



Justice Committee

Oral evidence: [Manorial Rights, HC 657](#)

Wednesday 15 October 2014

Ordered by the House of Commons to be published on Wednesday 15 October 2014

Written evidence from witnesses:

- Albert Owen MP [MAR0007](#)
- Amanda White [MAR0015](#)
- The Peasants' Revolt [MAR0023](#)
- Rhun ap Iorwerth [MAR0026](#)
- Timothy Troman [MAR0016](#)
- The Country Land and Business Association [MAR0027](#)
- Bond Dickinson LLP [MAR0028](#)
- Christopher Jessel [MAR0004](#)
- Professor Judith Bray [MAR 37](#)

[Watch the meeting](#)

Members present: Sir Alan Beith (Chair); Christopher Chope; John Howell; Mr Elfyn Llwyd and Andy McDonald

Questions 1-67

Witnesses: **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, gave evidence.

Chair: We are starting a little early because we have a lot to get through this morning and we are very glad that you are all here. Before I turn to you, I have to ask Members to confirm that nobody has any relevant interests.

Nobody does, so I can say that it is a pleasure to welcome Albert Owen, our colleague, Rhun ap Iorwerth, Kim Thomas and Amanda White. The latter two are from the wonderfully

named Peasants' Revolt, while the first two, of course, are concerned with impacts in Anglesey. I am going to ask Andy McDonald to begin.

Q1 Andy McDonald: Thank you, Sir Alan. Good morning, everyone. Beyond the difficulties and confusion over the actual registration process, which we are going to deal with separately, can you describe any specific detrimental impacts that the registration of manorial rights has had on landowners? Can I throw that open?

Albert Owen: There has been a huge detrimental impact on some people because they have registered their properties, purchased them in good faith with solicitors and conveyancing has been undertaken, but then all of a sudden they get a notice to say that there are overriding rights and a third party has some rights to their property, so there is the anxiety there. In addition, there has been some complication when these rights were first issued about people re-mortgaging and mortgaging their properties, because, quite frankly, many of the lender associations did not know about them, in the same way as the individuals did not know about their rights. I have spoken to three or four solicitors—I am not making this a pertinent thing—and they have given me three or four different answers, so there are an awful lot of issues. Nobody had, really, anywhere to go when they received these notices and a lot of them did not understand it. The Land Registry was playing catch-up, to be quite frank. It issued these notices, but it was not giving the safeguards that individuals expected. The burden of proof was on them when, quite frankly, it should have been on the individual who was issuing those rights.

Rhun ap Iorwerth: There was evidence initially perhaps that problems with re-mortgaging were due, largely, to the fact that people had challenged the original registration, meaning there was a live dispute, and banks and building societies were not happy to touch those applications while that was the situation. I have been getting people contacting me in the past few weeks who are still having difficulty re-mortgaging. Lawyers do not understand it; banks and building societies do not understand it. The Land Registry is not able, it seems, to pass on information. While we are told regularly—or have been told regularly—that it should be no problem and that things should be able to carry on as usual, that clearly is not the case. We have ample evidence from many constituents that very real problems have been caused, as well as, of course, that people have had to pay hundreds of pounds for legal advice. Clearly one detrimental effect is that it has cost people money.

Q2 Chair: What about so far as Welwyn Garden City is concerned?

Kim Thomas: As far as we are concerned, the letters from the Land Registry came out of the blue, so it was a great shock to everybody concerned suddenly to discover that while they had bought the freehold of their houses in good faith, a third party has an overriding interest in their properties.

In terms of the damage it has caused, the difficulty for us is the uncertainty because we do not really know what these rights mean. We have been asked to rely on reassurances from all sorts of lawyers that these rights will not be exercised, but reassurance, in a way, is not good enough. We would rather know for certain that those rights were never going to be exercised or that the rights did not exist in the first

place. For us, it is a question of why these rights continue to exist if they are not going to be exercised. We do know that elsewhere in the country they have caused problems. For example, there was a case in Staffordshire when somebody called Mark Roberts bought the lord of the manor rights and then started charging residents to use common land that they had used for a very long time. So they are open to abuse, and that is obviously something that concerns us.

Q3 Andy McDonald: Have you any other examples of people trying to exercise their manorial rights—that was one of them—rather than just them existing and causing a problem by their mere existence?

Rhun ap Iorwerth: There is a good example from 1999 in Peterstone Wentlooge, when one particular owner of manorial rights made a real nuisance of himself. His attempts to extract substantial amounts of money, in some cases, from people in that area were blocked by parliamentary proceedings but, again, it was an example of how at worst—or at best, rather—the holders of these manorial rights can threaten to extract. As we hear, there are examples of where they have managed in practice to do that.

Q4 Andy McDonald: Do they have any value if you are going to need the permission of the landowner to exercise them?

Albert Owen: That is a very interesting question because when the Land Acts of the 1920s abolished the whole feudal system, these were protected rights and the question has to be asked—why? All I can come up with is the fact that in our area you can have a fair or a market, but you also have mineral, shooting and hunting rights, so I presume they were to preserve that. Of course, mineral rights could be worth an awful lot of money if they were able to be disposed of in the future. Those are the issues that are of concern. When I led the debate in Parliament in January of this year, of course the debate over shale gas was coming in and a lot of people were concerned that there was going to be extraction of gas and minerals in certain parts of not just my area—there is no shale there—but other parts of Wales and England.

