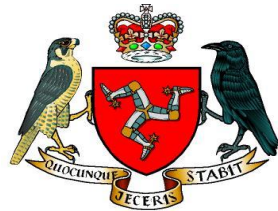


GD 2021/0052



Isle of Man
Government

Reiltys Ellan Vannin

**Council of Ministers Response to the
Tynwald Constitutional and Legal Affairs and Justice Committee –
Second Report for the Session 2020-21 – Adverse Possession**

June 2021

**To the Hon S C Rodan MLC, President of Tynwald, and the Hon Council and Keys
in Tynwald assembled**

Foreword by the Minister for Justice and Home Affairs



The Council of Ministers has studied with interest the report of the Tynwald Constitutional, Legal Affairs and Justice Standing Committee and would like to congratulate the Committee for the work it has done in seeking to address the grievance identified by the Petitioner Mr Mark Cleator and in doing so considering:

- i) the continuing applicability of the principle of Adverse Possession to land law in the Isle of Man
- ii) the technical difference between the operation of adverse possession in connection to Trust law; and,
- iii) the system for controlling costs relating to the litigation in Courts against unsuccessful parties. As part of its work the Committee has considered elsewhere the issue of standards within the legal profession and Council of Ministers have already responded to the recommendation of this work of the Committee.

The Committee's work on this occasion was to consider a technical area of law. It took evidence from a number of sources. The Standing Committee's report contains 12 overall conclusions and 7 recommendations. The Council of Ministers acknowledges the conclusions and is supportive of the recommendations. Council has made small practical amendments to the Standing Committee's Recommendations. Recommendations 1-3 are accepted and the Minister for Enterprise will oversee the Land Registry's work in seeking to implement and consult on the delivery of these important recommendations. Acceptance of Recommendation 1 is qualified.

The principle of Recommendation 3 is accepted but Council is concerned that this work should not be progressed in isolation for the Government's established programme of externalizing Government information through the Property Gazetteer and MannGIS programmes. Council accepts the general principles contained in Recommendation 4 subject to a consultation by the Department for Enterprise via the Land Registry.

Council are not prepared to issue a direction under section 24A of the Land Registration Act 1982 at this stage as recommended in Recommendation 5 but does recognize the principles contained in those recommendations warrant further consideration and the development of

a programme for the registration of the Government estate by the Department for Infrastructure and Treasury.
Council is entirely supportive of the principle of Land Registration and recognizes that registration is the best way to safeguard the public estate. Recommendations 6 and 7 are accepted.

The Council of Ministers welcomes the Committee report and conclusion and to confirm a target for the registration of Government real estate by 2030.

Hon Graham Cregeen MHK
Minister for Justice and Home Affairs
Chair – Council of Ministers’ Sub-Committee for Justice

Foreword by the Minister for Enterprise



I have followed the work of the Committee with interest and considered the implications of the Committee’s recommendations. I was pleased to note the Committee overwhelmingly supported the work of the Land Registry and am keen to put on record, as the Committee have done, support for the principles of Land Registration as the best way for both the public and the Government to obtain certainty and clarity as to their rights over land. The Land Registrar’s zeal for the merits of Land Registration came through strongly in his evidence and I am confident that in the Registrar General and Land Registrar and all the staff in the Central Registry we have the right team in place to consult on and implement the recommendations of the Committee and of Council.

Touching on the petition itself, it is clear that the Committee rightly determined that it could not look to address the details of the specific claims made by the Petitioner in relation to settled court proceedings. I am satisfied that the Committee’s recommendations, as accepted, will deliver important improvements to the safeguards provided by Land Registration.

Hon Laurence Skelly MHK
Minister for Enterprise

The report

This Report is the output of a Committee workstream formed to review a Petition for redress of Mr Mark Cleator. Mr Cleator's three main issues were:

1. The principle of Adverse Possession
2. The operation of adverse possession in connection to Trusts.
3. The system of awarding costs relating to litigation in the Court against unsuccessful parties. Related to this was the issue of standard of control exercised by the Courts to keep the costs of advocacy low and the standard high. Mr Cleator submitted the courts were failing in this regard.

Background to the Committee's work and the petition for redress.

Mr Cleator has been involved in an unsuccessful dispute with another party about a right of way which he claims as serving a property in his ownership. The matter of the ownership of that other piece of land has been determined by the Land Commissioner and confirmed with modification on appeal by the Staff of Government (Appeal Division). The Committee have been at pains to explain that their work is not a review of the outcome of settled court decisions. Mr Cleator has subsequently sent an email to all members of Tynwald, including the Council of Ministers, encouraging them to reject the Committee report. Mr Cleator is uncomplimentary about the work of the Committee and the evidence on which its findings are based. Mr Cleator has not sought to register his land.

