

The Open Register

A paper by Joe Timothy, Director of Legal Services, H M Land Registry prepared for Registering the World – The Dublin Conference 2007

Introduction

For the first 128 years of the existence of Her Majesty's Land Registry, there was a fixed rule that, with very limited exceptions, the register of title could only be inspected or copied by the registered proprietor or by persons authorised by the registered proprietor.

On 3 December 1990 the land registration world changed. The owner's consent was no longer required. Instead the amended Land Registration Act conferred on 'any person', subject to payment of the prescribed fees, the right to inspect and obtain copies of the register and the documents referred to in the register and held by the registrar.

This paper examines that change and its consequences, some of which are still working themselves through.

History

Her Majesty's Land Registry has its origin in the Report of the Commissioners Appointed to Consider the Subject of the Registration of Title with reference to the Sale and Transfer of Land. The Commissioners, who were appointed in January 1854, reported to Parliament in May 1857. They recommended that a register of title be established and, even though their report did not expressly recommend it, they seem to have taken it for granted that the register would be open.

After dealing with formalities the Commissioners' report begins with an approving description of the advantages of registration.

'In earlier periods of our history publicity was considered essential in almost all dealings with property. The transfer of the immediate freehold in possession was made notorious by livery of seisin; the transfer of the remainder or reversion was made equally notorious by the attornment of the tenant of the estate in possession, by which he recognised the new proprietor; the surrender of copyholds, followed by the admission of the copyholder, was an open avowal in the presence of the lord, and before the whole homage, that an old tenant had died or disposed of his interest, and that a new tenant had come into the manor and taken his place; fines and proclamations were public acknowledgements in the King's Courts that an estate which was supposed to belong to one man was in truth the property of another; while easements, such as rights of way and rights of water, were evidenced and kept in existence by the notoriety of continued user and actual enjoyment.'

The Commissioners then referred to the Statutes of Uses and Enrolments, measures passed in 1536 during the reign of King Henry VIII. They said

'By them the Legislature sought to abolish that secret transfer of land which had begun to prevail by means of private confidences, enforced by the jurisdiction of the Courts of Equity. ... But the object of these provisions was soon evaded by a subtle construction and contrivance; and instead of giving publicity and notoriety to equitable transfers, the Statute of Uses was so interpreted as to make even legal conveyances, what they never were before, secret. So obvious were the evils resulting from this change, that from the time of James the First to the present, repeated attempts have been made to remedy them by means of public registration, but made in vain. ...It appears ... that the principle of registration has been constantly recommended by the ablest lawyers and statesmen; that this principle has been repeatedly recognised by both Houses of Parliament separately, though they have failed to agree in the details of a measure which might pass into a law; ... that as early as the reign of Charles the Second this uncertainty of titles to estates was deemed to be "one cause of the decay of rents and value of lands"; and that the same conviction, instead of being diminished, has been so much strengthened by subsequent experience, that upwards of twenty bills have within the course of the last twenty years been brought into Parliament for the purpose of establishing systems of registration.'

Later in their report, when discussing other registers then in existence (registers of judgements, of annuities and of bills of sale and local deeds registries in Yorkshire and Middlesex) the Commissioners say

'It is important to observe that this institution of registry has always, in each of its several forms, been directed to the attainment of one specific objective of public policy, and founded upon a regard to one broad and distinctly defined interest of the community; namely the security of title and of transactions by means of notoriety and the perpetuation of evidence.'

It is no surprise, in the light of these and other comments in the report, that an outline Bill, prepared by one of the Commissioners and referred to with approval in the report, contains a clear provision for a general right of inspection of the register and of any documents deposited in the register office.

One of the members of the Royal Commission was Sir Richard Bethell, first as Solicitor General and from 1856 as Attorney General in the Liberal government of the day. Some five years later, as Lord Westbury, the Lord Chancellor, he brought the Bill to Parliament which, in due course, became the Land Registry Act 1862. As a signatory of the 1857 report it must be assumed that Lord Westbury had accepted the principle of an open register. His Bill, nevertheless, was drawn on the basis that the new register would be available for inspection only by, or with the authority of, the registered proprietor. Apart from one oblique remark by the Conservative front bench spokesman in the House of Lords there appears to have been no reference to this change of direction in the debates in either House. It may be that the presence in the House of Lords of most of the major landowners of the time had some influence on this aspect of the Bill but that can only be speculation. In any event, neither the register put in place by the 1862 Act nor its successor, established by the Land Transfer Act 1875 and continued by the Land Registration Act 1925, were open to public inspection.

