

Land Property Registration in the United Kingdom Faces Unresolved Challenges and Misaligned Aims

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Introduction

This analytical approach aims to critically examine the complexities of property law, with a relevant focus on competing rights over land, especially conflicts between mortgage lenders and neighbours with easements or restrictive covenants. The paper discusses the tension between legal and equitable rights, added by the detection of challenges posed by unregistered titles, and the lack of public records for unregistered estates. The core approach also addresses the doctrine of notice, issues in conveyance, and the role of the Land Registration Act 2002, exploring ongoing challenges and proposals for future reform in property law.

Competing Rights Over Land

I agree with the context that competing rights over land in the UK have led to legal conflicts. The reason is the involvement of multiple parties claiming rights over the same property. Irrespective of the creation of a register under the Land Registration Act 2002 to reflect legal ownership, this kind of conflict remains unresolved because of the competing equitable interests. In most cases, it is held by beneficiaries under a trust or rights like easements or restrictive covenants. This is justified by the case of *Williams & Glyn's Bank v Boland* (1981)¹, where the House of Lords held that a wife's beneficial interest in a matrimonial home, despite being unregistered. This could override the bank's legal charge due to her actual occupation. This case led to the protection of equitable interests in matrimonial property, even if they were not reflected on the title deed; and affirms that actual occupation provides legal protection under the Land Registration Act 1925.

However, in a more recent case, *Chhokar v. Chhokar*² [1984] FLR 313; [1984] Fam Law 269 under the Land Registration Act 2002, the registered legal titles prevailed despite knowledge of an unregistered equitable interest. It is significant to mark that though this

¹ *Williams & Glyn's Bank v Boland* [1981] AC 487 established that a spouse's unregistered equitable interest in a matrimonial home could override a registered mortgage if the spouse was in actual occupation of the property. The House of Lords held that actual occupation provided sufficient protection under the Land Registration Act 1925, emphasising the importance of considering the rights of occupiers in property law.

² In *Chhokar v. Chhokar*, the wife claimed an overriding interest in the property, asserting she was in actual occupation despite temporarily leaving for hospital care, while her husband sold the house without her knowledge. The court ruled she remained in actual occupation, but declared both the wife and the purchaser as tenants in common in equity, with the purchaser receiving credit for paying the mortgage.

system enhances transaction certainty, it neglects individuals with unregistered equitable rights, and as such, it leads to potentially unfair outcomes. The exception of the Land Registration Act for overriding interests offers some protection, which is however limited. Thus, I insist on reforming the Land Registration Act to balance the protection of equitable interests with the need for a streamlined, transparent system, which can ensure fairness and clarity in property ownership rights for all stakeholders.

Conflicting Interests: Mortgage Lenders vs. Neighbours with Easements or Restrictive Covenants

As the Land Registration Act 2002 attempts to resolve conflicting interests between mortgage lenders and neighbours with easements or restrictive covenants by creating a clearer registration system, it also challenges easements or covenants that are not registered. This is evident in the case of *Abbey National Building Society v. Cann* (1990)³, where the mortgage lender's charge was upheld over a long-standing restrictive covenant. Although the Land Registration Act 2002 provides clarity on the priority of registered rights, it does not fully resolve issues where unregistered equitable interests, such as those of neighbours, are overlooked. The failure to register these interests, as required under Section 27(2), creates uncertainty, allowing mortgage lenders to maintain priority in cases of foreclosure. This highlights the instance of the continued challenge of reconciling competing interests in property transactions despite legislative reform.

Legal and Equitable Rights

In the case of *Walsh v Lonsdale* [1882]⁴, the Court of Appeal held that equity, instead of common law governs the enforceability of a lease agreement even if it was not formalised by a deed. In this case, a landlord (D) and a tenant (C) had an agreement for a seven-year lease, but without a deed, which should be entitled under common law. Irrespective of such condition, the Court found that the principles of equity prevailed under the

³ In *Abbey National Building Society v Cann* [1990] 1 AC 56, the House of Lords held that a mortgage lender's charge takes priority over a restrictive covenant on the property, even if the covenant affects its use, provided the mortgage is registered. The court ruled that the mortgagee's interest was not defeated by the unregistered covenant, as the completion of the mortgage transaction and the transfer of the property were considered part of the same process.