Rhun ap Iorwerth: One other example that it might be well worth referring to are the stories I heard at the time—I have no reason to doubt them—that constituents of mine who were very concerned about the effects of these rights and how exercisable they were offered to buy the ability to clear their name of these rights. I have heard examples of thousands of pounds being asked for to go through the process of clearing a particular property from this registration. That is an exercisable value. I have heard that some people have paid. I cannot confirm that, but certainly people were willing to pay, and it took some persuading for people not to go down that route, initially at least, otherwise people would have paid a lot of money to be clear of this.

Q5 John Howell: I want to turn to the registration process for this. In your experience, should the Land Registry have done more to assist landowners who received unilateral notices, because many of the problems cited in written evidence seem to stem from a lack of information and knowledge at the time the registration process was undertaken and landowners receiving unilateral notices?

Rhun ap Iorwerth: It is secondary because you could always argue that lessons can be learned from their experience. It was clearly a shambles in Anglesey.

Amanda White: It was a shambles in Welwyn Garden City as well. I thought it was a joke at first because I had never heard of such things. It is a red herring. Yes, they could have done a lot more; it could have been a lot clearer; they could have given us a lot more information. I know it may come up later, but I think they could help with the burden of proof about whether these exist. As a resident affected by this, 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 and my notice came a fortnight after paying off my mortgage, so it was particularly insulting, at least we knew about it now, and people who subsequently buy their properties will know about this. It is a bit of a red herring. There is lots they can do better and I would be happy to help them and advise them on that, having liaised with them to try and get more information—and more information and more information.

Albert Owen: They could have done more. They have a neutral role, but there is the actual notice, and to disprove the claim the individual then has to go to a tribunal. Individuals, in my opinion, should not have to pay that extra thing. There was no clarity of a definitive map, for instance. That would have been disputed. The individual who was claiming the rights did not have to prove the boundaries of the map and it had to go into this tribunal system—this legal system. There could have been a clause in it to help. The Land Registry say that they are following the Registration Act, but when they gave these notices out they should have, first, been in laypersons' terms and not in legalistic terms, and, secondly, it should have been more balanced. The person who was making the claim should, in the first instance, have said, "I have a definitive map. I own the rights in this particular area," rather than the individuals having to dispute them time and time again.

Q6 Mr Llwyd: That is a very important point. Going back to the Commons Registration Act 1965, if you registered rights of common—grazing or ownership—you would have to prove it initially, but this seems to be exactly the opposite. It is rather strange, is it not, that they adopted that procedure rather than making the applicant prove his or her case initially? The unilateral notice procedure is quite different, is it not?

Rhun ap Iorwerth: There is a threshold above which they have to be able to prove that they have a certain interest, but that threshold is so low it is largely meaningless. The truth is that most would find it difficult, if not impossible, to prove that the rights do exist as they claim. In fact, in relation to Treffos manor, a document I know has been received and published by this Committee raises real doubts about the validity of the claim in relation to that particular manor. The threshold is too low and, anyway, proof may be impossible in many cases.

Q7 John Howell: Looking forward, while there may still be some registrations that occur, the incidence of claims has been declining and is likely to decline even further. So what benefit is there to changing the registration notice?

Rhun ap Iorwerth: As we say, it is secondary. The main reason we are here is that we believe that manorial rights should be abolished. Clearly, the way the registration on Anglesey and in Welwyn Garden City was handled was erroneous in many, many ways. We could give you many examples, as I am sure I did in the paper that I gave this Committee. The main thing, though, is the principle in the 21st century of the existence still of these manorial rights. We think that the Law Commission should now properly review this law. They have come close to reviewing it in the past. The evidence that we have had in the last months, if you like, before the 2013 deadline came has shown us that it is indeed time for that review, which we clearly hope would lead to abolition.

Kim Thomas: If I can just add to the question about the registration process, we had to pester the Land Registry for quite a long time to get a modern map. When we received that, we realised that one of the streets where residents had received letters was outside the boundary of the claim. If we had not done that, those residents might never have known that. It suggests that the whole process was rather slapdash. We do wonder, in fact, how legitimate some of these claims around the country have been and whether it is just people chancing their arm, and whether the evidence is there to sustain the validity of those claims.

Rhun ap Iorwerth: I have constituents of ours who have successfully challenged. There are a handful of people who have successfully argued, “Hold on, I am not in your patch.” How many more are there? We do not know.

Q8 John Howell: Is it just a question that the registration process is flawed and that manorial rights should be left alone?

Albert Owen: No. There is no place for them. I do pose the question again of why they were maintained in the 1920s. Probably the make-up of this place was different then and many of the people who were sitting in this place would have had manorial rights themselves. It is time for Parliament—

Mr Llwyd: Some of them are still here.

Albert Owen: Some of them are still here. I am sure the majority of us now want to be on the side of fairness and I do not think these are fair rights in the 21st century. They belong in the dark past. In the case of Lord Treffos, they were handed down from Edward I to the Bishop of Bangor, and then it ended up in an auction and this person got those rights. I can understand those who hold the rights having their legal representation and their claims being protected. Parliament has a place to protect the rights of the individuals who have bought freehold and leasehold. When the laws were changed in the 1920s, that should have been the case, but now is the time to put it right, I feel.

