



House of Commons  
Justice Committee

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# Manorial Rights

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**Fifth Report of Session 2014–15**

*Report, together with formal minutes relating  
to the report*

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## Summary

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Manorial rights are certain rights which were retained by lords of the manor in England and Wales when land became freehold in the early 20<sup>th</sup> century, and can include rights to mines and some minerals, sporting rights such as hunting, shooting and fishing, and rights to hold fairs and markets. In the past such rights were not required to be detailed on the register of title, but they remained overriding—that is they bound the owner of the affected land even though they may not have known about the rights. Changes made through the Land Registration Act 2002 sought to increase the transparency and knowledge of such rights by requiring that they be registered and removing their overriding status. This Act specified a deadline—October 2013—by which such rights should be registered to ensure they could not be lost.

A consequence of this provision was that a large number of claims to manorial rights were registered in the year preceding the deadline—around 90,000—which led to many landowners discovering for the first time that their properties were subject to rights owned by a third party. The lack of understanding of such rights, and the means by which the registration process was carried out and communicated, led to many of the affected landowners experiencing understandable concerns and anxieties. As a consequence we received representations from Members of Parliament on their constituents' behalf and individual members of the public affected by registrations of manorial rights made on their properties, most notably from landowners in Anglesey and Welwyn Garden City. These all called for the abolition of manorial rights and/or a review of the law in this respect. Following correspondence with the Government and the Law Commission it was clear to us that there was no desire on their part to address the current law related to manorial rights, and we therefore decided to launch this inquiry to instigate a debate on the current situation and inform any possible future review.

During the course of the inquiry we heard about considerable problems with the registration process, and in particular the notifications sent by the Land Registry to landowners, the burden of proof of the validity of claims, which we believe falls disproportionately on the landowner, and the use of unilateral notices to register manorial rights. However, we received little evidence of the negative impact upon landowners of the exercise of manorial rights in the present day.

We received considerable evidence from those opposed to the abolition of manorial rights who cited the real economic value that some manorial rights may have in certain cases. It is therefore understandable that many manorial rights holders responded to the new legislation by seeking to protect these rights, although we consider the situation whereby a claim to certain manorial rights can be made over areas of dense residential properties, where rights are unlikely to ever be exercised, is anomalous. Evidence also highlighted issues with the abolition of manorial rights, most notably regarding the human rights implications and consequential compensation issues. However, we do not believe that such issues are necessarily insurmountable, given there are lessons that can be drawn from elsewhere.

In light of the evidence received we consider that there are some obvious improvements

that could be made to the existing process of registering manorial rights, not least in removing the use of unilateral notices as the primary means by which such rights should be registered and thus shifting the burden of proof towards those claiming manorial right. We also believe that there would be merit in further research being carried out, and data collected, into the prevalence, exercise, impact and value of manorial rights in England and Wales, given the paucity of information in this regard that came to light during the inquiry.

It was never our intention to pass judgment on whether or not manorial rights should be abolished, and we have not done so in this report. However, in addition to proposing improvements to the existing process of registration, we recommend that a review be carried out assessing whether the law related to manorial rights should be changed, including the question of whether all or some categories should be abolished, and how legislation could appropriately address compensation and human rights issues in such an event. We would expect the Law Commission to carry out this work, either as part of a future programme of law reform, or upon the specific request of the Government. It is also our view that such a review would need to be preceded by some consideration and work by the Government into the financial implications and provisions for compensation which would be associated with abolition of some or all manorial rights.

*[N.B. In this report, Committee conclusions are in bold text, recommendations are in bold italics.]*

# 1 Background to this inquiry

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## What are manorial rights?

1. The Land Registry describes manorial rights as rights which were retained by lords of the manor in England and Wales when land became freehold in the early 20<sup>th</sup> century.<sup>1</sup> Those rights can include rights to mines and some minerals, sporting rights such as hunting, shooting and fishing, and rights to hold fairs and markets. When copyhold tenure was abolished in 1926 and converted into freehold in a process known as ‘enfranchisement’, these rights were preserved indefinitely unless ended by written agreement between the lord and tenant. In its written evidence, the Ministry of Justice describes copyhold tenure as:<sup>2</sup>

tenure of land “by copy of Court Roll”. The roots of copyhold date back to before the Norman Conquest. The history is complicated but in brief Court Rolls of the manor came to record the title of the tenants of the manor to their properties and the tenants were given a copy of the entry recording their title. This is apparently the origin of the term “copyhold”. Title to copyhold land was, or became in practice, inheritable and transferable subject to the customary rents and services to which it was subject. By the seventeenth century it seems that copyhold land was held by rent rather than for services. Nonetheless the legal form lingered on until all remaining copyhold land was “enfranchised” into freehold tenure on 1 January 1926.<sup>3</sup>

2. Since these changes the law related to manorial rights remained largely unchanged in England and Wales until the Land Registration Act 2002 (referred to in this report as “the 2002 Act”) which attempted to increase the transparency of such interests by requiring that they be placed on the land register.<sup>4</sup> The meaning of manorial rights for the purposes of the 2002 Act was explained by the Law Commission in a preceding consultation document as being the following rights of the lord of the manor in respect of former copyhold land or of the copyhold tenant:

- the lord’s sporting rights;
- the lord’s or tenant’s rights to mines and minerals;
- the lord’s right to hold fairs and markets;
- the tenant’s rights of common; and

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1 [Land Registry Practice Guide 22: Manors](#)

2 Written evidence received, in particular the respective submissions from Dr Paul Stafford ([MAR0039](#)) and Christopher Jessel, ([MAR0004](#)) provides a fuller account of manorial right historical origins.

3 Ministry of Justice ([MAR0031](#))

4 While the Ministry is responsible for the general land law of England and Wales, of which the law relating to manorial rights forms part, it is the Land Registry, an agency of the Department for Business, Innovation and Skills, which is responsible for the registration of ownership of land and property in England and Wales.

- the lord's or tenant's liability for the construction, maintenance and repair of dykes, ditches, canals and other works.<sup>5</sup>

3. As this inquiry has been instigated as a consequence of the changes in the 2002 Act, this is the definition of manorial rights that we have used for the purposes of our inquiry. However, the last category was made registrable under legislation from the 1920s and is therefore usually known to landowners, while the tenant's rights of common would not be considered the established right of the lord over land owned by someone else, and are anyway required to be recorded in the registers of common land under the Commons Registrations Act 1965. Therefore, it is the first three manorial rights listed above that are considered within the primary scope of our inquiry. The Ministry notes that it is "generally accepted that the first two of these ... are the most important".<sup>6</sup> It is important to note that in most cases the exercise of the lord's rights requires the consent of the landowner. Other associated issues, such as manorial waste, relate to freehold land often still owned by the lord and are therefore not relevant to another landowner's registered title nor this inquiry.<sup>7</sup>

4. While many current owners of manorial rights are individuals who have inherited such rights, the process of enfranchisement in the 1920s also enabled lords of the manor to sell their remaining rights to third parties. As Dr Paul Stafford noted, that there remains to this day "an active market for such rights and also for lordships, which can change hands for five or six figure sums."<sup>8</sup> In one of the areas where claims of manorial rights have caused controversy, Anglesey, those claims were made by a person who bought the title of lord of the manor in 1992, although it should be noted that he has subsequently withdrawn the claims (see paragraph 15 below). Equally, manorial rights are held by charities and institutions, for example the Church Commissioners and some Oxbridge colleges.<sup>9</sup>

### How the Land Registration Act 2002 changed the status of manorial rights

5. Prior to the 2002 Act it was often difficult to find out whether a property was affected or bound by manorial rights as they did not have to appear in the land register. In some cases if rights were not contained in the register they could be recorded in old deeds to a property, but in many cases they would simply not be known to the freehold property owner. Following changes introduced by the 2002 Act, manorial rights lost their 'overriding interest' in relation to properties if they were not protected by being registered before 13 October 2013. This means that, following the deadline, the holders of the manorial rights will lose these rights when the affected property is sold if those rights are not registered before the sale. We heard that manorial rights owners, and in particular charitable organisations or trustees of estates, were often advised by their lawyers that it

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5 Law Commission, [Land Registration for the Twenty-First Century – A Consultation Document](#), 1998, p103

6 Ministry of Justice ([MAR0031](#))

7 See for example the case highlighted in Dr Paul Stafford ([MAR0039](#)).

8 Dr Paul Stafford ([MAR0039](#))

9 See The Church Commissioners for England ([MAR0018](#)) and Michael Edward Turner ([MAR0033](#))

was their duty to register claims to protect a potential asset from extinguishment.<sup>10</sup> The Land Registry summarised the position as follows:

a new owner who buys the land or property after 12 October 2013 may potentially buy it free of these interests if they weren't protected prior to the sale. Until the property is sold any rights that exist continue indefinitely and an application can still be made to protect them.<sup>11</sup>

