

Land Registry

Landnet

47

May 2015

In this issue

Land
Registry's
customer
magazine



Welcome to *Landnet* 47.

The General Election is now over so we can return to publishing *Landnet* after the necessary break.

In this issue we report on how we've changed our ID forms so they can be completed by two groups of newly authorised conveyancers. Congratulations to the individuals involved on your new professional status and please get in touch if you have any questions for us connected with it.

In the past 12 months we've had two cases in the Court of Appeal and on page 10 we look at the judgment in the second one. You can catch up on the first judgment in *Landnet* 46.

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Contents

News

New Chief Land Registrar and Chief Executive for Land Registry
Next steps for Local Land Charges
New conveyancers and changes to our ID forms
MapSearch video guide updated
Addressing our customers' concerns

Services

Useful tips for finding what you need on GOV.UK
Transaction Data – March 2015

Practice

First registrations and inheritance tax
Changes to entry 1 in the property register for leasehold titles
Forgery and the 'state guarantee' under the Land Registration Act 2002: the Swift case

Publications

Practice guides, annual reports and Landnet archive

Landnet can be made available in other formats on request. If you require *Landnet* in another format, please contact Customer Support using our [online form](#) or on 0300 006 0411.

To receive a bulletin every time *Landnet* is published, please send your name, job title and email address to gavin.curry@landregistry.gsi.gov.uk

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New Chief Executive for Land Registry

Thurrock Council Chief Executive Graham Farrant takes up the role of Land Registry's Chief Land Registrar and Chief Executive on Monday 1 June.

Graham succeeds Ed Lester after Ed stepped down in March. Operations Director John Peaden is currently serving as our interim Chief Land Registrar and Chief Executive.

Graham said: "I am delighted to be taking up this challenging and vital role with Land Registry.

"I look forward to continuing its proud tradition of being the cornerstone the property industry is built upon, while leading it through the next stages of its transformation into a modern, digital organisation providing excellent services to its customers."

Graham is also currently Chief Executive of Brentwood Council. In the recent past he also held the Chief Executive role on an interim basis for the London Borough of Barking and Dagenham. He also spent time in the private sector as Chief Executive Officer of Leisure Connection Ltd.



Graham Farrant

Matthew Hancock, Business Minister at the time of the appointment, said: "I am delighted to announce Graham Farrant's appointment.

"His energy and experience transforming complex organisations will ensure Land Registry continues to deliver a top class service while also embracing an increasingly digital model that will drive the efficiency and ease of use that customers expect."

Graham's appointment follows an open competition overseen by the Civil Service Commission.

Next steps for Local Land Charges

With the election period over it is now business as usual for Land Registry's Local Land Charges (LLC) team. So what can we expect to see over the next few months?

The legislation enabling us to provide our proposed digital LLC service was given Royal Assent in February.

As actual implementation requires a range of secondary legislation and rules to support these changes, a 12-week public consultation will start in the autumn.

Local authorities will continue to receive visits from our dedicated Engagement Team to help us understand their data sets and how they manage their processes.

This information will then inform how we create a single, digital LLC service that will improve access, standardise fees and improve turnaround times for property professionals and citizens.

We will also be exhibiting at the Local Government Association Annual Conference in Harrogate from 30 June to 2 July. Billed as one of the biggest political events of the year and attracting more than 1,200 delegates, the conference is a great opportunity for us to learn from key experts.

Further details about the public consultation and other LLC developments will feature in *Landnet*.

To contact the team please email llcproject@landregistry.gsi.gov.uk

New conveyancers and changes to our ID forms

Our ID forms have been changed so they can be completed by two groups of newly authorised conveyancers.

CILEx Regulation, formerly known as ILEX Professional Standards, has begun authorising individuals and organisations to undertake reserved instrument activities under the Legal Services Act 2007.

This means people so authorised will be 'conveyancers' as defined by rule 217A of the Land Registration Rules 2003 and therefore able to lodge applications direct and verify identity.

