

SUBMISSION FROM CONVEYANCING DIRECT

1. Biographical Note: My name is Graeme McCormick. In 1978 I qualified as a solicitor in Paisley. As Renfrewshire was the first operational county for land registration in 1981 I have been closely involved in the land registration process since its inception. I established Conveyancing Direct, Solicitors in Glasgow in 1997. We undertake around 4000 domestic conveyancing transactions each year from Shetland to Gretna. I personally check and draft around 2000 title deeds every year for purchasers and their lenders. My firm is an associate member of the Council of Mortgage Lenders.

2. My Firm's Conveyancing Philosophy: Around 66% of adults in Scotland own heritable property through the purchase of their homes. Many more aspire to home ownership. Many commentators state that the process is potentially the biggest and most stressful transaction most people will make in their lives. Consequently my firm's focus is quite simple: ***If you are a buyer you expect your keys on time. If you are a seller you expect your money on time.*** If either of these objectives is delayed or doesn't happen then the system has failed. That system involves various professions and agencies; these include estate agents, mortgage brokers, lenders, surveyors, banks, insurers, factors, solicitors, local authorities, Scottish Water, British Coal, law enforcement agencies, private searchers and sometimes many more; but most crucially, The Land Register of Scotland.

3/1 The Purpose of the Bill: In my opinion the purpose of legislation is to make life better. This Bill may appear extremely dry and technical and primarily designed for administrative convenience and a wish-list for the Keeper of the Land Register, but in my submission, it offers this Committee and this Parliament the opportunity to develop the land registration system to be more equitable, robust, clear, efficient and in the public interest while greatly improving the conveyancing process for the property buyer and seller and their lenders. The land registration system must also be capable of correction without undue cost or delay to the consumer.

3/2 While I appreciate that this Bill is largely an enabling one there are serious issues which are not addressed in it which have a major impact on the practice of conveyancing and, as a result, the general public. I passionately believe that Parliament should take this opportunity to consider these issues and seek to enforce and direct change. My comments are of a general nature but if thought worthy of further consideration I am happy to make more detailed suggestions.

3/3 While the following issues are not exhaustive they do highlight some of the existing deficiencies which are not directly addressed by the Bill but which the land registration process could and should address.

Issues:

4/1 Title Descriptions

Most title descriptions in Land Certificates are adequate. However that cannot

be said for tenement flats where the descriptions range from floorplans, compass points, various descriptions such as "righthand", "second from the left", "second left", etc. to even reference to a floor in the tenement where one flat cannot be accurately identified from another. Failure to be accurate can cause transactions to be delayed or even fail or involve clients paying for expensive private sector title indemnities. In a robust title system adequacy of a property's description should be paramount. As far as I can judge the proposed measures in the Bill do not provide for a single means of describing a tenement flat.

4/2 Remedy: the Keeper should be required to insist that on any purchase or grant of a standard security (mortgage) on a property there must be a floor plan of the property in a form prescribed by the Keeper indicating the location and extent of the property.

5/1 Servitudes Rights

The Scots Law of Prescription creates rights of access and others through the uninterrupted use over time even if these rights are not conveyed in any written deed. Rights can also be ended by failure to use over a prescribed period. As a general rule the Keeper refuses to mark the Title Sheet or Burdens section with any reference to these rights. As a result the Land Certificate may not be a definitive expression of the extent of the title of a property. As such prescriptive rights do not appear in Land Certificates one of the objects of land registration- reference to one title deed- is not achieved as the full title picture requires examination of other properties' titles and documents and knowledge of local practice.

5/2 Remedy: The Keeper, if requested so to do by the applicant, should be obliged to enter or remove such rights in the Land Certificate but suitably endorsed to exclude her indemnity with the date of said endorsement.

6/1 Errors in Existing Land Certificates

If a solicitor submits an application which the Keeper considers has an error the Keeper may reject the application and charge the solicitor a penalty for the rejection. If however the solicitor finds an error in an existing land certificate or the Keeper's response to an application, the Keeper is not obliged to compensate the solicitor for the error. The solicitor's only recourse is to charge his client or write-off the unpaid work to experience. If these were isolated incidents then the matter would not be worth raising but they can take hours of investigative work by the solicitor. We alone see on average two Keeper's errors in our title examinations each week so if that is multiplied across the land registration activity it is significant and causes delay and extra costs to the consumer. If we assume that on average there are dealings on a property every four years I guesstimate that there are around 40,000 titles with significant defects already registered in the Land Register.

6/2 Remedy: The Keeper should be legally obliged to pay solicitors a correction fee where solicitors identify errors in land certificates as the solicitors are doing the Keeper's work for her.

7/1 Very Important Ancillary Documents

As copies of registered title deeds can be obtained online through Registers Direct there is generally no need for original deeds. However domestic conveyancing transactions regularly require additional documentation to enable transactions to complete. Many mortgage lenders do not now retain title deeds and ancillary paperwork, and with the passage of time and regular remortgaging, such paperwork is lost. There is no national register for this paperwork. Such paperwork would include: NHBC ten year guarantees, planning permission, building warrants, completion certificates and plans, letters of comfort, road bonds, property enquiry certificates, SEPA certificates, specialist guarantees and reports, home reports, architect supervision certificates, etc. Replacement of even one item can cost £100 or more thus adding to the house owners' costs.