Responses to the Conclusions and Recommendations of the Tynwald Constitutional and Legal Affairs and Justice Committee

1	The Committee would like to institute a system under which the same application, notification and response procedures as contained in the Land Registration Act 2002 (Westminster) in respect of adverse possession claims over registered land.
Conclusion 1	Council of Ministers response 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.
Commentary	Conclusion 1 is accepted. This recommendation must be read in connection with paragraph 32 of the Committee's findings: <i>We propose that the Land Registration Act 1982 be amended to disapply the Limitation Act 1984 in respect of registered land subject to an adverse possession claim and to introduce provisions that replicate the procedures in operation in England and Wales.</i> Such a proposal would serve to make registration more attractive on a voluntary basis.

	<p>The notice procedures in England and Wales serve the purpose of complying with the substantive law which provides additional protection to registered land owners. The Land Registry consider it desirable for a similar additional protection to be incorporated into Manx Land Registration law and that the notice procedures should then be similar. The notice procedures in England serve a specific purpose. Any system of notice created in the Isle of Man would need to follow the substantive law.</p> <p>Council agree that it is appropriate to add this additional level of protection to the protection provided by the act of Registration and that accordingly the existing operation of the Limitation Act in connection with unregistered land does not need to change.</p> <p>The Land Registry, part of the Department for Enterprise, will need to consult on an implement this change through a change to the Land Registration Act. This will be performed through that Department.</p> <p>Council of Ministers propose the following amendment</p> <p>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.</p>
Response	Amend

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.
	<p>Council of Ministers response</p> <p>Conclusion 2 The current provisions of the Limitation Act 1984 in respect of claims against land held on trust offer sufficient protection to beneficiaries.</p> <p>Conclusion 3 Registration of land is key to ensuring further protection to beneficiaries.</p> <p>Conclusion 4 The process of registering land should be no more burdensome for an advocate than preparing documentation for any other land transaction.</p> <p>Conclusion 5 An uptake in the registration of land will not remove the need for the professional services of an advocate in the conveyancing process.</p> <p>Conclusion 6 Registration of land provides an effective solution to many difficulties and disputes arising from unclear title deeds and ownership status.</p> <p>Commentary The Land Registry looks to ensure its application methodology is fit for purpose and constantly seeks to deliver improvements.</p>

	<p>At present the Land Registry is working on improvements to its application forms and especially the complexity around accepting online applications and the use of electronic signatures.</p> <p>Council acknowledges this and supports improvements.</p> <p>As part of the consultation outlined in the response to Recommendation 1 the Department of Enterprise via the Land Registry will conduct this review.</p>
Response	Agree

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.
Commentary	<p>Council of Ministers response</p> <p>Council is entirely supportive of the principle behind this recommendation. The Chief Minister recently referred to this in a written response to a question in the House of Keys of 18 December 2020 in the following terms:-</p> <p><i>For instance the Land Registry database project which I mentioned during the sitting. This is providing the basis of a centralised Land Information Service. Whilst controlled and delivered by the Department for Enterprise, it makes use of the Property Gazetteer database as a core component of the system.</i></p> <p>Council acknowledges the steps the Land Registry has taken over the past few years to increase online accessibility to a range of resources including: the tithe and asylum plans, the Grantor and Grantee indices, the Woods Atlas, the online deed-on-demand service and online register map accessible via the TitleLocator. The TitleLocator allows Land Registry title documents to be purchased online and now also provides access to the Planning Portal and to the Definitive Rights of Way map. This has been transformative for the professional conveyancer and provides a wealth of material for the interested amateur.</p> <p>More can and will be done to make ever more publicly-held information about land publicly available.</p> <p>This recommendation is accepted. Delivery has already advanced even before the recommendation was made. Council welcomes further developments in this space and will task the Cabinet Office to provide further and ongoing assistance to the Land Registry.</p>
Response	Agree