Rhun ap Iorwerth: There is a context within these islands in that the Scottish Parliament did decide to get rid of Scotland’s equivalent of manorial rights around the time of the Land Registration Act here—not precisely the same rights, but very, very similar. The opportunity should clearly have been taken then in 2002 to abolish the

rights here. It clearly would have been easier to do it then; it clearly would have been cheaper to do it then. There is the issue of perhaps compensation having to be paid for the abolition of manorial rights. In the example of Treffos manor, the rights were on sale online for £20,000. This was in December last year. At that time the Land Registry told me that dealing with the registration of Treffos alone had cost them £40,000. We are 10 months on; presumably that total has risen dramatically since then, so in fact the public purse could have bought the manorial rights to Treffos and saved £20,000 at least in the process. The principle was right then; the principle is right now also. We might have missed that particular train in order to save money, but the principle remains the same.

Q9 Chair: Just going back to some of the earlier questioning, is the Land Registry equipped to evaluate claims, or can it do only a very minimal check that this is the place that the claim refers to, and that this is the property that sits on it, rather than seeking to evaluate the evidence?

Albert Owen: I do not think it has the resources. In the case of Treffos manor on Anglesey, it says “about 10,000 acres.” In the 1300 and 1400s, it might have been clear to have a boundary. There might have been three or four properties within that manor, but now there are hundreds and thousands of residents who are affected by this, and I do not think it has the resources. There is talk of its privatisation. It has to be self-financing. It has to look at those issues, whereas I believe Parliament—I repeat this—has a duty to look at the other side of the argument and to say, “Have these individuals been treated properly in that sense?”

Coming back to the value, Rhun raises a very important thing about this going on sale somewhere. The title goes on sale. Not many people know about these rights, even when they are selling them on. There is a way, Mr Howell, of separating the title, which could carry on, and the rights being extinguished altogether.

Kim Thomas: From our point of view, it would be very hard to determine the legitimacy of the rights because when we submitted our UN4 forms, we got back the evidence from the Land Registry that Lord Salisbury had submitted. There were really two documents. One was a 19th century map, and it was very difficult to see where the boundaries were because, obviously, there was no housing then; it was just farmland. There was also a largely illegible handwritten document dating from the 1850s. We had no idea, really, what authority or legitimacy those documents had, and whether they might have been superseded since then or not. I do not know if the Land Registry would be able to find out that information either.

Amanda White: If we wanted to dig further from that, these are not necessarily public documents. These belong to the estate. Not only did we not have the legal firepower, or the funds to hire that legal firepower—all the proof lies with the person making the claims in some dusty tome, if it exists—but we had no access to it. It is just so unfair. How would we prove or disprove the claim?

Q10 Mr Llwyd: Just on that point, wouldn't access to the tithe maps assist you?

Amanda White: Again, I do not know; I am not a lawyer. What we have learned from this is how obscure and complicated these laws are. We heard earlier that several lawyers had given different answers on this. I have had contradictory evidence from

Lord Salisbury's lawyer on some issues. It is just so complicated and so old that anybody other than—we have some academics later—a real expert in this field does not stand a chance of getting at it, and yet we are still expected to go into battle against these and say, "I do not think you have proven this adequately."

Q11 Mr Llwyd: Much of the evidence we have received refers to it as being anachronistic and having no place in today's society. Do you wish to expand on that viewpoint?

Kim Thomas: Yes. These laws, as I understand it, date from the 11th century. You can understand that, in the context of the 11th century, the rights of the lord of the manor to hunt, shoot and fish, and to get access to minerals, no doubt made perfect sense. Now, 1,000 years on, almost every other property law we associate with the 11th century has gone, yet these bizarrely remain. There is no logic to allowing a third party to hunt, shoot and fish, or, indeed, to hold fairs or to mine on somebody else's private property.

Q12 Mr Llwyd: Can I disagree with you, being devil's advocate for a moment? Rights of common—in other words, rights of grazing—are frequently registered by tenant farmers, and by people who own farms as well, and it is an everyday thing. Equally, rights of fishing happens all the time and also sporting rights. Is it possibly because some of the regime works and appears to be necessary that part of the regime has stuck with us? Do you understand the question?

Kim Thomas: Yes. Some of those rights you mentioned are very specific, and over time they have a logic to them. For example, somebody has a right of way over somebody else's property because they need to get from A to B and it is quicker, and everybody understands those rights and they are happy with them. These rights, on the other hand, seem to be completely archaic in that they are saying that one person has a right, in our case, over probably about 1,000 properties that are privately owned. Those rights have not been agreed with those property owners. The property owners were not aware of them, and there does not seem to be any sensible reason to have them.

Rhun ap Iorwerth: There are people who are experts on the legal side of it that you will hear from this morning. We can only speak, largely, from our experiences. I would draw your attention to one particular article by Judith Bray, who is going to be giving evidence later today and is a professor at the university of Buckinghamshire. It comes from her paper *Feudal Law: The Case for Reform*. 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.

I know you will be speaking with Professor Bray later this morning, but that makes perfect sense to me, having studied this issue rather closely over the past year or so. It cannot be right that people who have bought property according to the only measures that they have open to them to assess the validity of the property that they are trying to buy, which is to go through Land Registry searches when conveyancing, have been given the all clear—

Q13 Chair: That was the purpose of registration, was it not; to ensure that future searches—
Rhun ap Iorwerth: To have been given the all clear, which is what you get when you are buying your house. You might be doing it for yourself or you might be doing it for the mortgage lender. In fact, however, to have been given the all clear that there are no rights relating to your property, and then to find out in subsequent years that rights do exist, to me is anachronistic and is wrong. We have seen, certainly in Anglesey—the experience is the same in Welwyn Garden City—that that has not only caused a huge amount of distress and anxiety, but cost people money.

