

PE1676/C

Petitioner submission of 15 March 2018

Thank you for expressing your support for my petition and other supporting statements expressed at the Committee Meeting 1st February 2018. As of the 7th March 2018 I am now in possession of the following:-

A. PE1676/A submission from the Scottish Government of 6th March 2018 unsigned**, - and

B. A Letter from Register of Scotland (RoS) dated 15th February 2018 signed Sheenagh Adams

** On 7th March 2018 I requested the Petitions Clerk by Email to let me know who had written the response and why there was no signature.

I will respond as follows with my own opinions and without prejudice.

A. Scottish Government of 6th March 2018 unsigned.

NB. *Original text from submissions and letters in italics.*

A1. Submission from the Scottish Government.

This unknown Scottish Government spokesperson is quoting an answer from the RoS Keeper, a non ministerial government department.

As the Scottish Government is responsible for the Land Registration etc (Scotland) 2012 Act, and comments were requested by the Petitions Committee from the Scottish Government, could I request that you please refer back to them for comment on my petition by the responsible ministerial person.

For your information I had this very same problem in 2016/2017 [REDACTED].

A2. 1st Page The cadastral map

“On this the Keeper receives 400-500 updated map tiles from Ordnance Survey each week each of which may contain changes to the map base. While not all such changes affect the boundary of a registered title, Registers of Scotland (RoS) estimate that in excess of 1,000 titles are updated each week to reflect changes to the mapbase.”

Whilst acknowledging that the RoS Title Deed Plan uses the OS Map as a background medium, and boundary lines are delineated by RoS, there must be many times where these boundary lines are amended by RoS to match the new background OS Map. Thus introducing errors for owners without their opportunity to approve the changes. Retrospective action should be taken to seek approval of these changes by affected proprietors.

This in my opinion is further exacerbated by the facts that as I understand that generally a property is transferred from the Sasine Register into the Land Register either when the property is sold, or when a new mortgage is taken out on the property, or on the death of the proprietors with transfer of the property to their heirs. Or on completion of a Mortgage when the owner can make application for voluntarily registration.

The risk of error for proprietors is significantly further increased with the recent legislation introducing a new scheme called Keeper Induced Registration in which property titles independently are moved from the Sasine Register into the Land Registry without an application from the owner. There is no fee if the property is moved into the Land Register by this method. Scottish Ministers have requested of RoS that all properties are transferred into the Land Register by 2024. No approval of proprietors is to be sought.

In my opinion - **What a poor indictment of a Land Registration system in free-fall.**

“Another potential option would be to amend the 2012 Act to require the Keeper to arrange a site survey on each occasion that the Ordnance Survey map differs from the Keeper’s cadastral map, and to allow proprietors an opportunity to comment on all such updates.”

Most definitely, change is absolutely necessary, hence the reason for my Petition to request a change to the 2012 Act to make it mandatory for RoS to check OS Map validity against current holdings and it’s affect on Title Plans. Otherwise errors will continue to be perpetuated at the expense of proprietors. Especially with the additional problem of the Prescription and Limitations Act and it’s 20 year cut off date, when owners have not had visibility of their Land Registered Title Deed Plan for more than 20years, and cannot then request correction of an error.

How is it excessive to have a law (2012 Act) that is not fit for purpose in providing proprietors with an accurate Land Registry system? In my view, the RoS currently provides inaccurate information on property title maps and systematic amendments independently, without approval by proprietors.

(As explained by Mr Hugh Paterson in his Petition PE01672 and loss of a substantial piece of his land.

Another person from Inverness contacted me regarding the loss of a piece of land due to inaccuracies in the Land Register. Also Mr Derek Riddick commented on my Petition website which stated “I have experienced difficulties with title registration and consider the methodology being used which does not take dimensions for existing titles into the new title to be a fundamental and potentially fatal flaw in the current system”.

Also Michelle Ballantyne MSP 1st February 2018 at Petitions Committee noted:-

“A couple of constituents have come to me with this very problem, so there is a need to revisit the issue. If someone who has lived somewhere for a long time suddenly finds that a boundary has moved but they are time barred from addressing the issue, that is incredibly inequitable and unfair, because they did not know about it. Therefore, we really need to have a look at the issue.”

I would submit that knowledge of errors could occur with a high percentage of owners who do not see Title Plans until property is sold, Mortgages are discharged, or their heirs make claim on the property.

A3. 1st Page The cadastral map

“The Keeper estimates that the cost of surveys in all such cases, followed up by correspondence with the affected proprietors and mortgage lenders, would exceed £7 million at a conservative estimate each year and could well be significantly higher

than that. That cost would have to be passed on to property owners in Scotland, in the form of increased registration fees, as the costs of land registration are met by those using the service, rather than by the taxpayer.”