This secrecy, or privacy as we used to call it, became such an entrenched part of our system that it was often put forward as one of the advantages of land registration in England and Wales. In 1958 Sir George Curtis and Theodore Ruoff, the then Chief Land Registrar and Senior Registrar respectively, had this to say about the subject in the first edition of *The Law and Practice of Registered Conveyancing*.

'The Statute of Uses, by the interpretation placed upon it, enabled legal conveyances to be made in secret and thus was born the English system of conveyancing by deeds kept in private custody to which no one has access save the person to whose property they relate. The framers of the land registration system could do no otherwise than adopt this principle of secrecy and so well did they succeed that today there is greater privacy in the register of title than under the system of unregistered conveyancing, for in the latter case incumbrances, including puisne mortgages, must be registered under the Land Charges Act 1925 in registers open to public inspection, for a fee of one shilling.'

There is nothing in their work to suggest that the learned authors did not honestly believe this statement or that they had any ironic intent. However, the 1857 Commissioners deserve at least some of the credit for framing the land registration system and, as we have seen, they deployed the '*subtle construction and contrivance*' of the Statute of Uses as an argument for openness, not secrecy.

Position pre-1990

The practical consequence of this restriction of inspection was that, with very few exceptions, the register was used only for conveyancing purposes. Even then, the conveyancers acting for the buyers received an authority to inspect the register from the sellers' conveyancers only after exchange of contracts for the sale. Until then the buyers had to make do with a copy of the register supplied by the sellers rather than obtained directly from the registrar.

Until 1976, when the rules were changed so that the price paid for the property was no longer recorded in the register, these copies were, more often than not, incomplete, the details of the price paid by the sellers having been cut out. The usual practice was to send the excised pieces to the buyers only when they were contractually bound to complete the purchase.

The Court always had a residuary power to permit inspection of the register and, over time, a few other exceptions were made to the privacy principle. So, even before 1990, the police, official receivers, trustees in bankruptcy and other investigatory and enforcement authorities were permitted to see registers relevant to their duties without the agreement, or even knowledge, of the registered proprietors. The process required that some senior representative of the inspecting authority sign a certificate as to the purpose of the inspection – for example, that there was reason to believe that the register would disclose information relevant to the investigation of a criminal offence. It was not unknown for the police to be refused sight of the register on the grounds that the certificate had only been signed by a Chief Inspector rather than a Superintendent as required by the rules.

Opening the register 1990

Pressure to open the register had been building for some time before Parliament finally passed the enabling legislation in 1988.

In 1973 the House of Lords, while considering a Land Registry Bill, discussed an amendment that would have required an open register. The government secured withdrawal of the amendment, which had been well supported in the debate, by giving assurances that the Law Commission was to consider the issue.

In 1984 the Law Commission undertook fresh consultations on the issue and, in 1986, finally recommended that the law be amended to allow any person, on payment of a fee, to inspect the register. In justifying the change they said

- that virtually all other jurisdictions (including Scotland and Northern Ireland) had no similar restrictions on public access,
- that even in England and Wales there were many public registers (for example, probates and births, deaths and marriages),
- that ownership of land was a matter of legitimate public interest (for example, to persons promoting the preservation of public footpaths) and of legitimate private interest (for example, to tenants and developers), and
- that an open register could contribute significantly to the simplification of conveyancing.

The draft Land Registration Bill prepared by the Law Commission was in the event introduced to the House of Lords not as a Government Bill but as a private member's measure by Lord Templeman, then one of the law lords (the senior judges who are the only members of the House who sit when it is exercising its judicial function). On its second reading, in November 1987, the Bill received unanimous support and by March 1988 it had passed through all its stages in both Houses and received the Royal Assent.

Even with Government support this was quite rapid progress for a private member's Bill. But Parliament's favourable view of the Bill in was not universally shared. *The Times* of 9 December 1987, under the headline '*Land Register Bill splits Law Society*' reported

'The Law Society and the Country Landowners' Association have been the chief opponents of the Law Commission's recommendations, arguing that an open register will make frauds easier. They say it would enable wrongdoers to obtain land or charge certificates and deal with the property, for example, to obtain a loan on the security of it, particularly when the owner was absent. ... Opponents of the Bill also argue the register was introduced on the basis that strict confidentiality was observed and to open it would be a breach of faith; and that to open the register would discriminate between the owners of registered and unregistered land.'