### **Purpose of the reforms**

6. Overriding interests are third parties' property rights that bind a purchaser of the affected land even though the rights are not mentioned in the register of title (commonly called "the land register" or "the register") kept by the Land Registry, and even though the purchaser may not know about them. The 2001 Law Commission and Land Registry report, *Land Registration for the Twenty-First Century—A Conveyancing Revolution*, which contained the draft Bill which was subsequently enacted as the 2002 Act, commented that:

The range of interests that are presently overriding is significant. They include many easements (whether or not these have been expressly granted or reserved), the rights of persons in actual occupation, leases granted for 21 years or less, as well as some obscure interests that may have very serious effects on the registered proprietor (such as manorial rights). Overriding interests therefore present a very significant impediment to one of the main objectives of the Bill, namely that the register should be as complete a record of the title as it can be, with the result that it should be possible for title to land to be investigated almost entirely on-line. The Bill seeks to restrict such interests so far as possible.<sup>12</sup>

7. The 2001 Report, which was the result of a six-year investigation into land registration practice, recommended that the overriding nature of certain rights including manorial rights (i.e. their persistence despite not being registered) should be "phased out over a period of ten years".<sup>13</sup> The intention was to phase out the overriding nature of some rights and instead require the entry of a notice on the register in order to make the register and land ownership more transparent, so that anyone buying a piece of land or property would see what they owned and have more information about what matters they were subject to.<sup>14</sup> The Ministry's written evidence to us explained further that the underlying policy of the 2002 Act was to make the land register "as complete a register as is practicable of the rights affecting a registered property" in order to make it easier for prospective purchasers to investigate the title of a property, and that the changes would prevent the risk in the future of a property being purchased "in ignorance of the fact it is subject to manorial rights which will then bind the new owner".<sup>15</sup> The 2001 Report did not recommend that

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10 [Q 18](#)

11 [Land Registry Public Guide 25](#), December 2013

12 Law Commission, [Land Registration for the Twenty-First Century—A Conveyancing Revolution](#), July 2001, para 2.24

13 *Ibid.* para 8.40

14 [Land Registry Public Guide 25](#), December 2013. Equally, some rights, such as customary rights, and certain legal easements, *profits à prendre* and mineral rights, retained their overriding status under the 2002 Act.

15 Ministry of Justice ([MAR0031](#))

these rights be removed altogether. The consultation document which led to the report and 2002 Act, while stating that manorial rights were anomalous and “could” be abolished, suggested the financial implications of abolition did not make this option a “viable strategy for reform”.<sup>16</sup> Nevertheless, the door was not closed to a further review and the consultation document went on to state that “any such strategy would have to be conducted as a separate law reform exercise with full regard to its implications”.<sup>17</sup>

## Our inquiry

8. As a consequence of the coming into effect of the relevant provisions in the 2002 Act, in particular the passing of the October 2013 deadline for registrations which led to a large number of registrations being made around this time, we received a range of representations from Members of Parliament on their constituents’ behalf as well as individual members of the public affected by registrations made on their properties. These all called for the abolition of manorial rights and/or a review of the law in this respect. In response to these representations we wrote to the Law Commission and the Government in early 2014 asking whether there were plans to review the law concerning manorial rights in order to consider whether such rights should be abolished. Responding to us in April 2014, the Government stated that, while it was aware of “consternation” in some areas related to the registration of manorial rights, it was “not aware of any actual problems in practice” and therefore did not plan to review the law on manorial rights or request the Law Commission to do so.<sup>18</sup>

9. In its response to us in March 2014 the Law Commission said it currently had no plans to carry out a law reform review in relation to manorial rights and that it had anyway recently agreed its [12th Programme of Law Reform](#).<sup>19</sup> The letter did note that the Government could refer a specific project to the Commission outside of its law reform programme, but it also stated that “a project whose objective was the abolition of property rights encounters some particular obstacles, and before considering whether to take on such a project we would want to know that government has considered the implications of taking such a step and was prepared to make the necessary provision for compensation”.<sup>20</sup>

10. In light of the correspondence and representations received, we decided to carry out a short inquiry into manorial rights in order to instigate a debate on the current situation and inform any possible future review. We invited evidence addressing any aspect of the current laws and procedures in relation to manorial rights, but in particular on the following points:

- The recent incidence of manorial rights being exercised, and the impact upon landowners;

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16 Law Commission, [Land Registration for the Twenty-First Century – A Consultation Document](#), 1998, para 4.24

17 *Ibid*, para 4.39

18 Ministry of Justice ([MAR0041](#))

19 Law Commission ([MAR0042](#)). Under the Law Commission Act 1965 the Law Commission is required to receive and consider proposals for law reform and to prepare and submit to the Lord Chancellor, from time to time, programmes for the examination of different branches of the law with a view to reform. It typically produces a new programme of law reform every 2–4 years.

20 *Ibid*.

- The arguments for and against the abolition of manorial rights;
- The implications of abolishing manorial rights, including the cost of any appropriate compensation that may be required.

11. In the course of our inquiry we received 33 written submissions and we held two oral evidence sessions, hearing from Kim Thomas and Amanda White, from a campaign group for Welwyn Garden City residents calling itself The Peasants' Revolt, Rhun ap Iorwerth, Assembly Member for Ynys Môn, and Albert Owen, Member of Parliament for Ynys Môn; David Towns, Director, Bond Dickinson LLP, Roger Tetlow, Senior Legal Adviser, Country Land and Business Association, and Timothy Troman, Chartered Mineral Surveyor, Wardell Armstrong LLP; Professor Judith Bray, University of Buckingham, and Christopher Jessel, retired solicitor; and Lord Faulks QC, Minister of State for Civil Justice and Legal Policy, Ministry of Justice, and Steve Coveney, Head of Registration Legal Services, Land Registry. We are grateful to all those who gave written and oral evidence to us in this inquiry.

### The Law Commission's current project on the 2002 Act

12. While the Law Commission currently has no plans to review the law related to manorial rights, we note that in recent years the Law Commission has planned to carry out a project related to feudal law more widely. The 9th Programme of Law Reform launched in 2005 included a project to examine the case for the reform of feudal law and the implications of statutory intervention. However, the 10th Programme published in June 2008 stated it had not been possible to carry out this work because of the demands of other projects, and that it considered the project should further be delayed until the 11th Programme. At the time of the publication of 11th Programme in July 2011 it was stated that Commissioners had taken the view that other proposed law reform projects offered the potential for greater public benefit than work on feudal land law. We also note that the current 12<sup>th</sup> Programme includes a project on the mechanics of the Land Registration Act 2002 for which the Law Commission will publish a consultation paper in late 2015 and a report and draft Bill in late 2017.<sup>21</sup> The Law Commission describes the project on its website as “a wide-ranging review of the 2002 Act, with a view to amendment where elements of the Act could be improved in light of experience with its operation”.<sup>22</sup>

### The cases of Welwyn Garden City and Anglesey

13. Although not exclusively so, much of the written evidence received has been from campaigners and individuals for the abolition of manorial rights who have direct experience in relation to the registration of claims made against land in Welwyn Garden City and Anglesey respectively. During the course of the inquiry we have drawn on and examined some of the principal objections raised by those affected in these two cases including:<sup>23</sup>

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21 For more information see: <http://lawcommission.justice.gov.uk/areas/land-registration.htm>

22 *Ibid.*

23 See for example Albert Owen MP ([MAR0007](#)), Rhun ap Iorwerth AM ([MAR0026](#)), [Qq 1–17](#)

- The fact that property owners were not aware of the existence of a claim to such rights against their property upon purchase.
- The cost incurred by residents in objecting to the claims—primarily legal advice and research costs relating to the validity of the claim.
- The impact on future property sales and access to loans.
- Possibility of exercise of rights in public places.
- The role of the Land Registry in the process of notification.
- The burden of proof in relation to verifying a claim.

14. In the Welwyn Garden City case, in October 2013 around 500 households in the Handside area received notices from the Land Registry informing them that Lord Salisbury had registered claims to manorial rights over their properties. From evidence received, it seems that while many residents submitted initial objections to the claim, following correspondence with the Land Registry and the lawyers acting on behalf of Lord Salisbury, Bond Dickinson LLP, most objections have not been pursued, aside from those notices issued to properties that subsequently were shown to be outside the area to which Lord Salisbury was making his claim. The primary reason cited in the evidence received was the cost that would be incurred by pursuing their objections.<sup>24</sup> Those affected in this case were told by Bond Dickinson that there was no intention for the rights to be exercised at present and that the rights were registered simply to avoid their loss and protect their long-term value.<sup>25</sup>

15. The claim in Anglesey was made by Stephen Paul Hayes who owns the title of Lord of the Manor of Treffos, which he bought in 1992. In October 2013 around 4,000 Anglesey residents were sent notices by the Land Registry detailing Mr Hayes' claim. In this case around half of the residents objected and following considerable local public pressure, including research carried out by individuals contesting the claim regarding the extent of the Treffos Manor and its boundaries, Mr Hayes agreed to withdraw all his original rights claims.<sup>26</sup> We also received individual pieces of evidence citing issues with manorial rights registrations in Bewcastle (Cumbria), Lincolnshire, and Delamere (Cheshire).<sup>27</sup> However, based on the statistics provided in the next Chapter, the various areas from which we have received representations on the registration of manorial rights would seem to account for only a small proportion of total registrations made since the 2002 Act.