Albert Owen: You ask a very important question in the fact that common land is pretty clear. I think there is common land within the Treffos estate. That is clearly defined, but we are talking about individuals who have contacted me who are freeholders. Going back to earlier questions about these rights existing, with those rights in previous centuries came responsibilities. The landowner would look after grass verges and look after and clean rivers for fishing; he would have a responsibility for that. We have moved on since then. In the area that we are talking about, the local authority is responsible for the highways and the lighting. Individual freeholders have their own responsibilities. There is no responsibility on the manorial rights holder, and that is why they are, as I said, surplus to requirements in today's legal system and they should be done away with as soon as possible.

Q14 Mr Llwyd: This may be an unfair question, but why do you think the Law Commission, in its work prior to 2002, was not persuaded to suggest the abolition of manorial rights?

Rhun ap Iorwerth: What the Government tell us, and have told me repeatedly, is that they did not consider it to be a priority—not that they had dismissed the bids and arguments for reform, but that they did not consider it a priority. The right hon. Michael Fallon, as Minister of State for Business and Energy, told me that. I am trying to find the relevant part here, but I can certainly pass it on to you as a Committee, if you like.

Q15 Mr Llwyd: Is it because the Crown has an interest?

Albert Owen: There are some very powerful vested interests here, including the Church, the Crown and various other lords of the manor, but it is an important question. Why didn't the Law Commission do it? It is not subsequently that Fallon was talking about the priority of subsequent Governments. At that time, it was not made. If you remember, Mr Llwyd, the Act of Parliament that we are talking about was predominantly to do with squatters' rights and various other issues. I do not remember, looking back over this, manorial rights ever being discussed as part of that legislation. This would not have come to light had these notices, 10 years later, not been issued. There was an error there, and there is a chance now for Parliament to amend the law and to ask for a review, and for the Law Commission to look at this again.

Rhun ap Iorwerth: What I was told by Mr Fallon was: "My understanding is that reform of feudal remnants of land law was considered by the Law Commission as a possible project several years ago but was not taken up because of the demands of other priorities." It does state that that was not in relation specifically to manorial

rights, but the evidence that we have gathered in our respective areas over the past year or so prove that manorial rights should very much be at the heart of that review.

Q16 Mr Llwyd: An entirely reasonable view is that this matter should be reconsidered by the Law Commission.

Kim Thomas: Yes.

Q17 Mr Llwyd: I have one final question, if I may. If manorial rights are not to be abolished—I am not saying that that is the case, and one hopes perhaps otherwise—what can be done in the meantime to assist people in your position? From what I have understood from your evidence, first of all the process needs to be more transparent. Far be it from me to take crusts out of the mouths of poor lawyers, but the process should be sufficiently transparent and straightforward so that there should be no need to take legal advice in order to protect one's interests.

Amanda White: Clearly, we would like them to be abolished; we think they should be.

Mr Llwyd: Yes, I understand that.

Amanda White: But “in the meantime”—perhaps that is a way of putting it. First of all, the rights are registered in the charges register, which is where somebody with a claim over your property registers it. That is a huge insult, rather than having it as part of the historical property register. This was once copyhold land. That would help a little bit. It should be the minimum requirement that, for every single property affected by this, the claimant of the manorial rights should list clearly what the rights allow and do not allow in terms of mining, hunting, shooting and fishing on that particular property. It would just make it an awful lot clearer. Take it off the charges register and take away the hunting, shooting and fishing in residential urban property. It is ludicrous to suggest that.

Albert Owen: In addition to that, Parliament must make clear, through the Land Registry, that these rights cannot be exercised without other responsibilities and other local authority laws and guidelines as well, because I was told in a debate by the Minister that it does not affect mineral rights unless they get planning permission. Again, when these rights were first granted, there were no planning laws, so safeguards need to be put in at least from this review. Hopefully, there will be safeguards but, of course, we are asking for these to be done away with altogether.

Rhun ap Iorwerth: If I could just add to that, the burden of proof for people wishing to register should be made very clear—they should have to shoulder the burden of proving and of paying for going through tribunals, if necessary, to prove. Ideally, I would want all registered manorial rights removed, and then people told to prove them, to see if they are willing to put their money where their mouths are. If we are told consistently by the Land Registry that there is nothing to worry about, these should not have an effect on people's ability to re-mortgage. There should be a very clear statement from here, through to mortgage lenders, banks and building societies, that these rights are indeed worthless and should not be seen as a threat. If they are indeed worthless and not seen as a threat, why should they exist at all in anything but name?

Chair: Thank you very much indeed. We are grateful for your help this morning. We have some further witnesses. Thank you.

Examination of Witnesses

Witnesses: **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, gave evidence.

Chair: Mr Troman, Mr Towns and Mr Tetlow, welcome to all of you. We are grateful for your help this morning and the benefit of your experience of dealing with claims of this kind. We look forward to being wiser by the end of this session than we are at the beginning of it.

Q18 Andy McDonald: Good morning, gentlemen. Perhaps I could direct this question to Mr Towns and Mr Troman in the first instance. Could you outline your role and work assisting clients on registering their manorial rights since the 2002 Act, and tell us what those clients' motivation?