These newly authorised conveyancers will be called either CILEx Conveyancing Practitioners or Chartered Legal Executive Conveyancing Practitioners.

Our ID forms

The new versions of our identity forms (forms [ID1](#) and [ID2](#)) were published on Tuesday 7 April. A further revised version of form ID2 was published on Monday 18 May.

The forms have been changed to include verification by CILEx

Conveyancing Practitioners and Chartered Legal Executive Conveyancing Practitioners.

Land Registry has also agreed with CILEx (Chartered Institute of Legal Executives) that all Chartered Legal Executives can now verify identity even if they are not conveyancers. Chartered Legal Executives who are not conveyancers will still not be able to lodge applications for registration direct.

It is also now possible for an officer of the UK armed forces to verify identity for a member of the armed forces operating overseas. This change has been made because of particular difficulties in forces personnel getting their identity verified when serving abroad. Officers of the UK armed forces will not have a general power to verify identity.

Part B of both forms has been redesigned to make it clearer and easier to complete. There are now separate panels for different categories of verifiers.

Each form also clearly states that the form must be completed no more than three months before lodging the application with Land Registry and that the colour photograph must be on photographic paper.

Older versions of the forms can still be used provided the particular verifier is one covered by the form used, the completed form is no more than three months old at the time of lodgement and the photograph is on photographic paper.

[Practice Guide 67 – Evidence of identity: conveyancers](#) explains our identity requirements.

MapSearch video guide updated

The [tutorial video for MapSearch](#), our free digital service for Business e-services customers, has been updated to include the Snapshot feature and the options for changing viewing preferences.

Snapshot allows customers to save their MapSearch results in PDF format.

We've recently been talking to customers about how we can further improve MapSearch and expect to introduce fresh enhancements within the next few months.

How to use MapSearch



Addressing our customers' concerns

At Land Registry we closely monitor levels of customer satisfaction, primarily through our quarterly telephone survey of 300 business customers.

After two successive years of 98 per cent satisfaction we recorded a fall to 94 per cent in 2014/15.

Two issues have been of particular significance to our customers according to the survey: our speed of service on new title registration applications and our new website on GOV.UK.

As we've reported before, in 2014 our intakes were the highest they have been for more than seven years.

We've worked hard to maintain the quality of our work but recognise that this has meant some applications are taking longer to process than before.

We are taking steps to speed up the processing of registration applications, including rebalancing work across our offices and recruiting new staff, but it is likely to be several months before the impact of these is felt.

Also, customers tell us that knowing more about the progress of their applications will help so we are looking at ways of improving our communication on this.

We have also included a question about communication in our customer survey.

We will give more detail about everything we're doing on this issue very soon.

Our website on GOV.UK

The impact of our website's move to GOV.UK is still being felt six months after it happened. Currently 78 per cent of customers are satisfied with it, down from 94 per cent before the move to GOV.UK.

Improvements are being made following customer feedback (see our tips on page 6) and we'll be carrying out further research over the next couple of months. If you'd like to take part please contact us at Customer&MarketInsight@landregistry.gsi.gov.uk

Satisfaction with the Land Registry portal meanwhile stands at 95 per cent.

The methodology of our customer survey is under constant review, with our partner IPSOS Mori conducting face-to-face interviews with customers to ensure it's capturing the right information on the most important issues.

IPSOS Mori analyses the results of the survey on our behalf.

Satisfaction is defined as the percentage of customers who rate a service as excellent, very good or good.



Customer Satisfaction

- Excellent
- Good
- Average
- Poor

Useful tips for finding what you need on GOV.UK

Practice guides

Search for a practice guide

If you know which number guide you're looking for, eg [Practice guide 19](#), type the guide number 'PG19' into the GOV.UK search bar.

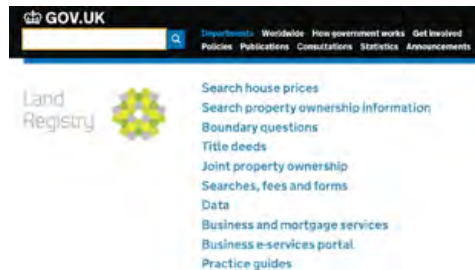
For supplements, eg [Practice guide 40, supplement 5](#) add an 's' like this: 'PG40s5'.