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24 See for example, Richard Hill ([MAR0020](#)).

25 The Peasants' Revolt ([MAR0023](#))

26 Lloyd Russell Jenkinson ([MAR0017](#))

27 See: David O'Mahony ([MAR0019](#)); Jane Donaldson-Allen ([MAR0038](#)); and Bewcastle Parish Council ([MAR0040](#)).

## 2 The registration process and role of the Land Registry

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### Statistics on registration levels

16. Although those with claims over manorial rights had ten years to register their claims with the Land Registry, much of the anecdotal evidence received during our inquiry was that the effect of the October 2013 deadline was to lead to large numbers of applications claiming manorial rights on properties being made to the Land Registry in the months preceding the deadline. In its written evidence the Ministry stated that it did not hold data for applications made for registration of a notice to protect a claim to the ownership of manorial rights prior to December 2012, while Mr Coveney from the Land Registry stated that they had only begun to collect data when “it seemed that it might be becoming a more high profile problem”.<sup>28</sup> The figures provided by the Ministry to us indicate that between December 2012 and July 2014, 84,000 notices had been registered. In addition, the Land Registry noted that a further 116,500 titles included an entry related to manorial rights from the preregistration title deeds i.e. when the deeds lodged on first registration indicate that the property is subject to such rights. Taken together, this equates to slightly less than 1% of all registered titles in England and Wales.<sup>29</sup> The Ministry’s written evidence goes on to state that, of the 84,000 notices registered under the 2002 Act:

- These had been received from 142 applicants.
- Around 6,000 applications had subsequently been received to withdraw the notice by the person entering the notice.
- Around 16,000 applications to challenge notices from landowners had been received, although the Land Registry was unable to indicate how many of these were successful, i.e. resulted in the notice being removed. However, the Land Registry believed that “anecdotal evidence” suggested approximately a third of challenges were successful.<sup>30</sup>

17. During oral evidence Mr Towns of Bond Dickinson LLP said that he had been told by the Land Registry that, prior to December 2012, 3,200 notices had been registered since 2003.<sup>31</sup> **In this light, and given the Land Registry’s role in the process of registering manorial rights, it seems surprising that it was not possible for the Ministry or Land Registry to provide us with full statistics regarding the extent of the registration of manorial rights before December 2012. Similarly, given successful challenges result in the removal of unilateral notices from the land register, we would have expected that it would be possible to collate such information. We therefore recommend that the Land Registry should carry out the necessary work to assess accurately the number of manorial**

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28 Ministry of Justice ([MAR0031](#)), Q 84

29 [The Land Registry Annual Report and Accounts 2013/14](#) indicated that there are 23.8 million registered titles in England and Wales.

30 Ministry of Justice ([MAR0031](#))

31 [Q 37](#)

*rights claims now registered against titles in England and Wales following changes in the 2002 Act. With an eye to any future review or changes to the law relating to manorial rights, it would also seem beneficial for the Land Registry or Ministry to collate statistics on the extent to which manorial rights are challenged and the success rates of such challenges, including the incidence of claims being decided by the Courts or Tribunal.*

## Main impacts of registration

18. Many of the issues faced by landowners and subsequent complaints raised have been due to the registration processes and an apparent unintended consequence of the 2002 Act's October 2013 deadline for registrations causing a surge in applications, rather than the policy objectives of the 2002 Act specifically or the impact of individuals exercising manorial rights. While many of those affected by the two main cases upon which we received representations, Anglesey and Welwyn Garden City, were particularly unhappy that they had not been aware of the existence of a claim to such rights against their property upon purchase, as outlined in the previous chapter one of the primary policy objectives of the changes in the 2002 Act was to make the register more transparent and avoid this lack of knowledge in the future. Indeed, as Amanda White from the campaign group to abolish manorial right, The Peasants' Revolt, noted, "I never had a problem with the Registration Act. We were grateful for the registration of this because, although it was a smack in the face ... at least we knew about it now, and people who subsequently buy their properties will know about this."<sup>32</sup>

## The use of unilateral notices

19. Following the changes to the status of manorial rights in the 2002 Act, the primary means by which the majority of manorial rights holders chose to register their claims was through requesting that a unilateral notice be entered on to the register by the Land Registry, in a process defined by the 2002 Act.<sup>33</sup> The entry of a unilateral notice on the register requires the Land Registry, after the entry is made, to send notification to the registered proprietor of the property informing them that someone else has registered a claim that they own an interest that affects their land or property. The Land Registry noted in its written submission that the 2002 Act actually allowed for two types of notices to be used in registering rights that were previously overriding interests—agreed or unilateral notices.<sup>34</sup> In the case of an agreed notice, the landowner has to consent to the entry of the notice, or the applicant has to satisfy the Land Registry as to the validity of their claim. There is no such requirement in the case of a unilateral notice. In order to satisfy the Land Registry of the validity of a claim in the case of an agreed notice the applicant has to submit detailed evidence. Therefore, as the Land Registry notes, "in practice, applicants opted to apply for unilateral notices to protect their manorial rights, rather than agreed notices".<sup>35</sup>

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32 [Q 5](#)

33 Although it should be noted that a unilateral notice is a mechanism predating the 2002 Act that lawyers traditionally use to protect option agreements and contracts.

34 Land Registry ([MAR0035](#))

35 *Ibid.*

### *The process of registration and dispute*

20. Making an application to register manorial rights via a unilateral notice simply protects a claim to these rights and ensures their priority when a future transfer or disposition of land takes place. The entry does not guarantee that the interest it protects is valid or even that it exists and it does not mean that the Land Registry has endorsed or approved it. Rather it is a claimed interest that the owner can seek to challenge. However, it is entered in the register on the title of a property without the consent of the landowner. The applicant is not required to satisfy the Land Registry that there is a valid claim and does not need to support the application with any evidence. The Land Registry states that a unilateral notice gives the landowner the opportunity to consider the issue and to apply to cancel the notice if they think their property is not subject to it. The landowner can apply at any time to cancel the notice.<sup>36</sup> All objections are considered in the first instance by Land Registry lawyers, who determine whether there are clear grounds for an objection.<sup>37</sup> The objection will then be put to the applicant in an attempt to resolve the dispute. There are then three primary options:

- The applicant may withdraw the application, or not object to the landowner's cancellation application within a specified period in which case the notice is cancelled.
- The objector may withdraw the objection (usually if provided with clear evidence from the applicant).
- Either party may decide to go to court to resolve the dispute.<sup>38</sup>

21. If neither party withdraws and they have not settled their dispute either through the courts or otherwise, the Land Registry will refer the case to the Land Registration division of the Property Chamber, First-tier Tribunal, which is a tribunal specifically set up to decide Land Registry disputes. The Land Registry notes in its written evidence that any dispute that cannot be resolved by agreement has to be referred to tribunal and that it has no power to determine such a dispute.<sup>39</sup> However, the Land Registry also notes that prior to 2003 disputes "could be determined by a senior lawyer in the Land Registry. The Law Commission recommended that ... it was desirable to create a completely independent office for adjudication and that was established in the Land Registration Act 2002".<sup>40</sup>

22. Throughout the process the Land Registry is not formally able to provide legal advice to either party or tailored advice about individual notices. However, during a Westminster Hall debate on the subject in January 2014, the then Minister for Business and Enterprise, Rt Hon Michael Fallon MP, stated that in cases of dispute the Land Registry would try to

36 Land Registry Blog, "[Letters we send about manorial rights](#)", December 2013

37 [Land Registry Public Guide 25](#), December 2013

38 [Land Registry Practice Guide 37](#), September 2014

39 Land Registry ([MAR0035](#))

40 *Ibid.* See Section 73(7) of the 2002 Act. Up until July 2013 this role was carried out by the Adjudicator to HM Land Registry. On 1 July 2013 the Land Registration division of the Property Chamber, First-tier Tribunal replaced the post of Adjudicator, with the former Adjudicator, Edward Cousins sitting as Principal Judge with three other full-time salaried judges and 28 part-time fee paid judges.

assist the parties in resolving the dispute including, if asked, to express its view based on the available evidence.<sup>41</sup>

### ***Future property sales***

23. Some of the evidence received also pointed to concerns regarding the impact of manorial rights claims on future property sales and securing loans. However, in the majority of cases this does not appear to have happened in practice. For example, the evidence from The Peasants' Revolt acknowledges there has not been an adverse impact in this respect to date.<sup>42</sup> Mr Owen indicated that he was aware of issues in this regard, although primarily related to instances when a claim was in the process of being disputed.<sup>43</sup> On access to loans, during the January 2014 Westminster Hall debate on manorial rights, Mr Fallon said that:

The Land Registry has been monitoring the situation and, where it has been able to contact individuals who may have been affected, those individuals usually, but not always, turn out not to have been affected. We know that in some cases there has been a short delay in granting a loan because of an earlier application by the property owner to remove the notice. The lender would have wished to ensure that any dispute had been resolved before proceeding. In one case, the property owner changed lawyers because of concerns about the advice given, and the change in lawyers enabled the loan to be granted. The Land Registry stands ready to assist anyone else facing similar problems.<sup>44</sup>

24. As Dr Stafford pointed out, the legal profession has been well versed in the law relating to manorial rights for centuries, and “there is no reason why the profession today cannot provide a better service by treating it as something which may need to be advised on in any residential conveyancing transaction”.<sup>45</sup> It is notable, however, that due to the use of unilateral notices, claims to manorial rights are required to be placed on the charges register by the Land Registry, rather than having them as part of the historic property register. Evidence received from those both for and against the abolition of manorial rights acknowledged that this was anomalous and had the potential to create unnecessary problems for landowners looking to sell their property. For example Mr Towns told us that using unilateral notices was “wrong” because they went on the charges register and some “solicitors who are not used to seeing that think it is a legal charge. They think it is something to do with the financial charges.”<sup>46</sup> He also pointed out the anomalous situation whereby in cases where the Land Registry makes an entry upon first registration based on manorial rights indicated on the deeds lodged, the note is placed in the main property register, rather than the charges register:

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41 [HC Deb 15 January 2014 c335WH](#)

42 The Peasants' Revolt ([MAR0023](#))

43 Albert Owen MP ([MAR0007](#))

44 [HC Deb 15 January 2014 c335WH](#)

45 Dr Paul Stafford ([MAR0039](#))

46 [Q 20](#)

The Land Registry says there are about 116,500 titles which have an existing note, so when this land was first registered the Land Registry saw that it was former copyhold and they have put a note in the property register, which is just the descriptive part, saying, “This land is former copyhold and subject to reserved manorial rights.” When this legislation first came out I thought that is what we would be applying to do—to put that kind of standard entry in the property register. Doing that would have been a far better approach, or perhaps creating a new manorial rights notice which you then apply for, rather than trying to shoehorn something as complicated as this into an existing method.<sup>47</sup>

### ***The burden of proof***

25. Evidence received from those against manorial rights has indicated that the burden of proof of a claim lies too heavily with the landowner, with the claimant having to incur relatively low costs to register their claim to manorial rights. As a result, the financial cost of proving or disproving a claim often fell disproportionately on individual property owners rather than the claimants, who may have substantial resources and easier access to legal advice on property matters. The incentive not to object is therefore greater due to the processes for registration specified by the 2002 Act.<sup>48</sup> These claims again have their roots in the use of unilateral notices. As already noted, under the 2002 Act no evidence is required for the Land Registry to issue a unilateral notice and place a claim on the register, but this does not mean the claim has been endorsed or approved by the Land Registry; rather it is a claimed interest that the owner can challenge. Mr Towns acknowledged that it was “a fairly aggressive thing to use, because, by its nature being unilateral, the Land Registry will register it without any proof. It is a bit like getting an interim injunction; you get it and then you argue your case”,<sup>49</sup> while Mr ap Iorwerth asserted “the truth is that most would find it difficult, if not impossible, to prove that the rights do exist as they claim”.<sup>50</sup> Mr Owen believed:

The Land Registry should [...] require a claimant to show documentary evidence of his or her claim [...]. If this evidence is not forthcoming then it should be for the Land Registry to determine that such a claim cannot be valid [...] the onus should also be on the Registry to carry out research on the basis of the claim to coincide with the evidence provided by the claimant. Parliament should legislate to this effect. The Land Registry rightly point out that it is for Parliament to decide how the claims are administered. Therefore, Parliament should specify that the burden of proof is on the claimant so that they are obliged to provide evidence of a claim to the Land Registry before any notifications are distributed. By taking these two steps, the burden of proof would be removed from the property holder removing both the stress and financial burden of fighting a claim that was not known.<sup>51</sup>

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47 *Ibid.*

48 See for example: Albert Owen MP ([MAR0007](#)); Richard Hill ([MAR0020](#)); and Rhun ap Iorwerth AM ([MAR0026](#))

49 [Q 20](#)

50 [Q 6](#)

51 Albert Owen MP ([MAR0007](#))

26. Dr Stafford made a similar suggestion, but noted that such a change to the process would require “extra work for the Land Registry, involving scrutiny by legally qualified staff, and this would no doubt require a higher fee from the applicant”. Nevertheless, he believed that the “... higher hurdle which the applicant has to overcome would have the effect of discouraging or eliminating weak applications, and so would the higher fee”.<sup>52</sup>

### ***Notifications sent by the Land Registry***

27. Much of the evidence received pointed to failings in the actions of the Land Registry, which in some instances the Land Registry has subsequently acknowledged. For example, Mr ap Iorwerth’s written evidence stated:

I was unhappy about the way this matter was dealt with by the Land Registry [...] and indeed they admitted they could have handled this much better in an e-mail to me in November 2013: “I think it is fair to say that we haven’t always managed to get the right balance in simplifying the legal language we use. [We] offer our full apologies for how we have handled this and the confusion caused to your constituents.” [...] People did not understand the legal jargon which only contributed to their fear of the unknown implications these rights might have and the Land Registry failed to simplify.<sup>53</sup>

28. Indeed, even those registering manorial rights felt that the Land Registry could have done more. For example, Mr Troman told us it should have been “adequately explained to the freeholder what was actually being registered and what was being claimed. That has often been explained to them since then, and quite often people just say there is not a problem. It is because concern has built up due to a lack of information”,<sup>54</sup> while Mr Towns noted that his firm had “acted to provide additional information which the Land Registry has sent out with notices because we felt that they were not giving sufficient information”.<sup>55</sup> The Land Registry has acknowledged that there were problems with the wording of its letters sent to landowners notifying them of claims to manorial rights over their property, and it is the case that letters have subsequently been amended to make them clearer and easier to understand.<sup>56</sup> Mr Fallon pointed out during the January 2014 Westminster Hall debate on manorial rights that there was little the Land Registry could do about letters being sent to landowners as the statute required the notice to be entered in the register and for the landowners to be notified of the entry.<sup>57</sup> However, he did state that the Land Registry appreciated that:

it can cause concern and upset when people receive a letter from it saying that a third party has protected a claimed interest [...] Where an owner disputes that their property is subject to the rights claimed, the Land Registry does what it can to help the parties in the dispute. For example, it encourages the party claiming

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52 Dr Paul Stafford ([MAR0039](#))

53 Bewcastle Parish Council ([MAR0036](#))

54 [Q 36](#)

55 [Q 20](#)

56 Land Registry Blog, “[Letters we send about manorial rights](#)”, December 2013

57 [HC Deb 15 January 2014 cc334-35WH](#)

the rights to produce its evidence at the earliest possible stage, and in many cases that brings the matter to a conclusion. The Land Registry always gives the parties the opportunity to try to resolve their dispute, and the time to do so. In addition, where it can, the Land Registry will try to assist, if asked, by expressing its view, based on the available evidence. However [it] must, throughout this process, remain strictly impartial.<sup>58</sup>

## Conclusion

29. The evidence received from both sides of the argument would seem to suggest the enabling of use of unilateral notices to register manorial rights claims, and their consequential presence on the charges register, was a mistake. The fact that an interest is placed on the register, which the landowner can only then seek to challenge, clearly skews the burden of proof unfairly away from the claimant and on to the landowner, when in some cases there may be little evidence to support a claim. Although the Land Registry points out that the legislation also provided for the use of agreed notices, it is not surprising that manorial rights claimants and their lawyers in the vast majority of cases have opted for the use of unilateral notices. Provision in the 2002 Act to allow registrations only by means of an agreed notice would have ensured notices were only placed on the register when suitable evidence of rights had been presented and, importantly, the Land Registry had been satisfied of the validity of this evidence. This would have avoided the inequality that exists in the current process with regard to the burden of proof, and the limited role the Land Registry is able to play in adjudicating upon disputes. However, we also note that a greater use of agreed notices would not have resolved the issue of the claims appearing on the charges register.

30. We welcome the improvements that have been made by the Land Registry to the letters sent to landowners notifying them of claims to manorial rights over their property. The rate of registrations of claims has now subsided following the October 2013 deadline, thus reducing the frequency with which problems with the registration process will occur. However, as the Ministry itself acknowledges, applications may continue to be made for the “foreseeable future”,<sup>59</sup> and therefore problems will continue to arise. We also believe that the ongoing presence of new manorial rights registrations in the charges register will continue to mean that there will be confusion when affected properties are sold in the future.

