

LAND REGISTRATION ACT 2002

EXPLANATORY NOTES

COMMENTARY ON THE SECTIONS

Part 11: Adjudication

Section 107: The adjudicator

170. **Section 107** provides for the appointment by the Lord Chancellor of an adjudicator to HM Land Registry. This office is new and its function will be to determine any contested application to the registrar that cannot be disposed of by agreement between the parties. At present this function is performed by the Solicitor to HM Land Registry and those acting under his authority. Notwithstanding that the Solicitor adjudicates only in disputes between parties and not those involving the Registry, issues can still arise in such cases which involve the decisions of officials of the Registry. There could therefore be a perception that he is not sufficiently independent. This section creates a completely independent office for adjudication, and will continue a system of determinations which are cheap, swift and more informal than court hearings. Further provisions about the adjudicator are contained in Schedule 9.

Section 108: Jurisdiction

171. **Section 108** lists the matters within the adjudicator's jurisdiction. They are:
- a) disposing of an objection to an application (see section 73(7));
 - b) dealing with refusal to grant a network access agreement, and disputes over the level of access applied for, or the termination of such an agreement (see paragraph 4 of Schedule 5); and
 - c) making an order for rectification or setting aside of a document which disposes of a registered estate or charge in some way which would be reflected in the register (for example, this is wide enough to cover the grant of a restrictive covenant as well as a sale or mortgage), a contract to make such a disposal of a registered estate or charge, or which effects the transfer of an interest which is the subject of a notice on a register.
172. The category referred to in sub-paragraph (c) above is new to this Act. The registrar has no power to rectify or set aside a document under the present law, which has meant that he has had to refer matters to the High Court which he could otherwise have resolved. The general law applicable to orders of the High Court also applies to orders made by the adjudicator under this section. This means, for example, that rectification relates back to the time when the instrument was executed and after rectification the instrument is to be read as if it had been drawn up in its rectified form.

Section 109: Procedure

173. As at present with proceedings before the Solicitor, hearings before the adjudicator are to be held in public unless the adjudicator is satisfied that the exclusion of the public

is just and reasonable. Rules will, as now, govern the practice and procedure to be followed in relation to hearings. The section lists a number of matters which may be covered by the rules.

Section 110: Functions in relation to disputes

174. **Section 110** makes provision for the powers of the adjudicator in relation to the disposal of objections to applications. The adjudicator may, instead of determining the matter himself, direct one of the parties to commence court proceedings by a specified date. These proceedings may be to determine specific issues or the entirety of the matter. This replicates the power given to the Solicitor to HM Land Registry under the present law and is likely to be used: when the application raises an important or difficult point of law; when there are complex disputes whose resolution is better suited to the court process; when other issues between the parties are already before the courts; or to make use of the wider powers available to the court, for instance, the award of damages for lodging an objection without reasonable cause.
175. Rules will make detailed provision about the procedure for referring the matter to court, the adjournment of proceedings before the registrar whilst the court proceedings are ongoing, and to specify the adjudicator's powers in the matter if the party directed fails to commence proceedings as directed. These rules may empower the adjudicator to dismiss an application in whole or in part if the defaulting party is the applicant. They may also empower the adjudicator to give effect to the application in whole or in part if the defaulting party is the objector. Additional rules may deal with the functions of the adjudicator following a court decision on all or part of the issues in the case. In particular, these additional rules will cover the adjudicator's ability to determine (or give directions about the determination of) applications to which the reference related, and such other present or future applications as the rules provide. Special provision is made in relation to applications for registration of title based on ten years' adverse possession (see paragraph 1 of Schedule 6). If the adjudicator decides that it would be unconscionable because of an equity by estoppel for the adverse possessor to seek to dispossess the registered proprietor, but that the adverse possessor ought not to be registered as registered proprietor, he must decide how to satisfy the entitlement of the adverse possessor and can make any order which the High Court would be empowered to make to resolve the matter.

Sections 111 and 112: Appeals, and Enforcement of orders etc

176. In a similar way to the present system, determinations of disputes can be the subject of an appeal to the High Court and any requirement of the adjudicator is enforceable as a court order.