Land Registry records reveal that, although we had been quite sanguine at the time of the Law Commission's consultation, we started to get cold feet when the Bill was introduced and we put forward both technical and practical arguments against its progress. As to the former, we were gently advised that since the Lord

Chancellor had himself encouraged Lord Templeman to bring forward the Bill he was not now about to suggest that it was irredeemably flawed. However, the practical arguments received a more sympathetic hearing. These were along the lines that Land Registry simply did not have the resource to cope with an influx of applications for inspection and official copies of the register and filed documents. As of November 1987 there were 915,000 uncompleted registration applications, representing a backlog of 75 days' work. Applications for dealings with registered land took an average of 51 working days to complete and new titles (first registrations, leases and subdivisions of existing titles) took 140 working days. In recognition of these difficulties it was agreed that the new Act would not come into force before 1990 and, in the event, it was December of that year before the public right to inspect the register, and the documents referred to in it, finally took effect.

By then the operational situation was just about starting to improve, following a substantial downturn in the housing market at the end of the 1980s. The impact on resources caused by opening the register was not as great as anticipated. By way of comparison with the 1987 position it may be worth mentioning that, with a workload increased many times over and only 50% of the staff, we now hold only 165,000 uncompleted applications, most of them because we are awaiting replies to queries that we have raised with the customers. We complete 84% of the applications, including those on which we have queries within 15 working days and 87.5% within 18 days. In fact most applications are now addressed and, where possible, completed and despatched on the day we receive them.

Consequences

The immediate consequences of opening the register were not very dramatic. As the chart and table at the end of this paper show, although there was a modest rise in the number of official copies supplied in 1990/91, the year in which the register was opened, there was a significant fall in the next year and, probably due for the most part to a stagnant housing market in the early 1990s, it took another four years before we got back to the level of 1990/91.

The table also shows, however, that since 1996/97 the demand for copies and views of the register has increased with ever greater speed each year. In 1996/97 we held just over 16,000,000 registers and we supplied nearly 2,500,000 copies or views, roughly one for every 6.5 registers. By 2006/07 we had increased our register stock by just over 30% to around 21,000,000. In the same year we supplied nearly 16,400,000 copies and views, one for every 1.3 registers and more than 6 times as many as we had been supplying ten years before.

So far as the early years are concerned, these statistics probably need to be treated with some caution. The systems of counting have changed to some extent and, because of the ways that we used to bundle documents, there may have been some undercounting. However there have been no such changes in recent years and, since virtually all copy and view applications are now serviced electronically, the figures are much more reliable. They paint a remarkable picture and the trend is clearly upwards.

We have not carried out any scientific study to discover the reasons why people want to buy more register information from us. Probably such a study would not be viable. So many changes are happening at the same time inside and outside Land Registry that we often find it almost impossible to account for a particular advance by pointing to one or two factors and to say that it came about 'because we did this' or 'because that happened'. But it does seem to me to be that all the following matters were significant.

1. In 1992/93 we established our Direct Access service, the first electronic links to our customers. It was initially aimed at conveyancers although soon started to attract other customers who were interested in the information that we hold. It gave customers the ability, for the first time to access limited amounts of information and to order official copies and searches of the register through their computers. By the following year the service had been expanded so that customers could view the register on screen, without having to order an official copy. As will be seen from the table, there were 8,544 register views in that first year, only 0.5% of the total copies and views supplied. By 2006/07 register views had overtaken official copies, even though by then copies were themselves supplied electronically as PDF files.
2. Further electronic services followed. Direct Access was superseded by Land Registry Direct, still aimed at the professional user but a more sophisticated service which was delivered through a web browser and, ultimately, over the internet. This service allowed images of title plans and scanned images of documents filed with the register also to be downloaded. Again the table demonstrates how the appetite for those services has grown since they first became available.
3. Land Registry also supported the development of, and has made data available through, a separate network, the National Land Information Service. This service was principally aimed at conveyancers and, unlike Direct Access and Land Registry Direct, it gave access to information held by bodies other than Land Registry – for example, the local authorities who in England and Wales hold their own registers of local land charges. Although we have always supplied substantially more information through our own services, NLIS has contributed some of the growth in demand.
4. In 2003, with some trepidation, we piloted a new service aimed at the general public – Land Register Online. This gives anyone with a credit card access to copies of registers, title plans and filed documents. A principal reason for caution was the unprecedented demand experienced by the Public Records Office when they made the 1901 census records available online at around the same time, resulting in their service falling over and having to be temporarily withdrawn. Fortunately, or unfortunately, we found that the demand for our information was not so great although, since we launched the full service with some publicity in January 2005, there has been a steady flow of business through that gateway also. The restoration of price paid information to the register for transactions registered after March 2000 has undoubtedly added to the general interest in register information.