David Towns: Yes, certainly. My role has been to assist clients in reviewing whether or not initially they had any of these potential rights, any lordships, and whether or not they could demonstrate that they were still lord of the manor, and then putting them in contact with researchers, who would then undertake research projects in being able to establish the rights. Generally, what that is doing is finding whether there is any land within a manor that this client can identify as being owned by them. Is there any land within that that is known as former copyhold, which is former part and parcel of the manor, and which was enfranchised with a reservation of rights? That could either be because the lord and the tenant agreed at the time that there would be reservation of rights, or was by reference to one of the enfranchisement Acts automatically under the 1922 Act. We would then co-ordinate that research. The research would come up with evidence of the land being former copyhold and then unilateral notices or cautions would be applied for.

With regard to the motivations for doing that in many of my clients' cases, it is not about greed or wanting to enforce ancient rights necessarily. It is largely because they are either charitable organisations or because the estates are held by trustees, and the legal advice that they were receiving at the time was, "You have something that could be potentially an asset. You have a fiduciary duty as a trustee or you have a duty under the Charities Act to protect those assets from extinguishment." Different clients take different approaches. Some said, "We will have a blanket approach. We will apply for rights wherever possible." Others have a more targeted approach, but, generally, their motives are because they felt bound to do this by the 2002 Act.

Q19 Andy McDonald: Do any of your clients, once they discover these rights exist and see where they visit, say, "I am not pursuing that. I am going to abandon those," and extinguish them?

David Towns: Some clients, as I say, took a blanket approach to this; others took a different approach where they thought, “Perhaps we won’t seek to register these rights in areas of dense residential development.”

Timothy Troman: That has been my experience as well. Speaking as a chartered surveyor rather than a lawyer, my role really has been to draw clients’ attention to this Act in 2002 and say, “Look, you have 10 years to do something about this.” Many of our clients left it very much to the last minute, which is why you have this glut of registrations towards the end of the 10-year period. They are obviously quite entitled to do this at the beginning, but many chose not to because of the perceived cost of doing it. As we got closer to the deadline, we obviously continued to point out that, if they did not register, there was a chance they would lose these rights, so that is what they did. It was a case of referring our clients to David and his colleagues to register them.

Q20 Andy McDonald: Do you identify any major shortcomings in the Act in relation to manorial rights? Could you give us a view about whether that is so?

David Towns: We have heard evidence this morning from the first panel about the lack of information that the Land Registry gives out. That is an issue, and I do appreciate that that is correct. As a firm, we have acted to provide additional information which the Land Registry has sent out with notices because we felt that they were not giving sufficient information. In terms of the Act itself, my view is that using a unilateral notice, which was an existing mechanism that lawyers can use to protect option agreements and contracts, is 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.

Using unilateral notices was wrong. As Ms White mentioned, it goes in the charges register. 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. You have many titles in the country. 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.

Q21 Andy McDonald: What is your experience of resolving disputes with landowners? Could you tell us a little bit about that? Where do they end up? How are they resolved? What is your experience?

Timothy Troman: To be honest, none whatsoever. There have been cases I am aware of, but, as surveyors, we have not been involved in that side of things.

David Towns: As a firm, we have applied for approximately 8,000 unilateral notices. A few we have agreed to withdraw, but not many. I know some firms have taken a different approach. Our approach was that we will not apply for anything unless we

are absolutely sure. Yes, there have been issues with mapping, and trying to translate very ancient maps on to modern mapping has been difficult. So there have been cases where we have agreed for notices to be taken off or we have proactively taken them off ourselves, but out of 8,000 we have had fewer than 10 cases which are going to tribunal.

Roger Tetlow: My experience at the CLA has mostly been with landowners receiving these notices. They are not necessarily lords of the manor any longer who own these rights, but the persons who own these rights have their own legal representatives and have used their own solicitors to make registrations. I have been receiving inquiries, as I work in the advisory service, from members who have received these notices. I have to say that at the start, when I first received these notices, I did not actually know an awful lot of what it meant. You are not taught this at law college. When I looked into it a little further and began to understand the nature of the rights, and the fact that the rights are not exercisable by the lord at his will but require the co-operation of the owner of the surface land, I was able to say, "In reality, this registration is not particularly critical or damaging to you. There would have to be a co-operative process before anything is extracted." The notice that the Land Registry started sending out was fairly scary. It was not written for lay people and it immediately meant that people felt they had to go and see a solicitor, which was unsatisfactory to my mind.

The other thing you have to bear in mind is that in many cases with rural land—there is a big distinction, I feel, 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. It did not need to be registered or it was not registered. In many cases, when I explained 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.

The other thing that I did not like was the idea that the Land Registry suggested that people who received the notices had to do something within a very short period of time. That is not the case at all. Anyone who puts on a unilateral notice can put it on. The Land Registry do not assess it particularly at all because they are a registration body. They do what they are asked to do, but the person who has a notice served on them at any time after that, whenever they have the time or the energy or the evidence to be able to rebut it, can at that stage go back and serve a UN4 saying, "I contest this application."

Q22 Andy McDonald: But should it ever get that far, where somebody can unilaterally put an entry into the charges register of a property that impacts upon, or is an encumbrance on, that property and the ability of that freeholder? When I went to law school, it was to the heavens and to the centre of the earth—that was the property—and they cannot trade on it.

Roger Tetlow: That is not always the case because, of course, there will always be people who sever rights. If you sell land, you can sever the rights. I agree with David that it was not a good idea to put it in the charges register. It would have been better to have just been placed in the property register.