7/2 Remedy: There is no reason why the Keeper could not register copies of that paperwork with the land certificate again endorsing same with exclusion of her indemnity. The Keeper could charge a separate fee for registration. The effect of this proposal would streamline sales and purchases and provide a much more useful record of a property and reduce the cost of buying and selling to the consumer.

8/1 Time Limits to Register Titles

While dealings on existing registered titles can be registered within three months of the date of application, first registrations regularly take in excess of one year, and new build properties a staggering five years is not unknown. These timescales are outrageous. Despite solicitors have cobbled together a practical way of undertaking sales and dealings while land registration is incomplete, there are considerable risks to consumers, their solicitors and lenders in the event of the original applications being cancelled, or the Keeper raising requisitions many months and even years after the original application was made.

8/2 Most lenders who lend in Scotland base their mortgage processing and deeds departments in England. The English and Welsh Land Registry appears much more efficient than the Land Register of Scotland so these lenders do not accept that the Land Register should be significantly slower than their English and Welsh counterparts. These mortgage lenders (quite rightly in my view) refuse to adjust their audit processes to take account of the much slower Scottish land registration process. These delays result in lenders and the instructed solicitors in considerable extra work and cost while the land registration is ongoing. Six monthly audit reports are required to be lodged by the solicitor with the lender while land registration is incomplete. If land registration takes 5 years that amounts to 10 audit reports which, on a time-cost basis to the solicitor and lender at a modest rate of £30 per hour, adds £300 to the cost of a purchase all because the Land Register takes so long to complete a title registration.

8/3 Furthermore, solicitors are regularly threatened with losing the right to act for lenders through no fault of their own but through the delays in the completion of land registration of a property title in the Land Register. If

solicitors lose their panel status with lenders they may as well close down their businesses given that around 80% of house purchases involve mortgage lenders. Each year I visit mortgage lenders' deeds departments in England offering them a free seminar explaining to them the vagaries of the Scottish land registration system just to keep them onside with their Scottish panel solicitors.

8/4 Remedy: The Keeper should be required to complete the registration of the title within six months of receipt of the application (subject to specific exceptions) otherwise the Keeper should be in default and liable to pay compensation for delay. Six months would appear to be a reasonable timescale as most lenders will not accept an application for a loan on a property to be purchased where the current seller has owned the property for less than six months. The effect of this would be that the land registration system would be more robust as only dealings where land registration had been completed would be permitted thus avoiding the risk of dealings on incomplete registrations. The principal reason given by the Keeper for the delay in new builds is the updating of Ordnance Survey mapping. I understand that OS rejects this reason, but in any event measures could be put in place to address this before any new build purchase application was submitted.

9/1 Money Laundering and Identity Fraud

Solicitors, mortgage lenders, brokers, estate agents and many more are charged to carry out various checks to help the law enforcement authorities to prevent money laundering, identity and mortgage fraud. It is estimated by the Council of Mortgage Lenders that there is over 1 billion pounds of mortgage fraud in England and Wales alone. I do not have the figure for Scotland, but although the CML acknowledges that the problem is less severe in Scotland due to the Law Society of Scotland's more robust and coordinated compliance regime, Scotland is not immune. Much of this unpaid work on behalf of the state involves considerable repetition with no sharing of information among these enforcement agencies and the professions.

9/2 The police etc. spend millions of pounds each year in detailed detective work to bring fraudsters and money launderers to justice and to deprive them of their ill-gotten gains. The Law Society of Scotland's Financial Compliance Department has detailed guidelines for solicitors which have been created so that almost as much time is spent by a solicitor on an individual transaction assessing whether the client and others involved in the transaction are financially and legally clean than in the conveyancing process itself. This adds greatly to the cost of a conveyancing transaction.

9/3 The purchase of and dealing in property are very popular routes for money launderers and fraudsters yet no attempt is made by the law enforcement agencies to share information with solicitors to prevent these dealings in the first place and radically reduce, if not prevent, criminals using the property system in Scotland. It amazes me that the Keeper has not sought to include some mechanism to help prevent crime using the land registration process. At a recent pre-Bill presentation by the Keeper's staff in Glasgow all the solicitors present were astounded to discover that the Keeper has a stand-over file of title transaction applications which may be fraudulent.

The status of these files is never disclosed to the submitting agent or the mortgage lender or worse still another solicitor who may be undertaking a subsequent dealing on the property in the honest belief that there was nothing nefarious about the original application whose registration is ongoing. This was the first we had ever heard of such a secret file.