This works wherever you are on GOV.UK.



Browse a list of practice guides

If you want to see a list of all of our practice guides, there's a link on our [home page](#) to a page showing [all practice guides ordered by number](#).



Search within a practice guide

Once you're in a practice guide and you want to search for a specific reference within a guide, use 'Ctrl+F' keyboard shortcut (hold down the Control key and F key at the same time). If you're using an Apple Mac, the equivalent is 'Apple/cmd+F'.

This displays a search box on the top of the page, allowing you to search for a specific term.

Search and find content on GOV.UK

1. Find the Land Registry home page

Use our shortcut www.gov.uk/land-registry.

2. Find things most people search for

Pick from one of the 10 links at the top of our home page, eg [Searches, fees and forms](#), [Business e-services portal](#) or [Practice guides](#).

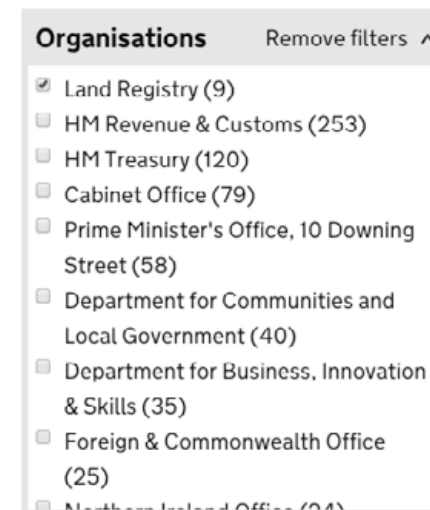
3. Use the search box

Searching from the Land Registry home page means you'll see only Land Registry pages in the search results.

4. Organisations filter

The search box is at the top of every page on GOV.UK. When your results are shown, you can narrow down results to just Land Registry pages by using the 'Organisations' filter on the left of the page.

Filter by:



We need your feedback

As part of our continuous improvement to GOV.UK, we're carrying out user research with our customers (see page 5).

If you have any suggestions or feedback, you can also:

- leave a comment at the bottom of any of our pages on GOV.UK from the link ['Is there anything wrong with this page?'](#)
- send us a question using our [contact form](#)
- post a question on our [customer support forum](#).

[Is there anything wrong with this page?](#)

Help us improve GOV.UK

Don't include personal or financial information, eg your National Insurance number or credit card details.