⁴ In the landmark case of *Walsh v. Lonsdale*, the court ruled that an agreement for a lease, even if not formally executed, is still enforceable in equity, binding the tenant to the same rights and obligations as a legal lease. This means the tenant must pay rent according to the agreed terms, as equity treats what should have been done as if it were already done.

Judicature Acts for establishing that equity precedence as it comes in conflicts with common law. The Court ruled that possession of the property under the agreement constituted an enforceable lease in equity. This leads to the demand validity of the landlord's rent in advance. As such, the case highlights the ongoing tension between legal and equitable rights.

In a critical point, the Land Registration Act 2002 aims to clarify the priority of registered legal rights over any kind of equitable aspect; the conflicts persist in cases of unregistered leases or easements, as they are unprotected or are inadequately registered. As in the case of *Walsh v Lonsdale*, this difficulty in reconciling legal and equitable interests reflects the complexity of ensuring fair protection of all parties who are integral to the property transactions.

To disagree with the context, it is evident that the case of *Walsh v Lonsdale* (1882) challenges the idea of equitable rights for unregistered leases. This created relevant concerns about conflicts in property law. It is by the case of *Swift 1st Ltd v. The Chief Land Registrar* [2015]⁵, that the respective court upheld equitable interests, in case they are not properly protected by registration. It also restricted the binding of the third parties who acquired legal ownership of the property. From the case of *Swift 1st Ltd v. The Chief Land Registrar* [2015], it was clarified that the intention of the Land Registration Act 2002 is to prioritise registered legal interests and thereby pave the way for a clearer framework for property transactions, reducing the impact of unregistered equitable rights. The decision of this case resolved the conflict by ensuring that registered legal rights take precedence and have limited effect on unregistered equitable interests.

The Complexity of Unregistered Titles

Unregistered titles are noted as complicated property transactions as they have difficulty in verifying ownership, added by the hindrance of rights attached to a property. In the case of *K-Sultana Saeed v Plustrade Ltd* [2001] EWCA Civ 2011⁶, the instance dispute

⁵ Swift initiated proceedings against the Registrar, seeking indemnity under Schedule 8 for the loss of its charge. Mrs. Rani's registered title to the property remained subject to Swift's registered charge, as long as the charge was protected by registration.

⁶ The case of *K Sultana Saeed v Plustrade Ltd* highlights the complexity of unregistered titles under the Land Registration Act 2002, where a dispute over an unregistered right of way demonstrated the challenges in identifying and proving unregistered interests. Key issues include the uncertainty created by overriding unregistered interests, difficulties in proving unregistered rights through evidence like deeds and witness statements, the complexity of adverse possession, and potential disputes over disclosure requirements, leaving buyers exposed to unforeseen liabilities.

arose over an unregistered right of way, which is liable to be protected against a registered purchaser. The case showcased hurdles in identifying further proving unregistered interests. In this case, the challenge of Schedule 1 Unregistered Interests gets reflected that remains under the Land Registration Act and permits certain unregistered rights to get marked as enforceable against a registered proprietor, even though the property is not formally registered. As such, is a state of uncertainty that is often hard to identify the full range of rights and the related obligations attached to a property.

Moreover, the complexity is *Proof of Unregistered Interests* demands substantial evidence, added by historical deeds, the statements of witnesses for confirming an unregistered right. This process of evidence-gathering is very time-consuming and can get contentious, which can cause disputes over the validity of claims.

There is also the issue of Adverse Possession complicating concerns related to people acquiring ownership rights to land through continuous as well as uninterrupted occupation over a specific duration. As marked by the case of *Hunt v. Luck* [1902] 1 Ch 428⁷ referred to the challenges in property law over the concern of unregistered estates and the doctrine of notice. In this case, with a mortgagee's responsibility to investigate rights tied to unregistered land, the respective court ruled that a purchaser or mortgagee must make inquiries about interests visible on the property. This is marked to involve tenants in occupation. However, the court limited the duty of investigation and further clarified that it does not extend to discovering any complicated interests like the act of collecting rent by the landlord. This case pointed out the hurdle of unregistered conveyancing where the absence of a public record means purchasers must rely on visible occupation to uncover interests, but it is critical to mark that the purchaser is not required to investigate beyond that. Irrespective of LRA 2002 referring to some of such hurdles, the doctrine of constructive notice still places a burden on buyers, as seen in *Hunt v. Luck*, where the notice was tied to what could be reasonably discovered.