31. In light of the above, we believe there is a case for considering improvements to the existing processes and procedures for registering manorial rights as defined and required by the 2002 Act, and that there is an opportunity for the Law Commission to do so as part of its forthcoming project on land registration. We note that the Law Commission considers this project to be a wide-ranging review of the 2002 Act, with a view to amendment of elements that could be improved in light of experience with its operation. We would consider the inclusion of such work on manorial rights within the Law Commission’s current project to be separate and in addition to any consideration

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58 [HC Deb 15 January 2014 c335WH](#)

59 Ministry of Justice ([MAR0031](#))

of a wider review of the law related to the general principle of manorial rights, which would not appear to fall within the scope of the Law Commission's current project.

*32. In this context, we recommend that the following should be considered as proposals for change to the existing process:*

- *Ending the use of unilateral notices as a mechanism to place manorial rights claims on the register, and providing for the use of agreed notices as the only mechanism by which manorial rights may be registered. Such changes would ensure that claimants are required to provide suitable supporting evidence before an entry on the register is made.*
- *Changing where current and future claims to manorial rights sit on the register and, in particular, moving those currently placed on the charges register to elsewhere on the register.*
- *Measures to strengthen the ability of the Land Registry to provide legal advice to either party, or tailored advice about individual notices.*
- *Reinstating the ability of the Land Registry to adjudicate in some cases where disputes over manorial rights claims arise, although resolution through the Land Tribunal or Courts may on some occasions still be necessary.*

## 3 Exercise and value of manorial rights

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### Evidence of use

33. The Ministry told us that it was not able to provide any evidence on the incidence or exercise of manorial rights as it did not collect such information, nor was it able to provide any evidence related to the impact of manorial rights on landowners as it had “not received such information from third parties”.<sup>60</sup> We have not received any evidence during the course of the inquiry citing instances where the exercise of manorial rights has caused problems for landowners in recent years. The Ministry’s evidence also stated that some manorial rights would have economic, social or environmental value with a real possibility that they may be exercised at some point, while others may have no realistic possibility of being exercised because of changes in the nature of the land in question. When questioned about the extent of use and exercise of manorial rights in the present day, some witnesses pointed to specific instances, particularly in relation to mines and minerals, but we were unable to garner a clear idea during our inquiry of how this translated more widely in England and Wales.<sup>61</sup> Professor Bray notably suggested to us that it was “... obvious that we need to have some kind of survey to find the extent of the use of the rights and categorising the rights”.<sup>62</sup>

### Consent

34. The Ministry’s written evidence suggested that it may be that the nature of manorial rights itself minimises the likelihood their exercise will cause real problems to landowners:

In relation to mines and minerals the legal position is generally that the lord of the manor owns the minerals beneath the land, but the landowner’s permission is needed if the person owning the rights wants to dig them up. Planning permission and other relevant regulatory permissions would also have to be obtained [...] In the absence of local custom the result is that the owner of the rights and landholder can each prevent the other from exploiting the minerals. Similarly, rights to markets and fairs confer an exclusive right to hold markets and fairs within the manor but do not generally permit the holding of a market on an individual property. [...] It is unclear [...] on the evidence available to the department, that there are any real problems being caused by the existence of [manorial] rights to the owners of land subject to them.<sup>63</sup>

35. As Dr Stafford pointed out this should mean that the impact of manorial rights on the freeholder of a property will “generally be much less serious than may at first appear” because “in the vast majority of cases owners can veto access to their land so that the rights cannot be used”.<sup>64</sup> However, in his oral evidence, Mr Jessel suggested that while the law on

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60 Ministry of Justice ([MAR0031](#))

61 See for example [Q 26](#), [Q 40](#), Tim Troman ([MAR0016](#)) and The Church Commissioners for England ([MAR0018](#))

62 [Q 52](#)

63 Ministry of Justice ([MAR0031](#))

64 Dr Paul Stafford ([MAR0039](#))

consent was very clear in the case of manorial mineral rights, it was less so in other cases, for example sporting rights where he claimed the position was “simply not known”.<sup>65</sup> When we put this to Mr Coveney he agreed and stated that it would depend on the custom of the manor in each case and, if there was ever a dispute, it would ultimately be for the court to decide, on the basis of the evidence, what the custom was in each particular case.<sup>66</sup>

36. Lord Faulks pointed to the potential for manorial rights to have a “negative value” in relation to the law on consent—that is, the situation where neither the landowner nor the manorial rights holder can extract minerals without the other’s consent being of potential value to the latter.<sup>67</sup> Pursuing this point in the context of future land development, Mr Towns told us that:

If a manorial lord has a demonstrable interest in the land, it is entirely his right to seek to protect his interests or to require a commercial payment to release them ... much like a right of way bisecting a development, or sporting rights held in gross, third party interests need to be taken into account by developers.<sup>68</sup>

### Types and locations of manorial rights

37. While there are no examples in the evidence received of manorial rights being exercised in urban residential areas, such as Welwyn Garden City, some of the evidence notes current use and benefits in more rural areas, particular in terms of minerals. Mr Troman said that he had “experience of several cases of manorial interests in sand and gravel deposits which have yielded in excess of [a] million pounds in royalties”,<sup>69</sup> while the Church Commissioners’ evidence stated that their manorial mineral interest extended to around 300,000 acres across various parts of the country and that the value of these interests was “substantial” with revenue generated making an important contribution to their core work.<sup>70</sup> Mr Towns accepted that “you cannot exercise sporting rights on a residential housing estate”, while most who had registered manorial rights “generally really have an eye on minerals because you do not have to have worked the minerals. You cannot be said to have abandoned minerals simply because you have not worked them for 100 years or so. There is more value in rural property.”<sup>71</sup> However, he also noted that, while some of his clients had taken a blanket approach to registering claims to manorial rights, others had not sought to register rights in areas of dense residential development.<sup>72</sup> Mr Tetlow also made the point, which is reflected to some degree in the types of cases cited in evidence during the course of the inquiry, that landowners in more rural locations are often more accepting of third parties holding rights over their land:

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65 [Q 53](#)

66 [Qq 93-94](#)

67 [Q 87](#)

68 Bond Dickinson LLP ([MAR0028](#))

69 Tim Troman ([MAR0016](#))

70 The Church Commissioners for England ([MAR0018](#))

71 [Q 39](#)

72 [Q 19](#)

There is a [distinction] between rural land and urban land—it does not change hands very often. It gets passed from father to son, and in many cases it was the grandfather who enfranchised. Grandfather knew that he was not getting the minerals and that the sporting rights were reserved, and that knowledge was passed on. It was not written down anywhere and that was why it was an overriding interest. [...] In many cases, when [he explained to affected members that] they had never had these rights and nothing was being taken away from them, but the people who had those rights had to register something in order to be able to keep them, they said, “That rings a bell with me. I seem to remember grandfather mentioning something about weird and wonderful rights.” They accepted it and, in those circumstances, usually chose to do nothing about it.<sup>73</sup>

38. We therefore raised the possibility of distinguishing between the status of different types of manorial rights and the locations upon which they are held with various witnesses. The Ministry told us that making any distinction may be difficult as the “rights exist in perpetuity and the use and character of land may change over time”.<sup>74</sup> When this point was put to Professor Bray she agreed there might be difficulties, stating that “Where you have a property right, use should not be the key factor; it should be whether you own the right”. She acknowledged that in relation to the question of abolition of rights the distinction might be more applicable, an issue we consider in the next Chapter.<sup>75</sup>

### ***Non-manorial rights to mines and minerals***

39. In some cases there is a distinction between specific ownership rights to mines and minerals and manorial mineral rights which has added to confusion about the status of manorial rights. For example the written evidence from Mr ap Iorwerth noted a recent example of the Crown Estate registering specific rights to mines and minerals in Anglesey.<sup>76</sup> Both Mr Jessel and Mr Coveney clarified the distinction during oral evidence.<sup>77</sup> The 2002 Act preserved the overriding status of certain ownership rights to mines and minerals held apart from the surface. In many parts of England and Wales it is fairly common that one person will own the surface of the land but someone else will own the land below the surface known as the ‘mines and minerals’. As the Land Registry website indicates, there are varying types of rights and ownership which can range from owning the mines and minerals outright and being able to take them away, whether or not the owner of the surface agrees, to having some rights to them that can be exercised with the agreement of the surface owner. Where someone owns the land comprising the mines and minerals below a property they will continue to own it indefinitely under the 2002 Act. They can apply to register it if they wish but do not have to and this will not affect their ownership.<sup>78</sup>

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73 [Q 21](#)

74 Ministry of Justice ([MAR0031](#))

75 [Q 54](#)

76 Rhun ap Iorwerth AM ([MAR0026](#))

77 [Qq 50, 72-73](#)