4	<p>That the sufficiency of the current triggers for compulsory land registration be reviewed and that consideration be given to introducing the following additional triggers:</p> <ul style="list-style-type: none"> • 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
<p>Conclusion 7</p> <p>Commentary</p>	<p>Council of Ministers response</p> <p>The current triggers for compulsory first registration of land are not sufficient for progressing towards a complete register of all land in the Isle of Man.</p> <p>It is the nature of a set of triggers confined to transactions (at present) that those classes of property unlikely to be disposed of will not be registered. Eg Government land, charity land, trust land, agricultural land holdings. The solution to attain all-Island registration must include greater triggers or greater 'voluntary' effort.</p> <p>Council remains committed to the achievement of all-Island Registration.</p> <p>The Land Registry supports an extension of compulsory triggers to registration. There is considered to be an advantage in approaching this by way of staged delivery. All dispositions of legal estates (conveyances not on sale, Gifts, Assents and First Charges) could be brought into the field of matters triggering registration with minimal legislative effort. Such a reform would be easy to implement. The Department for Enterprise via the Land Registry will consult on and implement a strategy to increase the triggers to registration.</p> <p>Council is concerned that increasing leasehold triggers may have undesirable cost implications and this will require clear policy development before it is progressed with.</p> <p>Council policy has not formerly been to link receipt of state funds (in the agricultural arena or elsewhere) to registration of land. Council recognizes that this has been implemented in other jurisdictions. Council considers that this should be considered further and consulted on as part of the review of registration triggers. Council notes that the Land Registry's chief concern was the ability to serve notice on unregistered land holdings (especially agricultural land). Council considers that the existing powers of the Registry to obtain this information on a case by case basis is sufficient and will direct DEFA to ensure assistance can be provided to streamline this process within the Registry. The outcome of this should be reviewed as part of any move to require proof of title by freehold registration.</p> <p>The sub-Committee of Justice recommended that Council direct the Department for Enterprise to include within a review of registration triggers the interaction between land ownership and applications for planning permission. It is noted that</p>

	<p>this runs counter to recent policy developments and legislative reforms (the Town and Country Planning (Development Procedure) Order 2019 and that land ownership is not a material planning consideration. The sub-Committee considers that in the broader context of a consultation on Land Registration triggers and improvements to publicly accessible information about land there may now be merits in reviewing this policy with a view to future integrations which may be advantageous to both the Land Registry and to the Planning system. Council is alive to the GDPR concerns of both regimes and does not intend that this should delay the introduction of new triggers which do not call for such broad policy adjustments.</p>
Response	Agree

5	<p>That the Council of Ministers use its existing powers 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.</p>
Commentary	<p>Council of Ministers response</p> <p>The Isle of Man Government is the largest single owner of land on the Island. The Government has a policy of achieving all-Island registration. This cannot be achieved without Government registering its own estate. Registration triggers are transactional and Government land is (by proportion) the least likely to be registered on a compulsory basis.</p> <p>Government departments are obliged under the Financial Instructions to maintain asset registered of their Real Estate. The Financial Regulations could do more to encourage Departments to register their landholdings. Together with the proposed changes to be made to exclude the operation of the Limitation Act from Registered land this will protect the public estate from losses.</p> <p>The Land Registry has made the case through the Justice sub-committee that it is particularly keen to see that, for reputational reasons, its own property –the Land Registry Building and its neighboring properties the CGO and the court are registered. Council understands that all pre-application legal work has already been completed by AGC but formal instructions from DOI are outstanding.</p> <p>Even allowing for a concerted cross agency approach to the registration of the Government’s estate it is recognized that it will mark a considerable undertaking and realism is required. Council will not make a direction to all Government departments to register their assets but will task the Department of Infrastructure to work with Treasury to prepare a strategy and timetable for the registration of the bulk of the Government estate by 2030. Council will review this strategy and timetable in February 2022 and consider the question of any further directions once that report has been considered.</p> <p>The current Land Registry fee order exempts Government from having to pay for first registration of its land. Council of Minister’s recognizes that there would be resource implications across Government of imposing a Direction on Departments to register their estate. The costs of identifying and locating Government land</p>

	<p>would fall on the relevant department, the cost of examining title and preparing Land Registry applications would fall to the Attorney General’s Chambers if conducted internally or on the Department if external counsel is engaged. Both would require funding approval. Finally there would be an effect on the resources of the Land Registry in the title award process.</p> <p>Council recommends a target being set for registration of Government assets by 2030. Treasury and DOI are tasked to prepare a strategy to aim to register the Government estate by this date within available resource parameters. .</p> <p>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.</p>
Response	Amend

6	That a reduction of the fee for voluntary registration of land be considered.
	Council of Ministers response
Conclusion 8	The law of adverse possession remains a valid and justified practice within the body of modern land law.
Conclusion 9	More should be done to make voluntary registration appealing to land owners.
Commentary	<p>Conclusion 8 is accepted. Conclusion 9 is accepted. Recommendation 1 is considered to be the appropriate way to deliver on conclusion 9.</p> <p>The current fee for First Registration on a voluntary basis is £75.00. A reduction in this fee is unlikely to deliver a material saving to the applicant.</p> <p>Land Registry fees are a net generator of income to Treasury. Further reductions in fees will lead to a reduction of income from Land Registration fees for Treasury.</p> <p>A review of the Land Registry fees will be conducted within 12 months and the fees charged for voluntary registration will be considered. As the Committee itself comments, a reduction in these fees will have minimal impact on the overall cost of registration.</p>
Response	Agree

Conclusion 10	The power to issue wasted cost orders and to determine what costs should be paid by all parties to any proceedings in the High Court already lies exclusively with the Court.
Commentary	This conclusion is accepted. The Land Registrar and Land Commissioner also enjoy a full cost jurisdiction in proceedings before them.