This proves that the Land Registration Act lacks clear and sufficient evidence of occupation, and thus causes legal ambiguity. Eventually, there is the concern of Disclosure Requirements, which is an obligation on sellers to disclose known unregistered interests. However, the cause of the disputes over 'known' information is subject to expose buyers to unforeseen liabilities led under undisclosed interests, led by the transaction.

⁷ *Hunt v Luck* [1902] 1 Ch. 428

Challenges in Conveyancing

Indeed, the Land Registration Act 2002 of the United Kingdom has greatly improved the proceedings of property transactions by mandating compulsory registration under Section 4. This has reduced disputes and protected bona fide purchasers. However, the transition to a fully registered system has been slower than expected, as there are still many properties, which are unregistered or are facing delays in registration. As such, there are uncertainties about ownership. While LRA 2002 attained some incremental improvements, especially through the streamlined conveyancing processes and has reduced title investigations; there remain many backlog challenges.

It is significant to note that the common concerns of the conveyancing process under LRA 2002 are chain delays due to situations where the buyers or sellers pull out or remain static with the mortgage issues. Property surveys reveal defects and title issues, especially in instances where boundary disputes, missing documents, or restrictive covenants appear to be critically troublesome. Unapproved property changes without retrospective planning or building regulation approval are some of the common hurdles of LRA 2002 maintenance. It can be noted that while property searches may uncover planning proposals, many environmental concerns restrict dispute resolutions. Delays in securing mortgage offers and missing planning permissions or title deeds are critical to handle. The legal issues or debts comprising the seller and disputes with the leasehold or freeholder, along with service charges, further complicate the process.

On the brighter side, Martin Dixon (2003) noted that the LRA 2002 has attained many acknowledgements for its efforts to modernise and simplify land conveyancing in England and Wales. Since October 13, 2003, LRA transformed its 1925 Land Registration Act through a fully operational electronic conveyancing system, with effect from 2006. It is through the Electronic Communications Act 2000 s8⁸ that LRA addressed systems that no longer suited the social and economic conditions of their eras⁹. While the 1925 Act is still regarded by some as disruptive to property law, the 2002 Act has faced similar scepticism, especially regarding its implementation of electronic conveyancing.

However, with critical introspection, it has been noted that although the need for e-conveyancing is undisputed, many concerns impacted the 2002 Act over the implication

⁸ LCD consultation document, e-conveyancing, A Land Registration Consultation, May 2002

⁹ Electronic Communications Act 2000, UK Public General Acts 2000 c. 7 Part II s. 8

of traditional land registration principles. The Electronic Communications Act 2000 s. 8 added substantive reforms designed to ease the transition to a system where registration alone confers title. However, these changes are expected to take effect before e-conveyancing is fully implemented. There remains the core challenge in the unintended consequences of substantive reforms taking effect before e-conveyancing gets operational and further creating uncertainties. These reforms may alter the landscape of registered land, and courts could exploit these uncertainties, potentially undermining e-conveyancing's intended functionality before it is fully implemented.

Proposals for Reform

The reform proposals for the UK Land Registration Act 2002 from this critically analysed paper would aim to address the concerns related to the conveyancing process. The reformation appeal will focus on improving coordination among parties involved by bridging loans or extending completion dates to manage delays. There is also the appeal for conveyancers to be facilitated towards negotiations for repairs, price adjustments, or relevant arrangements related to property surveys or inspections. Title issues must be addressed through obtaining missing documents, investigations, negotiating with neighbours, or resolving restrictive covenants. In terms of resolving unapproved property changes, indemnity insurance or retrospective approvals are highly suggested. Prompt responses to mortgage applications with complete documentation are recommended by this analytical paper and it is encouraged that the proceedings avoid delays. Leasehold-related disputes should follow negotiation or there should be scope for legal action towards unresolved issues. Finally, missing documents must be replaced, and any legal debts of the seller must be resolved before the sale.

Conclusively, the UK land registration system, under the Land Registration Act 2002, is generally effective, requiring only incremental improvements. However, significant unresolved challenges remain, and the system's goals do not fully align with practical realities. Substantial reform is necessary to address registration gaps and clarify competing property rights.

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