What you were doing

What went wrong

Transaction Data – March 2015

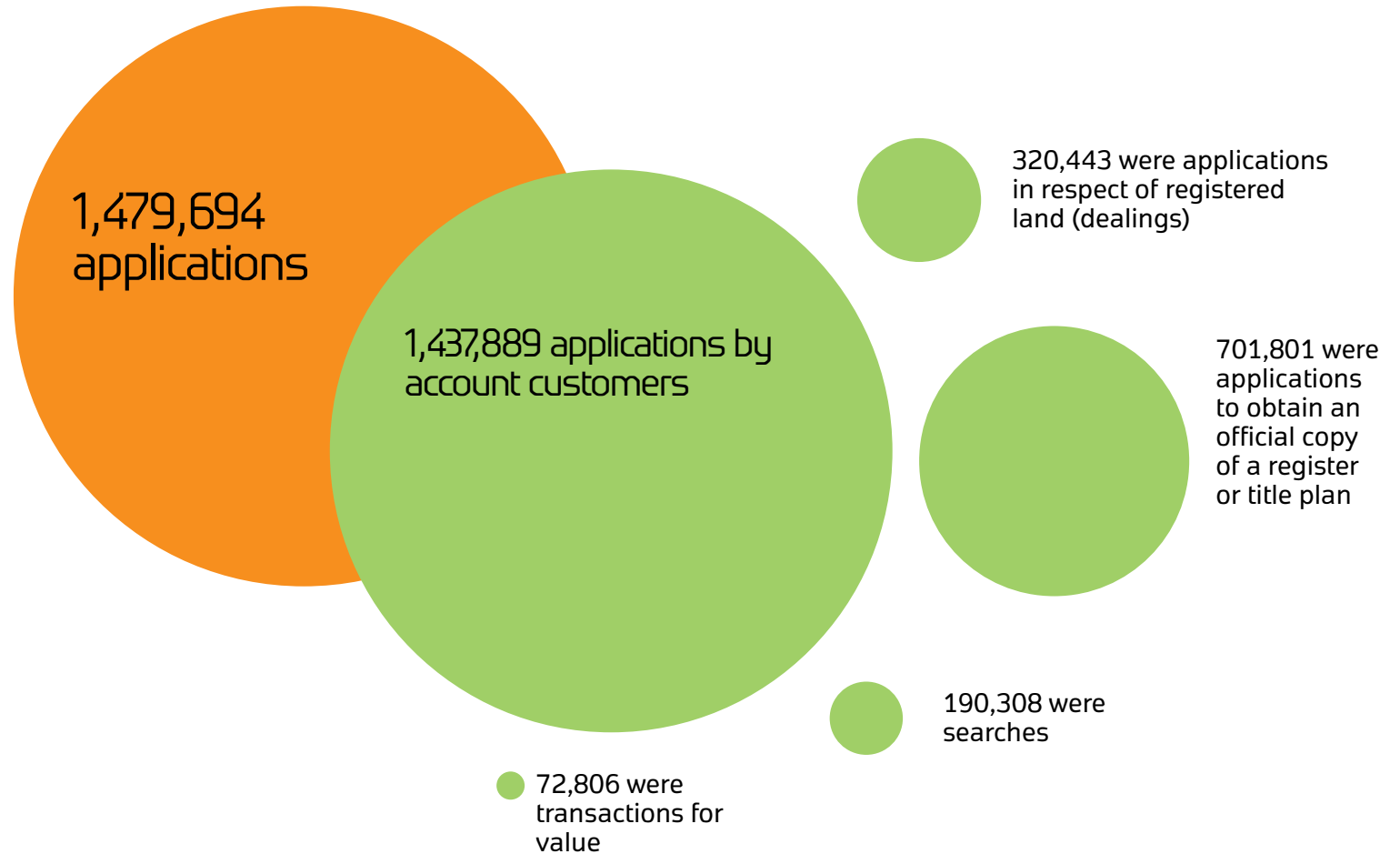
Our Transaction Data is a monthly guide to the applications we complete.

The latest set shows we completed 1,479,694 applications in March, including 1,437,889 by account customers.

Of the latter 320,443 were applications in respect of registered land (dealings), 701,801 were applications to obtain an official copy of a register or title plan, 190,308 were searches and 72,806 were transactions for value.

For the full March figures [see our website](#).

The April figures will be published on Friday (22 May).



First registrations and inheritance tax

On an application for first registration the registrar must, under rule 35(1) of the Land Registration Rules 2003, enter notice in the register of any interest which appears from their examination of title to affect the registered estate. This includes notice of a charge for any inheritance tax (IHT) (or interest on the tax) which might be due.

Where tax on a chargeable transfer (or interest on the tax) is unpaid, HM Revenue and Customs is entitled to a charge ('IHT charge') on any property comprised in the estate. Where a property forming part of the estate is transferred for value then the property is not transferred subject to the IHT charge; however, where the property is assented or gifted (that is, not for valuable consideration) then it passes to the recipient subject to the IHT charge.

The registrar must make an appropriate entry in the charges register on first registration if, from evidence of the applicant's title supplied, it appears to them that the land may be liable to a subsisting IHT charge.

There may be circumstances where an IHT liability arises, even if the value of the deceased's estate is below the maximum exempt threshold; the registrar is not in a position to know what percentage of any exempt threshold may have been used up or transferred, or what other circumstances (for example, a deed of variation of a will, or gift with a reservation) might have affected the tax position.

