have spoken in this debate, because whilst the subject matter is technical and our recommendations are also, of necessity, I suppose to some degree technical, this is a very human situation, (**Mr Callister:** Hear, hear.) and a number of people have spoken with passion and with understanding themselves, either because of their personal experience or because of how they have engaged with individuals about the toll that this type of situation, this type of legal battle, really can take on people's health, well-being, financial situation and Hon. Members, we must not underestimate how devastating this can be for members of our society when they are caught up in a legal battle.

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I would like to start actually with Mr Shimmins's point because, as I stated in my opening remarks and Mr Thomas, Hon. Member for Douglas Central, specifically reflected, sadly, there is a difference between what a Petition for Redress of Grievance and a Tynwald Committee can achieve and other routes for redress. So sadly, it is not possible for this Committee, or any Committee of Tynwald, to overturn a court decision or make an award of compensation, or act in any way to actually remedy a personal set of circumstances. That is not an easy thing to say when you have faced people who have been absolutely devastated by this type of experience.

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So it is the situation and we must, I think in fairness to all members of the public, whoever approaches, be honest and open with them. Sadly, there is no possibility for us to provide an individual remedy in any situation like that faced by Mr Cleator, or indeed other members of the public who have approached us.

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What I also absolutely want to pick up, which again has been mentioned by a number of people, is the courage, the public-spiritedness, the willingness of Mr Cleator to bring forward ... despite the devastating impact on him personally and his family, he has had the courage and the strength of mind to bring forward this Petition, (**Mr Shimmins:** Hear, hear.) which, thanks to Mrs Lord-Brennan, was picked up, and there is an opportunity to make some change in the hope that this will prevent similar situations in the future.

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The specific changes we are advocating in this Report are very much around our land registration system. To the wider points about conduct of advocates, training of advocates, capability of people to advise comprehensively and properly at the outset, the ability of citizens to be able to take meaningful actions to complain if they are concerned about the advice or the conduct of an advocate, these are matters which we *strongly* asserted in our inquiry into legal

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services. For those Hon. Members of this Court who are still here when that review into legal services reports, I *urge* you to make sure that those outcomes deliver positive change more broadly because, again, we do a disservice to our Island and to our citizens if we do not make improvements in these regards.

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I would like to thank my fellow Committee Members, Mr Robertshaw, Hon. Member for Douglas East, and Mr Hooper, Hon. Member for Ramsey, and in this case for him seconding today. A slight indulgence, but I must say I have *thoroughly* enjoyed working on this Committee over the last few years and working side by side with those hon. colleagues. It has been a pleasure, it has

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been hard work, but I feel through discussion, challenge and interaction, we have hopefully contributed to this Hon. Court, and I hope for the Island for its better moving forward.

I would also like to put on record as well my sincere thanks to our Clerks, our retiring Clerk of Tynwald, Mr Roger Phillips, and Inge Perry for their unstinting hard work and support throughout **(Several Members: Hear, hear.)** and their sage advice and help. We could not have done it without them.

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I would like to thank the Minister for Home Affairs and Justice again for his ongoing engagement with the Committee actually, which has been very welcome, and the Committee is broadly supportive of the small amendments that are being moved today. I think in relation to recommendation 5, the one thing we would say, and Mr Hooper would never forgive me if I did not mention this, is that there is a strong view by the Committee that we can just get on with it anyway. A business case was brought forward **(Several Members: Hear, hear.)** by the Department for Enterprise. It is possible to start to make a move on this. **(A Member: Hear, hear.)** So I accept that an end date of 2030 is referenced in the amendment, but really we can get on with doing this. So we would *strongly* encourage Government to do that.

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I would like to thank Mr Harmer for his recognition of the Committee's work, but also critically of the issues faced by people in Mr Cleator's situation; it is devastating. Similarly Mr Quine for that important recognition of the impact on individuals. I must say our recommendation 7 regarding formalising an inquisitorial process is in part about trying to ... There will be disputes, Hon. Members. I do not think we can ever get away from the fact that where land is concerned, there will be boundary disputes and questions about ownership from time to time. But what can we do to make sure people are well advised and understand their situation, and what can we do to effectively and efficiently resolve those disputes without forcing people down the path of costly and stressful and devastating litigation. Our recommendation 7 is targeted at trying to help with that.