9/4 Remedy: Since law enforcement agencies and Registers of Scotland are all parts of government, the law enforcements agencies could provide the Land Register with names and aliases of all criminals, their historic addresses, their relationships with other criminals, the properties they have owned, their spouses or partners and children. On application by a solicitor, the Land Register, for a fee, would provide any information it received from the law enforcement agencies to the solicitor so that the solicitor could then decide if he or she was prepared to act for the individual concerned. Given the Law Society of Scotland's Compliance Regime and the risk assessment solicitors are obliged to undertake, there would quickly be established a practice convention which prevented solicitors acting for such people and thus squeeze the criminals and their associates out of owning or dealing with property in Scotland.

10/1 ARTL Automated Registration of Title in Land

I have participated in any consultation to which I have been invited by the Land Register since ARTL was first suggested. From the start I indicated that our case management system was open access and have been assured over the years that ARTL would be compatible with open access systems in line with government open access policies. Despite several assurances by Land Register staff and visits from them this has not been the case, and we have been forced to use a Microsoft word system. ARTL is very slow and takes much longer to work in a transaction than traditional case management systems. The Keeper tries to encourage solicitors to use ARTL through pressure from lenders (who should know better) and charging less for land registration using ARTL when all that this does is increase the time devoted to each transaction by the solicitor and potentially increases the legal fees accordingly. I am aware that some Land Register officials believe that the ARTL is not fit- for- purpose.

10/2 Remedy: Solicitors welcome a streamlining of the systems of dealing in property. Any involvement by the Land Register must take account of, and be fully compatible with, case management systems which are a considerable financial investment by small businesses. Ninety five per cent of the 1200 legal businesses in Scotland are small businesses. Such investment could be a costly waste of money because the Land Register has failed to incorporate within its system the ability to work with all case management systems. There should be a mechanism that if the Land Register decides to introduce a successor to ARTL which involves solicitors in significant costs to adapt their case management systems to allow them to continue in business, the Land Register should contribute to the cost of adaptation.

10/3 With the advances in technology wherein much of any transaction type can be undertaken by internet exchanges among solicitors and other professionals, the Land Register should be required to restrict its participation

to the Stamp Duty Land Tax and land registration process and not be a participant in the completion of the sale/purchase transaction itself. Instead of the Keeper actively promoting ARTL in its current inadequate format a public acknowledgment of its deficiencies, abandonment of its reduced fee regime and a commitment to work with the ten most active conveyancing practices in the land to develop a functional system would be a major advance on the present situation.

11 Extending Land Registration

While I welcome attempts to increase the number of properties registered, in the light of the guesstimated errors in the current registered titles, I suggest that the Keeper concentrates on completing the land registration of all tenement flats and houses in housing schemes where the bulk of properties are already registered. In many cases the only difference between the title to two properties is the property description, purchaser's details and lender's details. All other title conditions are broadly similar. A drive to fast-track these types of properties at a one-off land registration charge of say £60 (the current basic Land Register charge to register a property purchase under £50001) would be a tremendous help. This approach would provide the Land Register with the opportunity to review existing land certificates to check and correct errors or inconsistencies.

12/1 Measure to Reduce Mortgage Repossessions

My firm was among those consulted by the former Scottish Executive prior to the introduction of the Mortgage-to- Rent Scheme. A short time after its inception we were approached to act for all the sellers which we did for about three years. During that time, which was before the Credit Crunch, it was clear that in many cases the lender promoting the repossession proceedings was not the first security or charge holder, but the second or even third charge holder. What basically had happened was that the house holders were using their houses as cash cows for fund raising and seeking second mortgages from specialist companies at far higher interest rates than the standard mortgage rates charges by their principal and first mortgage lender. In many cases the house holder did not even appreciate that the second loan was charged against his property. Many people will have lost their homes due to unsustainable secondary and tertiary borrowing against their homes. The Land Register has not sought to address this problem.

12/2 Remedy: While not wishing to promote a nanny state there is an issue here for Parliament and government. The first mortgage company invariably has a greater financial stake in the mortgaged property than the householder. The Mortgage-to-Rent and other initiatives involve the state in considerable expense to support distressed householders. Would it not be reasonable and in the public interest therefore for the Keeper only to accept an application for such a second security or charge from a specialist secondary or tertiary lender provided that the holder of the prior charge consents to the secondary or tertiary charge?

13 Conclusion

Where legislation on the face of it may appear technical and administratively enabling there is no point to it unless its end result improves the experience of the consumer and the society the legislation seeks to serve. The Keeper may argue that this Bill is not the forum for considering inadequacies of the present service provided by the Registers of Scotland nor to detail the incremental improvements the Register could provide in a cost neutral way due to its ability to charge for its services. I, and I hope you, reject this. While Civil Service vision is important, that vision should not obscure the fact that much public money, including some expended by the Registers of Scotland, has been lost due to systems which were not fit-for-purpose when less sophisticated but more incremental and less technically challenging processes can produce greater practical benefits to more people and reach a similar or more enhanced destination than that originally envisaged. I trust this Committee will not look on this Bill as a technical yawn but an opportunity to investigate current practices and how changes can be made from which home owners present and future, who make up the majority of your electors, will see the benefit soon.

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11 January 2012