Situations where the IHT charge may arise

When the property passes on a death

If (a) the property has not been sold since the donor died; (b) the death occurred within six years of the date of the application; and (c) the net value of the donor's estate shown in the probate or letters of administration exceeds the current inheritance tax threshold.

When the donor of a lifetime gift died within seven years of making the gift

When it is known that (a) the donor of a lifetime gift died within seven

years of making the gift; (b) the property has not been sold within eight years of the date of the application; (c) the gift was made within eight years of the application; and (d) the value of the property is in excess of the current inheritance tax threshold.

An IHT charge is protectable by registration of a D(i) land charge and where such a registration exists we will make the following register entry on first registration of the property unless evidence of discharge is supplied:

Land Charges registration number [...] dated [date] protecting a Land Charge Class D(i) in respect of inheritance tax against [Name]. No further particulars were supplied on first registration.

Where the application for first registration is not founded on a disposition for value, for example, an assent or transfer by way of gift, we therefore have to consider whether there may be any liability for IHT, irrespective of any land charge registration.

If it appears from the application

that the property may be subject to an IHT charge, we will write to the customer asking for written confirmation that either no IHT was ever payable, or that it has been paid in full. Alternatively, the customer can lodge written confirmation of this provided by HM Revenue and Customs.

Applicants for first registration can avoid an entry being made in the register or a requisition on this point by providing the requisite evidence that either the land charge has been cancelled, or that inheritance tax is not payable or has been paid in full.

Changes to entry 1 in the property register for leasehold titles

Our [recent change](#) to the way we create title plans for many leasehold registrations that involve a floor level also introduced new wording for entry 1 in the property register.

We have now made two further changes to this entry.

Where a leasehold registration is subject to a floor level, a separate information note will be added after the property description.

Example entry

“The Leasehold land demised by the lease referred to below which lies within the area shown edged with red on the plan of the above Title filed at the Registry and being Flat 4, Smith Street, Anytown, (DA1 4XX).

NOTE: The flat is on the first floor.”

Some existing registers refer to additional parcels of land such as garages, parking spaces

and garden ground within the description of the property in entry 1.

Any additional parcels demised by a lease will only be referred to in the register if they are subject to a floor level limitation such as a basement parking space within a building, or where the additional parcel is subject to a strata inclusion or exclusion. In such cases they will be referred to in an information note.

Example entry

“The Leasehold land demised by the lease referred to below which lies within the area shown edged with red on the plan of the above Title filed at the Registry and being 26 Regents House, Richmond Road, Cowgarth (CK3 8RN).

NOTE 1: The flat is on the first floor.

NOTE 2: The basement parking space is included in the title and excludes the subsoil below.”

This does not alter our policy for the creation of title plans. Additional parcels that fall outside the footprint of the building will continue to be shown on the tenant’s title plan by red edging or other suitable reference.

As with all leasehold titles, the register and title plan must be read in conjunction with the lease to understand the agreement made between the original parties.

This change will not affect services such as [searches of the index map \(SIMs\)](#), [MapSearch](#) or [official searches](#).

This policy change does not currently extend to freehold registers.

Forgery and the 'state guarantee' under the Land Registration Act 2002: the Swift case

A Land Registry lawyer examines the outcome of *Swift 1st Limited v Chief Land Registrar* [2015] EWCA Civ 330

Case No: A3/2014/0725

Neutral Citation Number: [2015] EWCA Civ 330
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
RICHARD SHELDON QC (SITTING AS A DEPUTY HIGH COURT JUDGE)
HC12A03910

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday 1st April 2015

Before :

LORD JUSTICE MOORE-BICK
Vice President of the Court of Appeal, Civil Division
LORD JUSTICE PATTEN
and
LORD JUSTICE TOMLINSON

Between :

SWIFT 1ST LIMITED **Respondent/
Claimant**

- and -

THE CHIEF LAND REGISTRAR **Appellant/
Defendant**

The long-awaited decision of the Court of Appeal in the case of *Swift 1st Limited v CLR* has been handed down. The registrar lost the appeal and will not be seeking permission to appeal further to the Supreme Court.