Q23 Andy McDonald: Can we just expand on that a little bit? Is there anything else that we can do, short of abolition, that would assist? We have talked about putting it in the property register as opposed to the charges register. What about the burden of proof that we have heard about today? It seems quite ludicrous that somebody can come up with some vague and indeterminate map from 300 or 400 years ago and suddenly it encompasses a vast swathe of residential properties.

David Towns: I see this from both sides because I act for landowners and I act for manorial lords. In the one case I have taken to tribunal we have just successfully had the unilateral notices taken off because of the poor-quality evidence submitted by the lord of the manor. They had to admit that they could not produce anything else or anything better, so the tribunal has taken a very proactive role in that and said, “We will just dismiss it,” fairly early on. This is part of the problem with using a unilateral notice. As we have said, it is unilateral. It goes on. Then there is an argument. That might cause a problem if there is a transaction happening with that property at the time that worries a buyer or worries a lender.

The problem about evidence is where, yes, certain applications have gone in where the evidence is of poor quality. That does not mean that all applications then are deficient. Certainly, in regard to the applications I have put in, I would not have made them if I was not confident that the evidence that the researchers had found, which I had reviewed, did what it was meant to do. The Act does not say you have to demonstrate that you have certain rights. What it says is you have to demonstrate that the land is former copyhold and was enfranchised with a reference to one of the Acts, or a private agreement between the lord and the tenant.

Timothy Troman: That has certainly been my experience. Clients have asked us what sort of evidence is required. You have to look at the compensation agreements that were entered into and deeds of enfranchisement. You cannot just simply say, “That is the manor; we will draw a line around it and claim the rights in there.” That simply would not stack up. The Land Registry made it fairly clear early on in this process that they just would not accept that sort of evidence.

Q24 Andy McDonald: What is the provable route? Is evidence being presented to the Land Registry that proves the existence of the rights and that is why it appears on the face of it?

Timothy Troman: Yes, absolutely; yes.

David Towns: The evidence, though, is generally sent after the unilateral notices have been placed on. You can send it first off, but, as Roger said, in terms of dealing with the unilateral notices, the Land Registry just does what it is asked in this case. It does not review any evidence; it just puts the unilateral notice on and then tells the parties that they have done that.

Timothy Troman: It shows my slight divorce from that part of it in that that is the evidence. I assume that the person who receives that notice could challenge it by

asking to see the evidence, and if there is no evidence then it would have to be withdrawn.

Q25 Andy McDonald: Would you agree that at the very least we should abolish the practice of unilateral notices?

David Towns: When the process kicked off, I would have thought it better that you would make an application with your evidence to apply to have what I call a standard entry put on to the property register. Essentially, when you register land at the Land Registry you send in a bundle of title deeds, which should include everything you have that relates to your property. The Land Registry then makes a decision what it will note. If it is evident from those title deeds that the land is former copyhold, it will make a note, and it is still doing that today despite the deadline passing. It will make that note. Essentially, what you are doing by producing the compensation agreement and the deed of enfranchisement—that is your evidence—is saying, “Here is a missing title document from your deeds.” The Land Registry would then advise the owner, “We are going to make an amendment to your title to add this on,” and give them an opportunity to dispute that. The Land Registry could then review the evidence themselves and could say to the homeowner, “Actually, this is pretty solid; this is what we are going to do,” but still give them an opportunity to object.

Q26 Mr Llwyd: Could you give us some examples of how in the present day manorial rights are being exercised, both in non-residential rural locations and, also, urban residential areas?

Timothy Troman: Shall I kick off with mineral rights, which is obviously my specialist field? I do not really deal with any other type of rights. There are a number of leases to aggregate companies throughout the UK. A particular experience I had is in the Trent Valley, where we have a number of sand and gravel sites where the title has been investigated and found to be manorial, but it is pretty much universal. I would not say absolutely every case, but in almost all cases, notwithstanding that the lord of the manor can claim ownership to the minerals—and that includes sand and gravel in these cases—they cannot extract them without the surface owner’s consent. There is an absolute bar on extraction without the surface owner’s consent—the freeholder. Therefore, in those instances, there will be a division of the royalties that are payable by 50%. The surface owner will get half and the mineral owner will get half. If either party disagrees with extraction, it does not happen. Those agreements can be worth, over a period of time, several million pounds and royalties pass.

Q27 Mr Llwyd: There are several areas where the Crown has in fact registered large tracks of land, are there not?

Timothy Troman: Absolutely, yes.

Q28 Mr Llwyd: It is your understanding, I take it, that manorial rights are not exercisable without consent of the landowner.

Timothy Troman: Certainly mineral rights are not. I am not sure about sporting or fishing.

Roger Tetlow: I think it is the same.

Q29 Mr Llwyd: Is it?

Roger Tetlow: Yes

Q30 Mr Llwyd: All three of you, in your written evidence, note the potential value of manorial rights. How do you envisage your clients or members exercising these rights in the future and potentially extracting financial value out of them?

David Towns: If I can start, it is not always necessarily about wanting to exercise them. As you say, there is a two-way process and you are in a position where you can stop something from happening. There is potential there for value because you have a right to veto something. There is also potential there, in effect, to do some good. If there is a new landfill site opening and the locals don't like it, you might have the power to say, "No landfill here, thanks. We don't want that." It is not just positively exercising them; there is refusing permission to allow someone else to do something.

Mr Llwyd: Right.