5. More than 15,000 organisations now hold a live Land Registry Direct account. Even from the early days of Direct Access we were aware of the interest in the service outside the conveyancing community and over the years we have marketed the service quite widely. Customers now include local authorities, police forces, public utility companies, credit reference agencies, estate agents and many other professions.
6. Market research over the last year has given us a greater understanding of the breadth and variety of potential applications to which our information could be put. We are currently developing some new pilot services on a commercial basis which present the information from the register not just as a copy or register view but in ways that better meet the customers' particular business needs. Examples include:
 - Debt recovery organisations who seek confirmation of property ownership before commencing legal proceedings.
 - Monitoring of changes in property ownership where the change would affect a contractual relationship – for example, an estate agent whose commission becomes due when the sale of the marketed property is completed.
 - Supplying information about property interests and adjacent titles in areas of potential road, rail and other infrastructure developments.

Criticisms

Although the arguments advanced against the Bill in 1988 soon died down we still occasionally receive complaints based on a perceived breach of privacy. More often than not these relate to the presence of price paid information on the register. Some property owners are still horrified by the idea that their neighbours can find out, for a fee of £3, how much they paid for their house.

Until a few weeks ago I would have had little more to report by way of public criticism. However, a phone call from the BBC to our press office late one Friday afternoon showed that the openness debate is not entirely over and resulted in one of my colleagues appearing on the BBC Breakfast sofa on the following Monday morning.

The BBC's interest had been aroused when one of their presenters discovering that a scanned image of his mortgage was available online. This he alleged would be like gold dust to anyone intent on stealing his identity, since it contained both his account number with his lender and his signature. He made these points quite forcibly in his piece to camera and emails received from the programme's viewers made similar points.

In responding the Land Registry representative explained why the information was publicly available and made the point that an open register helped to combat fraud, in that it prevented people from representing themselves as the owners of a property registered in someone else's name. He also said that, as is the case, we have no evidence that any fraud has resulted from the availability of open register information from Land Registry.

The way forward

It is probably fair to say that neither side emerged from the debate as a clear winner. But even though we did not agree with the specific charge made, the discussion and the interest that it has generated has caused us to look again at our procedures. Our internal review is still ongoing and we have not reached any decisions. But we do appreciate that the issue is not just about whether Land Registry should be obliged to make the register and filed documents available for public inspection. Even if this is accepted, there is a separate question about the channels that we use in discharging that duty. Is there a justification, for some classes of documents, to say to customers that before seeing them they must identify themselves to us, either by visiting one of our offices or by applying in writing for a paper copy to be sent to them by post?

Although we do not believe that any instances of fraud to date are directly attributable to the availability of open register information, it is undeniable that fraudulent transactions and registration applications are on the rise. For example, in the current quarter we expect to pay indemnity claims of about £2,400,000 and 49% of this amount will be accounted for by 8 separate claims based on fraud. This is a relatively small number when set against the millions of applications which we will process in the quarter but nevertheless the amount payable is significant and will have to be funded out of the fees paid by our customers. That is why Land Registry has now resolved that fraud prevention and detection must be one of its main priorities. To that end we have established a dedicated Registration Fraud Unit and adopted an anti-fraud strategy to address this threat.