The case involves complex areas of law and has significant implications in the context of Schedule 8 to the Land Registration Act 2002 (LRA 2002), that part of the legislation which covers the payment of indemnity in the event of mistakes in the register. The case involved a forged disposition; in this case a charge.

Factual background

The case involved facts which are fairly common in these kinds of cases. The claimant for indemnity, Swift 1st Limited ('Swift'), a lending company, claimed indemnity on the grounds that the removal of its charge from the register following alteration amounted to 'rectification' for the purposes of the Act and accordingly that it was entitled to indemnity.

The register was rectified because the charge in Swift's name had been forged and accordingly amounted to a mistake in the register. The registered proprietor of the property had never signed the mortgage deed that gave rise to Swift's registered charge; it was accordingly void, and hence the register contained a mistake. The registered proprietor successfully applied for the register to be altered.

The registered proprietor had remained in occupation of her property throughout the events which gave rise to the mistake.

Arguments

The registrar argued that because the registered proprietor had been in occupation at the time of the disposition, Swift's charge always took effect subject to an overriding interest in her favour. This followed

cont'd

reasoning by Lady Justice Arden in the case of *Malory Enterprises v Cheshire Homes* [2002] EWCA Civ 151.

The registrar argued that as the registered proprietor had the right to have the register altered in her favour (by removing the charge), and as she was in occupation at the time of the disposition, her right qualified as an overriding interest under Schedule 3, paragraph 2 to the Act.

The right qualified as such because Swift had not inspected the property, and to defeat such rights a disponee has to conduct a “reasonably careful inspection of the land at the time of the disposition”. Hence, not having done so, the right to alter was overriding.

Swift argued that this did not matter. It relied upon that provision in the Act which seems specifically designed, at first glance, to deal with this situation; namely paragraph 1(2)(b) of Schedule 8 (‘the deeming provision’) which states:

The proprietor of a registered estate or charge claiming in good faith under a forged disposition is, where the register is rectified, to be regarded as having suffered loss by reason of such rectification as if the disposition had not been forged.

Swift argued that this meant that as it had acted in good faith this was all the court needed to ask itself; it had suffered loss by its security having disappeared and accordingly was entitled to an indemnity to reflect the value of the charge as though it had never been forged.

The registrar countered that the deeming provision did not apply because of the overriding interest, the existence of which rendered the alteration non-prejudicial and, hence, not ‘rectification’. In other words, no loss was suffered because the removal of Swift’s charge (using the reasoning in *re Chowood’s Registered Land* [1933] 1 Ch.574) from the register merely gave effect to an overriding interest.

The registrar further argued that the purpose of the deeming provision was very limited. It was pointed out that the history of the deeming provision went back to the early days of land registration, its predecessor in the 1925 Act having been inserted simply in order to reverse the decision in the case of *A-G v Odell* [1906] 2 Ch 47, and that it was not intended to have any wider impact on the availability of indemnity.

Decision

The court accepted that the registered proprietor did have an overriding interest but that the effect of the

‘deeming provision’ was to undo its impact.

Lord Patten, who led the judgments, considered that had Parliament intended this ostensibly clear provision to be subject to the application of the *re Chowood* principle in the context of forged dispositions, then it would have made this clear in the legislation. Parliament had not done so and, accordingly, the deeming provision effectively “trumped” the overriding interest so as to enable Swift to claim indemnity.

Lord Patten did, however, comment that he had not found the decision an easy one to arrive at. Part of the difficulty had been the impact of *Malory* on what is understood to be the effect of registration. However, one aspect of the decision which is perhaps to be welcomed is the removal of what has been referred to as “The Malory Trust” from the pantheon of suspect legal principles, whereby a disponee under a forged instrument only obtains a bare legal estate, subject to the retained beneficial interest of the defrauded owner. That particular heresy appears to have been laid to rest.