78 The Land Registry, [“What are mine and mineral rights?”](#)

## 'Fracking'

40. We also heard that the existence and exercise of manorial rights was occasionally linked to the extraction of shale gas and the 'fracking'<sup>79</sup> debate. The written evidence from The Peasants' Revolt raised the possibility that manorial rights owners might demand compensation for any extraction work that takes place in land where they own the mineral rights.<sup>80</sup> Mr Towns also suggested to us that there might be value related to shale gas deposits for manorial rights holders.<sup>81</sup> Other evidence received indicated that it would be very difficult for a manorial rights holder to obtain any value from extraction of shale gas or the provision of access for the purposes of extraction. The Ministry's evidence noted that while the precise nature of manorial rights might vary from manor to manor, "they are subject to the general law so that coal is vested in the Coal Authority and petroleum is vested in the Crown irrespective of any manorial right. Manorial rights to mines and minerals do not therefore include rights for extraction of gas or oil, including shale gas."<sup>82</sup> Mr Jessel looked to clarify the situation further, stating that he could not see how the manorial rights holder could extract value from authorising access for fracking as "the insertion of a pipe ... is a trespass against the landowner; it is not a trespass against the lord. The lord has the proprietary right in the mineral substance ... If the lord has no interest in the mineral value of the gas or oil and has no possessory right to the land [they] cannot bring trespass proceedings".<sup>83</sup> Lord Faulks highlighted the fact that the Infrastructure Bill, currently proceeding through Parliament, would, subject to further amendment, contain provisions related to the extraction of shale gas that were likely to provide further clarity to the situation.<sup>84</sup>

## Conclusion

41. We acknowledge that there may be certain manorial rights, particularly those related to mines and minerals over rural land, that are of considerable and real value to the rights holders. However, we also believe that the situation whereby an individual can claim, for example, certain sporting rights over an urban residential home is anomalous. Manorial rights holders may withdraw their claims, as has happened in the case of Anglesey. We therefore encourage those claiming rights over properties in dense urban residential areas where exercise and value cannot realistically be expected, for example in some areas of Welwyn Garden City, to consider whether it may be more prudent to withdraw such claims.

42. However, we also accept the view of Professor Bray and others that, notwithstanding separate considerations in relation to abolition, to make any formal legal distinction between different types of manorial rights within the current legislative framework related to the 2002 Act would not seem workable given it is ownership not use that is the most important consideration in terms of existing

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79 Formally known as 'hydraulic fracturing'.

80 The Peasants' Revolt ([MAR0023](#))

81 [Q 31](#)

82 Ministry of Justice ([MAR0031](#))

83 [Q 58](#)

84 [Qq 89-92](#)

property rights. Furthermore, based on the evidence received, it is our view that the exercise of manorial rights in a situation that impacts adversely upon the landowner or against their wishes will in practice be minimal because of the fact the landowner's consent is required in most cases related to manorial mine and mineral rights, and the fact that certain manorial rights could not conceivably be exercised upon urban residential land. We also believe that the situation in relation to fracking is clear, and that any link of this debate with that of manorial rights is erroneous.

43. Finally, we are surprised that neither the Ministry of Justice nor the Land Registry was able to provide any substantive evidence or information on the exercise of manorial rights in England and Wales. *We recommend that the Ministry and/or the Land Registry instigate research to assess the prevalence of exercise of manorial rights in England and Wales, and the impact and value of that use.*

## 4 The question of abolition

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### Evidence for

44. In addition to the problems surrounding the process of registering manorial rights which we have considered in the previous two chapters, more fundamental objections have been raised to the very existence of such rights. Those submitting evidence in favour of the abolition of manorial rights suggested there was “no place in today’s society”<sup>85</sup> for them, and that they were an “anachronism”<sup>86</sup> in the 21st century. The written evidence from The Peasants’ Revolt stated that manorial rights were “a relic of a system designed over 1,000 years ago under William the Conqueror, a time when the king had absolute power and the lord of the manor could command serfs to work on his land without payment in return for using the land the rest of the time.”<sup>87</sup> Kim Thomas could understand why 1,000 years ago the rights of the lord of the manor to hunt, shoot and fish, and to get access to minerals “no doubt made perfect sense”, but she could not understand why when “almost every other property law we associate with the 11th century has gone ... these bizarrely remain”.<sup>88</sup> Mr ap Iorwerth cited a paper by Professor Bray on the case for reforming feudal land law:

The point that she makes in that is that it is inconsistent that remnants of feudal law remain in operation; largely, land law has moved on, she says, from ancient concepts and practices. It makes little sense to have partial retention of feudal land law for 21st century land holdings, she says. She says that the remnants that remain cause uncertainty to the general public, legal practitioners and the courts. One such area of uncertainty is the nature and extent of manorial rights.<sup>89</sup>

45. Professor Bray herself was more cautious on the question of abolition of manorial rights in her evidence to us, stating that “they should be addressed. That is a lawyer’s answer.” However, she did say that “the Law Commission has missed an opportunity in their 10<sup>th</sup> programme of reform when they thought of opportunities of whether to include the reform of feudal law, which would include manorial rights. If I was to be pedantic, manorial rights are outside the feudal structure, but they have missed an opportunity. It highlights that we really do lag behind other countries in allowing these remnants of a feudal world to exist.”<sup>90</sup>

### Evidence against

46. The Ministry, while acknowledging that manorial rights have their historic roots in the now “defunct manorial system”, has made clear its view that they are “in principle indistinguishable from other property rights” and that it “has no plans to change the law

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85 Rhun ap Iorwerth AM ([MAR0026](#))

86 Albert Owen MP ([MAR0007](#))

87 The Peasants’ Revolt ([MAR0023](#))

88 [Q 11](#)

89 [Q 12](#). The paper Mr ap Iorwerth is referring to is: J. Bray, “*Feudal Law: The Case for Reform*”, in M. Dixon (ed.), *Modern Studies in Property Law* vol.5 (Oxford: Hart, 2009), ch.4, 99–121

90 [Q 61](#)

relating to manorial rights”.<sup>91</sup> The evidence goes on to state that “arbitrary abolition of a type of property right could undermine confidence in the security of other types of property right, which would be contrary to the interests of property owners and the wider economy”.<sup>92</sup> When we asked Lord Faulks about abolition he affirmed that the Government was “not convinced that, in practice, the exercise of these rights is causing any injustice ... leaving aside the flutter of understandable anxiety that some people felt on receiving these notices” and that it was not appropriate “simply to wave away rights, unless they are causing real problems, which the Government are not convinced that they are.”<sup>93</sup>

47. Lord Faulks also highlighted the fact that the Law Commission did not in its work prior to the 2002 Act consider that manorial rights should be abolished.<sup>94</sup> Similarly, Mr Towns told us that the 2001 Law Commission report “did not consider the abolition of manorial rights feasible”<sup>95</sup>. However, as we noted earlier,<sup>96</sup> it was the 1998 consultation document that considered that abolition was not a viable strategy within the scope of the review due to the financial implications of abolition, although separate consideration of abolition in the future was not ruled out.

48. Others were particularly forceful in their defence of manorial rights, with Mr Towns’ evidence stating that “the argument that property rights should be lost or abolished just because they are historic is fallacious”.<sup>97</sup> He highlighted a court ruling in relation to easements—a separate type of right—which confirmed that a right of way unexercised for over 175 years remained extant.<sup>98</sup> Mr Tetlow told us that “antiquity does not mean that there is an irrelevance there”<sup>99</sup> and that the Country Land and Business Association was “wholly opposed to the abolition of manorial interests” which constituted “valuable property rights and their abolition would be a blatant attack on property rights”.<sup>100</sup> Mr Troman developed these arguments further, noting:

Whilst in public perception the concept of manorial interests may appear arcane, to the owners of manorial rights the interests are as tangible as any other property interest [...] To abolish manorial rights would not transfer an asset into public ownership, but would amount to transferring a property interest from one group of property owners to another. Only a relatively small proportion of registered property titles are still subject to manorial rights. It would therefore be difficult to justify that abolition would be in the interest of the public as a whole.<sup>101</sup>

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91 Ministry of Justice ([MAR0031](#))

92 *Ibid.*

93 [Q 95](#)

94 *Ibid.*

95 Bond Dickinson LLP ([MAR0028](#))

96 Para 6.

97 Bond Dickinson LLP ([MAR0028](#))

98 [Q 40](#)