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Mrs Lord-Brennan, thank you once again for your engagement and support throughout and crucially for picking up the Petition and for recognising and stating on the record Mr Cleator's courage and public-spiritedness in doing this. She asks, or she referenced matters that on behalf of Mr Cleator she wanted to put on the record. It is my understanding that the process of changing our law, which is covered by recommendation 1, will, and it says so in the recommendation, involve a process of consultation. So there is time and space for people to input to that consultation, and, of course, any change in the law will go through the Branches and will receive full scrutiny at that point. Again, where people have any further suggestions or ideas about improvements to our law, there is opportunity to achieve that.

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Mr Thomas, I have touched on the fact that he highlight ... he picked up, and I am glad he picked up and reflected again, that we must distinguish in the public mind between Petitions for Redress of Grievance and how they deal with their individual circumstances, which of necessity will be through our courts process.

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Interestingly, again, there is an area of education here for people. For example, I have always had legal expenses on my household insurance. I have done this because as a lawyer I know that sometimes you can end up sucked in legal battles not of your own choosing and actually it can be incredibly costly, not only your own expenses, but the risk of a costs award from the other side, which is where the real costs can really start to ramp up. So again, in the public mind, I think we would do well to try and do more education about not only financial matters but understanding

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1260 of people about what does go on in the court process, how it can go wrong for people, how it can be devastating, but also there are things you can do, and paying a relatively low premium for the peace of mind that you might be able to access that cover for legal expenses might be worthwhile.

Mr Callister: Can I interject there? Thank you, Mrs Poole-Wilson.

1265 I just want to put on record that we did have insurance, and I would highly recommend that to anyone, but under that rule, in our case, we were told that the 51% chance was not there. So that was fine, that was when we were still sucked into the legal system. We begged the Land Registrar to actually look at this and to put us both in a room and arbitrate, it did not happen. We got sucked in for no fault of our own, 18 months later we are fighting and writing those skeleton arguments.

1270 So you are absolutely right, I recommend people to do it, but once that 51% rule is in, then you are left alone unfortunately.

Mrs Poole-Wilson: Mr Callister makes a good point, but it comes back to good advice, and I am afraid if you are advised and your insurer regards your case as being too weak to fund it should cause you to stop and think. Good advice is important. In my work as an employment lawyer, I was always *very* careful to talk to people at length before they embarked on a tribunal case, because of the cost, but critically because of the stress. The stress and the devastating impact that litigation, because of its adversarial nature, inevitably takes on people. And that is particularly so when the other side apparently has deeper pockets. So I think we have a big, wider education piece that we could usefully bring forward.

1280 I think to Mr Thomas's other points, yes, our recommendations are about efficiency, more transparency and, hopefully, more of a one-stop shop for people. I think ultimately where people can help themselves more and also where we create inquisitorial discussion processes rather than adversarial legal processes, then we can keep people away from costly, devastating legal battles.

Thank you to Mr Callister for sharing his experience. It clearly resonates with others as well.

1285 Mr Shimmins, thank you very much to him for his engagement throughout. He has been very keen to support Mr Cleator, which I am sure has been appreciated by him, he has engaged with the Committee at length throughout, and I would like to thank him but also his recognition that actually, again, we are dealing with a hugely technical area. This is difficult. It is difficult even for practising lawyers to get right. So for the layperson to navigate some of this at times is not easy and we should not underestimate how difficult it is for people when faced with this sort of legal problem.

1290 I agree; I share his mixed emotions. I have great hope and positivity that some future change can come, but I absolutely empathise and feel personally very sorry for Mr Cleator and his family for the impact all of this has had, (**A Member:** Hear, hear.) and so in conclusion, Mr President, I would like to state finally a thank you to him again for having the courage to bring forward this Petition, and even though it does not change his situation, we hope that what we have brought forward will be capable of changing things for the future.

I beg to move.

Mr Callister: Hear, hear.

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The President: Now, Hon. Members, we have come to voting on this Item, Item 17. The motion is set out on the Order Paper. To that motion you have before you a composite amendment affecting recommendations 1 to 5. No motion has been made that the recommendations be voted separately. I will therefore treat the motion as a whole.

1305 I put first, as a whole, the composite amendment in the name of Mr Cregeen. All those in favour, please say aye; those against, please say no. The ayes have it. The ayes have it.

I now put the entire motion, as amended. All those in favour, please say aye; against, please say no. The ayes have it. The ayes have it.