Implications

The decision will no doubt have some effect on the application of the state guarantee in this context. Lenders may seek to rely upon the case as a

basis for making claims for indemnity in these circumstances. The registrar may still be able to argue that the lender has not been careful enough in certain circumstances, but will no longer be able to refer to the effect of an overriding interest where that interest is the right of a defrauded owner to alter the register in their favour.

Some of the legal implications are problematic. For example, what about the case where the charge is not forged but is signed by an owner who simply does not realise what they are doing? This would not be a forgery but a case of being void owing to the principle of *non est factum*. A lender would not be able to rely on the deeming provision in such a case. Anomalies, accordingly, may result from this decision.

Towards the end of his judgment, Lord Patten said: “I have not found this an easy question and it is certainly an issue which deserves to be considered in the forthcoming review by the Law Commission of the workings of the LRA 2002.”

We would forcefully submit that these issues are indeed worthy of such consideration.

Practice guides

You can find the latest versions of all our [practice guides](#) on our website.

Section 4.4.4 of [Practice Guide 1 – First registrations](#) has been amended to clarify that copy deeds sent to us will be scanned and destroyed. A new section 5.8 has been added dealing with inheritance tax.

Section 4.3 of [Practice Guide 5 – Adverse possession of \(1\) unregistered and \(2\) registered land where a right to be registered was acquired before 13 October 2003](#) has been amended to confirm that you need supply only certified copies of application forms and deeds.

Section 2.1.2 of [Practice Guide 8 – Execution of deeds](#) has been amended to confirm that one party to the deed cannot witness the signature of another party to the deed.

Section 9 of [Practice Guide 10 – Official search of the index map](#) and section 2 of [Practice Guide 40, supplement 6 – Other Land Registry plan-related services and guides](#) have been amended to reflect

current policy that Land Registry will issue textual results for official searches of the index map in most cases.

Sections 14 and 15 of [Practice Guide 20 – Applications under the Family Law Act 1996](#) and section 9 of [Practice Guide 63 – Land charges: registration, official search, office copy and cancellation](#) have been amended as a result of changes to contact details.

Section 8.1 of [Practice Guide 26 – Leases: determination](#) has been amended to clarify the need to specify how long rent has been unpaid in relation to forfeiture on peaceable re-entry.

Section 6.4 of [Practice Guide 27 – The leasehold reform legislation](#) has been amended to clarify that a court order for variation under sections 38 and 39 of the Landlord and Tenant Act 1987 cannot be protected by unilateral notice.

Section 9.1 of [Practice Guide 29 – Registration of legal charges and deeds of variation of charge](#) and section 5 of [Practice Guide 30 – Approval of mortgage documentation](#) have been amended to make it clear that when you lodge a scanned image of an

approved charge for registration, the ‘MD’ reference of the charge must clearly appear on the scanned image.

Section 3.3 of [Practice Guide 42 – Upgrading the class of title](#) has been amended to clarify the position for applications which are not first registrations, under which we will still need original deeds or documents to be sent in with Land Registry applications.

Section 3.2 of [Practice Guide 52 – Easements claimed by prescription](#) has been amended to make it clear that a protective entry will be made even if the burdened land is partially registered.

Section 4 of [Practice Guide 54 – Acquisition of land by general vesting declaration](#) has been expanded to give more information about how Land Registry will deal with applications to cancel register entries relating to third party interests such as easements and restrictive covenants. A new section 5 deals with highway land and stopping-up orders.

Section 4.2 of [Practice Guide 77 – Altering the register by removing land from a title plan](#) has been amended to explain more

precisely the legal position of the registrar when an application is made to the registrar for alteration which does not amount to rectification and the registrar has the power to alter.

Annual Report and Accounts

Read our [2013/14 Annual Report and Accounts](#).

Independent Complaints Reviewer’s annual report for 2013/14

Our [Independent Complaints Reviewer’s annual report for 2013/14](#) describes how we responded to the issues upheld by our complaints reviewer.

Landnet archive

Read past issues of [Landnet](#).