99 *Ibid.*

100 Country Land & Business Association ([MAR0027](#))

101 Tim Troman ([MAR0016](#))

## Implications of abolition

### *Human rights considerations and compensation*

49. Evidence from those against abolition of manorial rights indicated that abolition would be likely to result in legal challenges on human rights grounds under Article 1 of the First Protocol to the European Convention on Human Rights, which is related to deprivation of possessions and property, alongside complaints that some manorial rights holders had expended significant sums of money on researching and protecting their rights in accordance with the 2002 Act.<sup>102</sup> Mr Jessel also pointed out that it was “a very old principle of English law that you do not take property away without compensation, and that goes back centuries—before the civil war—so I do not think it would be possible just to abolish valuable rights without any compensation”.<sup>103</sup> The Ministry has acknowledged that if manorial rights were to be abolished the substance of the right would in effect vest in the landowner, which would amount to the forced transfer of property from one person to another. Thus abolition would:

amount to a deprivation of property and [...] engage the right to the free enjoyment of possessions under the Human Rights Act 1998. It is likely, therefore, that compensation would have to be paid to persons deprived of their rights. The amount of [...] compensation would depend upon the value of the rights abolished to the person thereby deprived of them.<sup>104</sup>

### *Scale of compensation and methods of abolition*

50. Evidence received suggested that an appropriate compensation scheme could address potential human rights issues, but we were told by Mr Towns that the process of valuing manorial rights would itself be “problematic” and might lead to legal challenges.<sup>105</sup> While the Ministry told us that it does not have any information as to the value of manorial rights,<sup>106</sup> Lord Faulks believed values would often be “very theoretical” with agreement hard to achieve between the various parties.<sup>107</sup> Lord Faulks also made the point that there would need to be consideration of who was required to pay the compensation, the landowner or the Government,<sup>108</sup> while Mr Troman noted that the process of determining whether there was any value, and then calculating this value would in itself incur significant cost.<sup>109</sup> We received little evidence on the scale of compensation upon abolition. Written evidence from Michael Turner, Emeritus Professor of Economic History at Hull University, stated:

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102 See for example Bond Dickinson LLP ([MAR0028](#))

103 [Q 65](#)

104 Ministry of Justice ([MAR0031](#))

105 Bond Dickinson LLP ([MAR0028](#))

106 Ministry of Justice ([MAR0031](#))

107 [Q 97](#)

108 [Q 95](#)

109 [Q 37](#)

I have attempted a back of the envelope calculation of what 50,000 enfranchisements/compensations/ extinguishments cost from 1841 to 1951 [the period when enfranchisement of copyhold land occurred]. [...] my calculation suggests that this process saw the exchange of money from former manorial tenants to lords of the manor of the order of £400 million (in real terms). I emphasise that this is not the same as abolishing manorial rights neither is it a scientifically verifiable estimate, but it might be an order of magnitude.<sup>110</sup>

51. Mr Jessel, while stating that it would ultimately be “very difficult to abolish” manorial rights noted that there were an “awful lot” of past experiences and precedents that could be used and adapted to calculate compensation “without too much difficulty”.<sup>111</sup> Dr Stafford noted that the process of enfranchisement in the early 20<sup>th</sup> century included provisions for freeholders to buy out the remaining rights from the lord of the manor under a statutory compensation scheme which using this experience could be “devised again”.<sup>112</sup> Mr Jessel developed possible procedures for abolition further in his written evidence:

Parliament could give the landowner an option to extinguish manorial mineral and sporting rights [...] based on procedures used under the Copyhold Acts and the [Law of Property Act] 1922. The compensation for minerals might be typically half the value of unworked deposits, reflecting the prospect of planning consent and the costs of working. The compensation for sporting rights would reflect the diminution in value of any adjoining land of the lord. Where a market was originally granted to a lord the law could be amended to make the rights free standing and to cease any connection with the manor.<sup>113</sup>

52. The Ministry’s evidence also suggested that arguments “for and against the substantive abolition of individual categories of manorial rights would have to be marshalled on a subject matter basis.”<sup>114</sup> The point of distinguishing between types and locations of manorial rights was made a number of times during the course of our inquiry, both in the context of treatment and exercise of rights under current law, as discussed in Chapter 3 of this report, and within the context of abolition. Professor Bray believed that such consideration was most relevant in the context of abolition,<sup>115</sup> and we pursued the suggestion further with Lord Faulks that there might be scope to abolish some categories of manorial rights, particularly those held over densely populated urban residential areas, while allowing others, for example those to mines and minerals on rural land, to remain. He said that while he understood the point:

it is quite difficult rigidly to define those that are urban and those that are not urban [...] There is also the danger that if you have a classification of those rights that you can abolish and those rights that are retained, you generate a great deal of

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110 Michael Edward Turner ([MAR0033](#))

111 [Q 64](#)

112 Dr Paul Stafford ([MAR0039](#))

113 Christopher Jessel ([MAR0004](#))

114 *Ibid.*

115 [Q 54](#)

litigation between those who say, “My rights fall into category A rather than category B.” These are difficult in terms of classification. To create a whole potential field of litigation, unless there is a real practical problem, seems difficult to justify.<sup>116</sup>

### *A Scottish parallel?*

53. Professor Bray and others pointed to the example of the abolition of the feudal system in Scotland,<sup>117</sup> and suggested that while the structure and system in Scotland was not directly analogous to manorial rights in England and Wales, lessons could be learnt in terms of abolition and compensation arrangements.<sup>118</sup> Until its abolition in 2004 the feudal system in Scotland was the main system of land ownership—the property owner held his or her land or buildings subject to certain rights retained by the “feudal superior”. In her written evidence Professor Bray suggested that the main similarity with manorial rights in England and Wales lay with the payment of feu duties and feudal burdens in Scotland, the latter of which included sporting rights in rural areas.<sup>119</sup>

54. The Abolition of Feudal Tenure etc (Scotland) Act 2000 ultimately abolished the feudal system in Scotland while the Land Tenure Reform (Scotland) Act 1974 had already restricted the significance of the superior’s right to collect feu duty and ensured it was not possible to create new feu duties.<sup>120</sup> Remaining feudal burdens were largely abolished under the 2000 Act while giving the former superior a number of opportunities to seek to preserve rights to enforce sporting rights after feudal abolition, primarily to ensure the legislation was compliant with the European Convention on Human Rights (ECHR). The legislation provided for this to be adjudicated by a Land Tribunal and the superior had to convince the tribunal that he or she would suffer substantial loss or disadvantage if the feudal burden was lost.<sup>121</sup> Professor Bray suggested similar legislation could be introduced now which would aim to abolish the rights but provide for compensation and allow those landowners who claimed loss or disadvantage to bring a case before the Land Tribunal.<sup>122</sup> However, the Scottish legislation dealt primarily with the principle of feudal ownership and the removal of feu duties; and the exception of sporting rights for ECHR compliance purposes illustrates that the main issues raised by manorial rights in England and Wales are not likely to be resolvable by legislation closely based on the Scottish model.

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116 [Q 96](#)

117 We are grateful to the Scottish Parliament Information Centre for providing background information on the abolition of the feudal system in Scotland.

118 [Q 63](#)

119 *Ibid.*

120 The 1974 Act also introduced measures to allow property owners to redeem, or buy out, existing feu duties by paying a lump sum, while also provided for the compulsory redemption of feu duty on the sale of land. This meant that there was only a small number of feu duties which remained when the feudal system was abolished in 2004, and while provision was made again for compensation to be paid, these amounts were typically very small. It was calculated by reference to 2.5% Consolidated Stock. A former superior was entitled to such sum as if invested in the 2.5% Consolidated Stock would produce an annual sum equivalent to the former feu duty. For example, on 5th January 2005, the price of a unit of 2.5% Consolidated Stock was £53.55 so in relation to an annual rent of £5.00 a feudal superior would have received £53.55 by way of compensation.

121 Judith Bray ([MAR0037](#))

122 *Ibid.*

## Conclusion

55. The nature of manorial rights and the impact of the relevant changes in the Land Registration Act 2002 have inevitably led to the emergence of two opposed camps regarding whether or not such rights should be abolished. In launching this inquiry we did not intend to resolve the question of the ongoing existence of manorial rights but rather to instigate a debate on the current situation, raise the profile of the issue, and inform any possible future review of the law in this regard.

56. What is also clear to us is that, although claims to manorial rights affect only a small proportion of registered titles and thus landowners, the process instigated by the 2002 Act has brought to light issues which are of real and ongoing concern to those affected. Equally, we acknowledge that, while some manorial rights may be impossible to exercise and of no practical significance, there may be certain manorial rights, particularly those related to mines and minerals over rural land, that are of considerable and real value to the rights holders. It is understandable that following the changes in the 2002 Act those who believe they hold such rights have wished to take the necessary action in order to protect those rights.

57. While we do not express a view on abolition and note that it would almost certainly require the provision of compensation to some manorial rights holders, not least because of the human rights implications, it is important to highlight the evidence received, in particular from Mr Jessel, that such issues can be addressed and overcome if a suitable scheme is devised. More generally, we draw attention to the body of written and oral evidence from this inquiry and the suggestions in this evidence which may be considered as a basis from which to develop further thinking on the subject. We hope that this inquiry, and the submissions made to it, will serve as an evidence base for the further work recommended below to draw and proceed on.