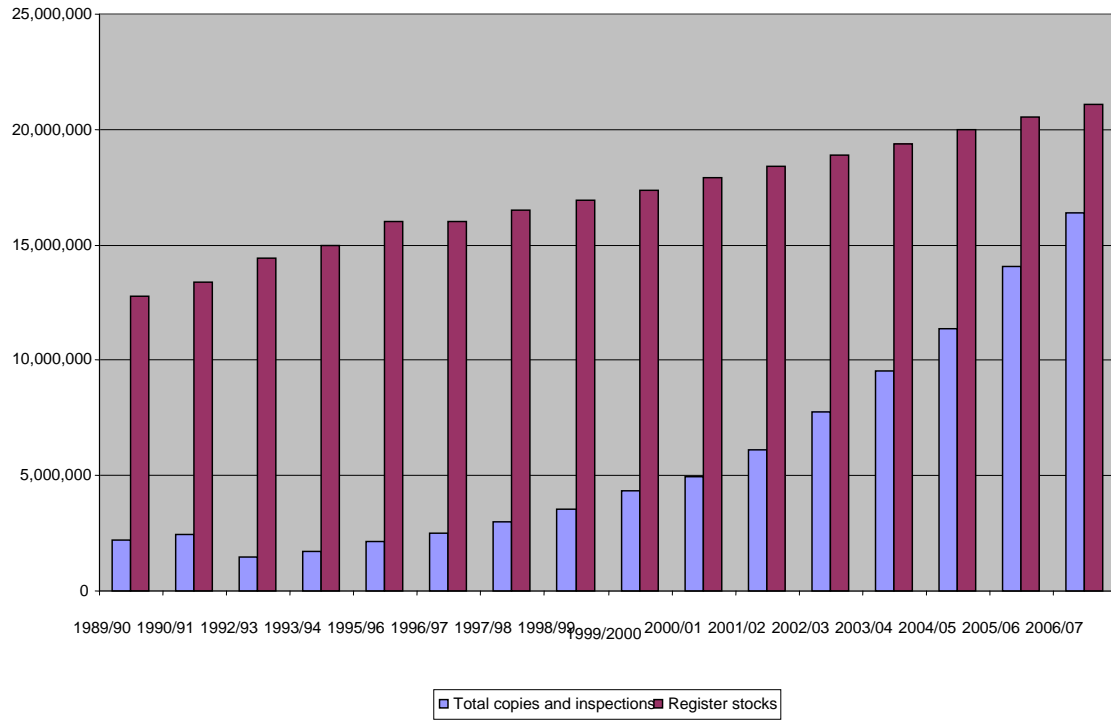
Conclusion

The opportunities and challenges which the open register presented could not have been foreseen in 1990. The internet was then in its infancy and virtually unknown outside the IT community. The supporters of the 1988 Act could not have imagined the possibility of instant online access to the register, let alone the services that some of our customers have developed, using the data they obtain from us.

Our view, based on the ever increasing take up of our services, is that customers' appetite for register information is unlikely to diminish and that, with proper safeguards, its supply and use is generally beneficial to society at large. But who can now say what the demand for register information will be even five years from now and to what uses will it then be put?

This is a developing story. In the context of 145 years, it is probably too soon to draw firm conclusions about a change made a mere 17 years ago.

Copies and Inspections 1989 -2007



	<i>Official Copies</i>	<i>Register Views</i>	<i>Title Plan Views</i>	<i>Doc Views</i>	<i>Total copies and views</i>	<i>Register stocks</i>
1989/90	2,215,651				2,215,651	12,774,000
1990/91	2,422,150				2,422,150	13,380,000
1992/93	1,469,900				1,469,900	14,439,000
1993/94	1,698,591	8,544			1,707,135	14,945,000
1995/96	2,060,963	81,383			2,142,346	15,998,000
1996/97	2,326,448	157,683			2,484,131	16,037,000
1997/98	2,719,967	293,791			3,013,758	16,529,000
1998/99	3,007,111	524,108			3,531,219	16,934,000
1999/2000	3,392,844	923,949			4,316,793	17,364,000
2000/01	3,465,295	1,458,354	18,532		4,942,181	17,906,000
2001/02	3,860,383	2,213,405	23,332		6,097,120	18,424,000
2002/03	4,410,481	3,301,970	42,076		7,754,527	18,876,000
2003/04	4,888,006	4,558,648	94,731	2,767	9,544,152	19,402,000
2004/05	5,075,196	5,901,899	379,690	36,165	11,392,950	20,010,000
2005/06	6,168,306	6,811,888	988,355	105,189	14,073,738	20,513,000
2006/07	7,067,343	7,804,664	1,214,251	283,510	16,369,768	21,079,000

Note 1: The register was opened to public inspection in December 1990

Note 2: The Direct Access Service started in 1992/93

Note 3: The National Land Information Service commenced in 2000/2001

Note 4: Land Registry Direct, which replaced the Direct Access Service, was launched via an extranet in July 2000 and was made available via the Internet in March 2004

Note 5: Land Register Online was piloted from March 2003 and officially launched in January 2005

Note 6: The register stocks figures are shown to the nearest thousand