	The Advocates Act 1995 obligates the fee committee to review advocates fees for conveyancing services every 2 years. The current fee order is 21 years old.
Council Response	Council considers that the time for a review of the Advocates (Conveyancing Fees) Regulations 2000 which control the level of fees advocates can charge the consumer for their services is overdue for review. The Chief Registrar has confirmed that this is currently under review. Council considers that because the current Regulations pre-date the effective commencement of Land Registration that a full review is necessary rather than a simple re-appraisal of existing caps. Council will be required to nominate a representative on the Advocates' Fees Committee pursuant to section 21 of the Advocates Act 1995

7	That an inquisitorial process by the Land 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.
Commentary	<p>Land Registration proceedings before the Land Registrar are already inquisitorial. However, as the frequency of proceedings before the Land Registrar looks set to increase as the Register grows there would be advantage in declaratory legislation confirming that the Land Registry are not acting in way prejudicial to any future determination of applications or proceedings by providing opinions on the content of documents and/or plans at an earlier stage in proceedings than at proceedings on a hearing. This would had the advantage of keeping costs low between applicants. The principle that Registrar hearings should be less formal than court proceedings; akin to Tribunal hearings, is one which should be preserved in the face of challenge from advocates about natural justice issues. Delivery would require a revision of the Land Registry Rules. The Department for Enterprise, via the Land Registry will develop this policy and consult as appropriate on its delivery.</p> <p>This Recommendation is accepted as part of a wider exercise of reviewing Land Registry legislation to be conducted by the Department for Enterprise via the Land Registry.</p>
Response	Agree

Conclusion 11	Manx advocates require more effective and in-depth training on the unique features and operation of land law in the Isle of Man, particularly in comparison to that of England and Wales.
Response	Council notes the Committee's conclusion which will be considered together the Committee's previous findings on Legal Services more generally.

Conclusion 12	A textbook on the unique features and operation of Manx land law should be published and maintained in order to facilitate improved training of advocates.
Response	Council notes this conclusion. It is beyond the scope of the Government to commission such a text book. The Land Registry publishes guidance notes and should continue to do so. Any private sector led textbook will receive such assistance as the Attorney General Chambers and/or the Land Registry are able to provide from available officer resource.

Recommendations NOT made by the Committee

The Committee did not recommend any changes to extend the additional protection afforded to trust beneficiaries to align it with those in England. This was because in the Isle of Man the limitation period is 21 years as opposed to 12 as in England and because trustee beneficiaries can already take action directly to protect their interest in the Isle of Man whereas they cannot in England.

Mr Cleator has subsequently written to all members of Tynwald court alleging that the Committee's failure to make this recommendation is unconscionable. The grounds for this contention are not clear.

Mr Cleator denies that the decisions of the ECtHR are binding on the Isle of Man and that because the case referred to is based on English law it doesn't follow that Manx law is human rights act compliant. A Grand Chamber decision is the highest authority there is on matters on Human Rights Law and is so highly persuasive as to be effectively binding on the UK Supreme Court (and it is assumed on the Judicial Committee of the Privy Council when considering appeals from Insular courts). Accordingly, it is also binding on the courts in the Isle of Man and the Land Registrar when determining matters relating to Adverse Possession applications. The principle that statutes of limitation and the principle of adverse possession are within the margin of appreciation of member states and not incompatible with A1P1 is what the ECtHR judgment referred to established.

Further points raised by the Committee –Centralised Gazette of notices.

An informal recommendation is contained within the Committee's report. Specifically at paragraph 34 that "*in order to alleviate the burden that attempts at notification currently place on the Registry, we would welcome the introduction of a Government Gazette as a central public notification point*"

Commentary: Section 43 of the Legislation Act 2015 (which is pending its ADO) provides for the establishment of an official electronic Gazette. Currently this is limited to the publication of newly enacted legislative instruments. The formalizing of this into a publication of record in which official notices could be served could reduce paid for advertising elsewhere and may result in substantial cost saving for the Central Registry and other areas of government. The Attorney General's Chambers would be required to resource this Gazette. Savings would need to be balanced against wider economic and social benefits as it would translate into a reduction of notice fees in the Island media.

No response to this recommendation is required. Council note the recommendation and will give further consideration to it.