Roger Tetlow: I do not have any personal experience of this at all, but I do think that in the past it has more been the case that the owner of the surface ground has wanted to do something or may have made an application for mining or minerals, and at that point the lord of the manor has reminded him that they belong to him. Then they would enter into a negotiation and involve a surveyor in working out how they distribute any profits.

Q31 Mr Llwyd: Mr Towns, in your written evidence you note examples of rights being of particular value in the present day. How does the situation differ between specific manorial rights and certain rights to mines and minerals that have remained overriding following the 2002 Act?

David Towns: What I am getting at in the submission is that there are potential sporting rights. If you have a large farm that was enfranchised that is still a large farm today, there is potential to exercise those sporting rights. The farmer may wish to purchase those sporting rights. They may want to be bought as a block to be added to another sporting estate. So there is always potential there for those to have value. Not many, in my experience, but some lords of the manor still have exclusive rights to markets and fairs. Most of these rights were bought up by local authorities in the late 1800s to the early 20th century because of health and safety laws, and somebody had to take charge of who was selling what and what have you in the markets. Some of these rights still exist and can be very valuable, because you can receive fees for permitting markets within your exclusive jurisdiction. That does not mean you have the right to hold a market on somebody's land. You do not have the right to hold a market in somebody's front garden. It is about a jurisdictional point.

They could be worth many hundreds of thousands of pounds if a local authority or investor wanted to purchase them.

In terms of mining, we have heard that minerals in situ with no prospect of being able to extract them probably have very little value at all, but there are minerals today that are incredibly valuable that 50 years ago were thought worthless because of changing technology. There are new forms of energy production, fracking and the like, which are going to involve very deep drilling. Obviously, the Government are considering their position in terms of minerals trespass in terms of fracking. These are interests

about which the lord of the manor may still be able to say, “I have a compensatable interest in terms of these schemes.” It is not really about trying to extract value necessarily from surface; it is about all these different interacting rights.

Q32 Mr Llwyd: Mr Towns, in your evidence you note that in relation to land development, it would be entirely the right of the person in charge of manorial rights “to seek to protect his interests or to require a commercial payment to release them.” Has this occurred, or do you believe that this could become an increasing occurrence in the future? I suspect part of the answer has been given to me already by Mr Towns.

David Towns: I think you have quoted from my submission.

Q33 Mr Llwyd: I did, yes; I am sorry.

David Towns: Again, I look at these rights as any other property right. I have referred in the submission to rights of way. A right of way has a demonstrable benefit to another property, but if you have an alternative access to your property, and you do not really tend to use this other access, nobody could say, “Take it away then. You don’t need it.” It is not necessarily about need. If somebody wished to develop that land and they find that there is a right of way over it, the person with the benefit of the right of way, even though they do not really use it, is not very likely to say, “Fine, I will just agree to extinguish that right so that you can develop the land and make an enormous commercial profit.” That right would be bought out. Restrictive covenants exist that are bought out. There are ransom strips for access. They have to be bought out. It is an ordinary part of the commercial property world.

We heard this morning that, if you have a right of way, both parties have agreed to that. In terms of manorial rights, both parties agreed to it. There was an enfranchisement and the tenant accepted reservation by reference to one of the Acts or accepted the specific terms in that indenture; it just so happened it was many, many years ago.

Q34 Chair: You made an important point earlier, though, when you said that, if you are a charity or a trust and you allow the extinguishing of the right and it has a potential value, you might be advised that you were in breach of your duties.

David Towns: Yes. Trustees could be personally liable if they have allowed something that they did not recognise as an opportunity today that might be an opportunity next year or in 10 years’ time.

Chair: Rights of light are the classic for that, are they not?

Q35 Mr Llwyd: What do you say to my earlier thesis that possibly one reason why we are in this position with regard to manorial rights is that, for example, the regime of registering rights to grazing and ownership under the 1965 Act, and rights of turbary, piscary and so on, all seem to be working quite well under that Act—that part of the regime? On the other side we have this, and we have a ridiculous situation where sporting rights might exist in Welwyn Garden City, for heaven’s sake. Could that be a reason why we have not had any real reform?

Roger Tetlow: We are probably here for three reasons. The first was that a lot of landowners thought, “Oh God, I have 10 years to do this. I will put it off to another day,” so it was all left until the 11th hour.

The second was that at the same time fracking became very big in the papers, and the first thing that I would have said when people rang me with a worry over this was, “Is this connected with fracking?” Of course it is not, but that was another thing.

Then the third thing is that probably people did not think, when they made these registrations, whether it was entirely sensible to do so, even if they were a charity, in places where there was frankly no real usable value. I remember doing an article in the magazine to members, right at the beginning of 2012, advising members when they were thinking about registrations: “Also, there may be a public relations angle to handle. When an application for registration of the rights is made to the Land Registry it will serve notice on the registered landowners of the surface land whose titles are affected. Currently the surface owner may blithely assume that he owns the minerals and sporting rights (as obviously up to then there is nothing recorded on his registered title to the contrary) and he may not take kindly to an encumbrance being noted on his title. So there may be merit in carrying out a sifting process and excluding areas which have been, for example, developed and where the prospects of sporting or mineral rights realistically being exercised are therefore remote.”

I have to say that we have had terrible trouble on Anglesey. I do not have a clue whether that chap took legal advice. He is not a CLA member, but if he had been more selective in what he did, I don’t think we would be here today.