58. *For all these reasons we recommend that the Law Commission conduct a project assessing whether the law related to manorial rights should be changed, including the question of whether all or some categories should be abolished, and how legislation could appropriately address compensation and human rights issues in such an event. It may be that such a project can be carried out as part of the Law Commission's 13th Programme of Law Reform, particularly given projects related to feudal law have been planned in recent programmes but not delivered due to competing priorities. However, given the 13th programme is unlikely to be determined until 2017, we recommend that the Government refer a specific project to the Law Commission outside of the law reform programme, as is in its gift.*

59. *We also recommend that such a review should be preceded by some consideration of and work by the Government on the financial implications and provisions for compensation which would be associated with abolition of all, or certain types of, manorial rights, as the Law Commission has itself suggested.*

# Formal Minutes

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**Tuesday 13 January 2015**

Members present:

Sir Alan Beith, in the Chair

Mr. Christopher Chope  
Jeremy Corbyn

John Howell  
John McDonnell

Draft Report (*Manorial Rights*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 59 read and agreed to.

Summary agreed to.

*Resolved*, That the Report be the Fifth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 20 January at 9.15am.].

## Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the Committee's inquiry page at [www.parliament.uk/justicecttee](http://www.parliament.uk/justicecttee).

### Wednesday 15 October 2014

*Question number*

**Kim Thomas** and **Amanda White**, The Peasants' Revolt, **Rhun ap Iorwerth**, Assembly Member for Ynys Môn, and **Albert Owen**, Member of Parliament for Ynys Môn

[Q1–17](#)

**David Towns**, Director, Bond Dickinson LLP, **Roger Tetlow**, Senior Legal Adviser, Country Land and Business Association, and **Timothy Troman**, Chartered Mineral Surveyor, Wardell Armstrong LLP

[Q18–46](#)

**Professor Judith Bray**, University of Buckingham, and **Christopher Jessel**, retired solicitor

[Q47–67](#)

### Tuesday 25 November 2014

**Lord Faulks QC**, Minister of State for Civil Justice and Legal Policy, Ministry of Justice, and **Steve Coveney**, Head of Registration Legal Services, Land Registry

[Q68–99](#)

## Published written evidence

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The following written evidence was received and can be viewed on the Committee's inquiry web page at [www.parliament.uk/justicecttee](http://www.parliament.uk/justicecttee). INQ numbers are generated by the evidence processing system and so may not be complete.

- 1 Albert Owen MP ([MAR0007](#))
- 2 Amanda White ([MAR0015](#))
- 3 Archives and Records Association ([MAR0030](#))
- 4 Bewcastle Parish Council ([MAR0036](#)) & ([MAR0040](#))
- 5 Bond Dickinson LLP ([MAR0028](#))
- 6 Christopher Jessel ([MAR0004](#))
- 7 Christopher M. Berry ([MAR0022](#))
- 8 Country Land & Business Association ([MAR0027](#))
- 9 David Bate ([MAR0002](#))
- 10 David O'Mahony ([MAR0019](#))
- 11 Dr Matthew James Hannah and Mrs Julie Marie Hannah ([MAR0025](#))
- 12 Dr Paul Stafford ([MAR0039](#))
- 13 Elizabeth Mary Daniel ([MAR0024](#))
- 14 James Reeve ([MAR0029](#))
- 15 Jane Donaldson-Allen ([MAR0038](#))
- 16 Professor Judith Bray ([MAR0037](#))
- 17 K M Ramsden ([MAR0005](#))
- 18 The Land Registry ([MAR0035](#))
- 19 The Law Commission for England and Wales ([MAR0042](#))
- 20 Lloyd Russell Jenkinson ([MAR0017](#))
- 21 Michael Edward Turner ([MAR0033](#))
- 22 Michael James Hall ([MAR0034](#))
- 23 Ministry of Justice ([MAR0031](#)) & ([MAR0041](#))
- 24 PCS Union Land Registry Group ([MAR0006](#))
- 25 Rhun ap Iorwerth AM ([MAR0026](#))
- 26 Richard and Janet Woodward ([MAR0008](#))
- 27 Richard Hill ([MAR0020](#))
- 28 Stephen Kent and Company Limited ([MAR0014](#))
- 29 The Church Commissioners for England ([MAR0018](#))
- 30 The Peasants' Revolt ([MAR0023](#))
- 31 Tim Troman ([MAR0016](#))

# List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the Committee's website at [www.parliament.uk/justicecttee](http://www.parliament.uk/justicecttee).

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

## Session 2010–12

First Report	Revised Sentencing Guideline: Assault	HC 637
Second Report	Appointment of the Chair of the Judicial Appointments Commission	HC 770
Third Report	Government's proposed reform of legal aid	HC 681-I (Cm 8111)
Fourth Report	Appointment of the Prisons and Probation Ombudsman for England and Wales	HC 1022
Fifth Report	Appointment of HM Chief Inspector of Probation	HC 1021
Sixth Report	Operation of the Family Courts	HC 518-I (Cm 8189)
Seventh Report	Draft sentencing guidelines: drugs and burglary	HC 1211
Eighth Report	The role of the Probation Service	HC 519-I (Cm 8176)
Ninth Report	Referral fees and the theft of personal data: evidence from the Information Commissioner	HC 1473(Cm 8240)
Tenth Report	The proposed abolition of the Youth Justice Board	HC 1547 (Cm 8257)
Eleventh Report	Joint Enterprise	HC 1597 (HC 1901)
Twelfth Report	Presumption of Death	HC 1663 (Cm 8377)
First Special Report	Joint Enterprise: Government Response to the Committee's Eleventh Report of Session 2010–12	HC 1901

## Session 2012–13

First Report	Post-legislative scrutiny of the Freedom of Information Act 2000	HC 96-I (Cm 8505)
Second Report	The budget and structure of the Ministry of Justice	HC 97-I (Cm 8433)
Third Report	The Committee's opinion on the European Union Data Protection framework proposals	HC 572 (Cm 8530)
Fourth Report	Pre-legislative scrutiny of the Children and Families Bill	HC 739 (Cm 8540)
Fifth Report	Draft Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013	HC 927
Sixth Report	Interpreting and translation services and the Applied Language Solutions contract	HC 645 (Cm 8600)
Seventh Report	Youth Justice	HC 339 (Cm 8615)
Eighth Report	Scrutiny of the draft Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013	HC 965 (HC 1119)
Ninth Report	The functions, powers and resources of the Information Commissioner	HC 962 (HC 560, Session 2013–14)
First Special Report	Scrutiny of the draft Public Bodies (Abolition of	HC 1119

Administrative Justice and Tribunals Council) Order  
2013: Government Response to the Committee's  
Eighth Report of Session 2012–13

**Session 2013–14**

First Report	Sexual Offences Guidelines: Consultation	HC 93
Second Report	Women offenders: after the Corston Report	HC 92 (Cm 8279)
Third Report	Transforming Legal Aid: evidence taken by the Committee	HC 91
Fourth Report	Environmental Offences Guideline: Consultation	HC 604
Fifth Report	Older prisoners	HC 89 (Cm 8739)
Sixth Report	Post-legislative Scrutiny of Part 2 (Encouraging or assisting crime) of the Serious Crime Act 2007	HC 639 (HC 918)
Seventh Report	Appointment of HM Chief Inspector of Probation	HC 640
Eighth Report	Ministry of Justice measures in the JHA block opt-out	HC 605 (HC 972)
Ninth Report	Fraud, Bribery and Money Laundering Guideline: Consultation	HC 804
Tenth Report	Crown Dependencies: developments since 2010	HC 726 (Cm 8837)
Eleventh Report	Appointment of the Chair of the Office for Legal Complaints	HC 916
Twelfth Report	Crime reduction policies: a co-ordinated approach? Interim report on the Government's Transforming Rehabilitation programme	HC 1004
Thirteenth Report	Serious Fraud Office Supplementary Estimate 2013-14	HC 1005
Fourteenth Report	First Joint Report from the European Scrutiny, Home Affairs and Justice Committees of Session 2013–14: The Government's response to the Committees' Reports on the 2014 block opt-out decision	HC 1177
First Special Report	The functions, powers and resources of the Information Commissioner: Government Response to the Committee's Ninth Report of Session 2012–13	HC 560
Second Special Report	Post-legislative Scrutiny of Part 2 (Encouraging or assisting crime) of the Serious Crime Act 2007: Government Response to the Committee's Sixth Report of Session 2013–14	HC 918
Third Special Report	Ministry of Justice measures in the JHA block-opt: Government Response to the Committee's Eighth Report of Session 2013–14	HC 972

**Session 2014–15**

First Report	Crime reduction policies: a co-ordinated approach?	HC 307 (Cm 8918)
Second Report	Theft Offences Guideline: Consultation	HC 554
Third Report	Mesothelioma Claims	HC 308 (HC 849)
Fourth Report	Joint enterprise: follow-up	HC 310
First Special Report	Mesothelioma Claims: Government Response to the Committee's Third Report of Session 2014–15	HC 849