Significant costs and delays are borne by property owners at present when title deeds are in error, with costs of solicitors, chartered surveyors, RoS fees, public notary and administration fees, some at a time of loss of loved ones.

I would submit that the cost of maintaining a correct Land Register is wholly the responsibility of the Scottish Government via the RoS whose main reason for being in existence is the provision of correct Land Titles.

In my opinion: -

All costs should be borne by RoS and funded by the Scottish Government to provide a foolproof system for owners of property.

(In conclusion I might add that the previous Land Registration Act and the systems/procedures of RoS provided a valuable service to property owners. As an example in 1990 when OS Digitised their Maps supplied to RoS, they wrote a letter to me with the new Title Plan for approval which I readily gave. RoS should again provide this is the type of service to owners free of charge.)

A4. 1st Page Provision of supporting materials such as death certificates.

“Operational matters at Registers of Scotland are a matter for the Keeper.”

The RoS Keeper is responsible in law to the Scottish Government statutes under which she must operate, in particular the Land Registration etc (Scotland) Act 2012.

As stated in my Petition, “Provision of a death certificate negates the possibility of error by a proprietor or solicitor and, in extreme cases, could prevent fraud.”

A5. 1st Page Provision of supporting materials such as death certificates.

“The Scottish Government’s understanding is that applications for registration of title are typically submitted by the applicants’ solicitor who is under a professional duty to establish the identity of their client.”

As explained in my Petition, “Provision of a death certificate negates the possibility of error by a proprietor or solicitor and, in extreme cases, could prevent fraud.”

Not all applications for change to the RoS are required to be made by solicitors, individual or joint proprietors can unilaterally make application for these changes.

While it may be that this has not happened before, how many cases could come to light in the future. In my view, provision of a certified death certificate excludes future problems for proprietors and solicitors alike, and prevents a flawed system.

This loophole should be closed for all.

B. Register of Scotland (RoS) dated 15th February 2018.

B1. Page 1. *“1. Mr Rosser’s proposal that the Registers of Scotland (RoS) should be required to confirm the accuracy of Ordnance Survey (OS) updates of the OS base map which is used by RoS.”*

This is a complete misinterpretation of my Petition in which I had requested:-

“To avoid any inaccuracies or questions about the validity of updated Ordnance Survey maps received by RoS, I would like it to be mandatory for the RoS to check their validity against the current cadastral map. Where maps are in dispute the RoS should arrange a re-survey (to be conducted by OS or RoS) of the property physical boundaries, and proprietors should have the opportunity to question/approve the revised cadastral plan/title deed plan.”

[REDACTED]

As explained in my petition “I should note that OS do not delineate boundaries on their maps.....” that is wholly the responsibility of the RoS. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Hence the reason for my Petition to request a change to the 2012 Act to make it mandatory for RoS to check OS Map change validity against current title plan holdings. Otherwise errors will continue to be perpetuated at the expense of proprietors. Especially with the eventual Prescription and Limitations Act statute and it’s 20 year cut off date, after which no amendments will be made to correct erroneous title deed plans.

[REDACTED]

[REDACTED]

[REDACTED] Perhaps the RoS procedure should be changed to request title plans when mortgages are discharged.

B4. 2nd Page *“Where it is suggested to us that the OS map may be out of date or incorrect, we will instruct the Ordnance Survey to carry out a re-survey at our expense.”*

Again, the RoS are expecting proprietors/ their solicitors to be the proactive agents to 'suggest' incorrect Title Plans, it is my view that RoS should be the prime mover to get plans correct.

Also why are RoS reimbursing OS for incorrect data, surely their contract allows for free correction and surveys when required by RoS. [REDACTED]

B5. 3rd Page "Death Certificates"

"That being the case, we take the view that we are entitled to rely on information certified by a solicitor to be correct without further investigation.

[REDACTED]
[REDACTED] *We do not consider that it is necessary to ask solicitors to provide copies of death certificates [REDACTED]*
[REDACTED]"

As stated in my Petition, "Provision of a death certificate negates the possibility of error by a proprietor or solicitor and, in extreme cases, could prevent fraud."

Not all applications for change to the RoS are required to be made by solicitors, individual or joint proprietors can unilaterally make application for these changes.

While it may be that this has not happened before, how many cases could come to light in the future. In my view provision of a certified death certificate excludes future problems for proprietors and solicitors alike and prevents a flawed system.

As Michelle Ballantyne MSP expressed at the 1st February 2018 Petitions Committee meeting:-

"In effect there is a loophole or a gap that people are falling through."

This loophole should be closed for all proprietors.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Should you wish any additional information or indeed copies of the letters referenced above please do not hesitate in contact me.

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