Q36 Mr Llwyd: You are obviously batting very hard for the CLA. Are you saying if he were a CLA member, he would not have done what he did? No, sorry, you needn’t answer that.

Roger Tetlow: I don’t have any land on which to do anything myself anyway.

Timothy Troman: Could I add a fourth reason, possibly, in that the notices that went out to the freeholders were not terribly forthcoming with information on this? It could 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.

Q37 John Howell: A lot of the discussion centred around the value of manorial rights but, if you look at this and you were abolishing manorial rights, what are the levels of compensation that would be required?

Timothy Troman: As probably the only valuer in the room, I would say that you would have to look at each title individually. Although it has been properly said by this panel that many of the titles have no intrinsic value, you do not know that until you have looked at them. The act of looking at them and writing a report would incur a cost. I did have a think, on the way down, how much that was likely to be, and obviously there will be legal time involved as well. You are going to be looking at

several hundreds of pounds, perhaps up as far as £1,000, in costs to whoever in order to determine that there is not a value, and then they can be passed over to the freeholder. Who would pay that? Would it be the manorial right owner who would receive only nominal compensation, or would it be the freeholder who would be, effectively, getting something that they did not previously have? Those are the cases where there is no intrinsic value. Where there is a significant value, such as the case I have referred to in Trent Valley, obviously a more in-depth assessment will be required and larger sums would be considered.

David Towns: I can only add to that by saying that we have heard some evidence this morning, and that is absolutely acceptable, but I really do not think there is a particular problem caused by these notices on a wider scale. It has affected certain individuals. It has affected certain geographical areas, and I do accept that, but there are 24.3 million registered titles in England and Wales. There have been varying figures, but I note the MOJ's submission, which was published yesterday, gives a figure of about 84,000 or 85,000 unilateral notices that have been registered in terms of manorial rights since December 2012. I have a figure from the Land Registry of 3,200 from 2003 until December 2012. So it does show there was a huge move to do this before the deadline. In total, there are fewer than 90,000 unilateral notices. That is less than 0.4% of all registered titles.

Q38 John Howell: Is there a difference between the rights that apply to rural land and the rights that apply to urban land?

David Towns: Yes, there is. There is more what you might call immediate potential for the rights. There is possibly—

Q39 Chair: In which case?

David Towns: Sorry?

Chair: There is more immediate potential in which?

David Towns: In terms of rural, so where you have an undeveloped area of land, there is more potential to be able to utilise manorial rights, potentially sporting rights. I fully accept that under the law you cannot exercise sporting rights on a residential housing estate. Most manorial lords who have 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.

Q40 John Howell: Can I take you both back to the big picture argument? The Bond Dickinson evidence states that the argument that property rights should be lost or abolished just because they are historic is “fallacious.” The CLA suggest that abolition would be a blatant attack on property rights. Can you expand on that for us?

David Towns: Certainly. I have already covered the point, really. If you have a right of way, for example, just because you do not use it, you still have that right. There is a case mentioned in the submission where a right of way had not been used at all for nearly 180 years. The courts said that that did not matter. It is still a property right that one person has over someone else's property. It does not matter that it is old and

archaic and has not been exercised for a long time. We have Magna Carta. Nobody would suggest getting rid of Magna Carta just because it is very old.

Roger Tetlow: I cannot add an awful lot more to that. There are very old bits of legislation, very old case law, going back 500 years. They still have relevance today. Antiquity does not mean that there is an irrelevance there. Going back on the point on whether they have any significance, I note in the Church Commissioners' response they say they have several working quarries where they are basing their extraction on manorial rights, so plainly those things can have, and today do have, significant values. What do you do if you decide to abolish them? Do you abolish them only where they have not been working, or do you say that anybody who has these rights suddenly loses them? More to the point, by taking them from one landowner, you are giving them to the surface owner, so you are just transferring the value from one group to another group.

Q41 Andy McDonald: There could be an ancient right of way, could there not, and when a housing development comes along, you have the lord of the manor come knocking at your front door saying, "I am coming through. I am coming through your front room, out your back kitchen and through your back gate"?

Roger Tetlow: It is not going to happen. It would not happen because the developer would want to make sure he had a clean title at the start of it.

Q42 Andy McDonald: How do you know?

Roger Tetlow: The second thing is that, once something has been built over a right of way—something physical—if a landowner has not reserved his right by that time, he will have been assumed to have abandoned it.

Timothy Troman: The other point, of course, is that the lord of the manor cannot simply exercise those rights without the surface owner's consent, so he cannot just say, "I am coming through," because the surface owner will say, "No, you can't."

Q43 Chair: I could not quite hear what you said. You said he cannot exercise the right without what?

Timothy Troman: The surface owner's consent. Whoever owns the land.

David Towns: One of the points to make is that this whole inquiry has come about because of unilateral notices. As I have said, fewer than 90,000 properties are affected by them. At least 116,500 have this pre-existing note, which is what we talked about very early on in this evidence. By abolishing manorial rights, you are also going to be handing certain property rights to those 116,500 freeholders who, when they bought their properties, did so with their eyes wide open knowing that their properties were subject to these rights.

Q44 John Howell: How does that relate to the Human Rights Act?

David Towns: If you look at the Law Commission's work in the late 1990s, they looked, very briefly, at abolishing manorial rights and decided on control rather than deprivation because of article 8. Deprivation without compensation clearly would be a breach of human rights. They saw imposing a deadline proactively to protect your rights or to face extinguishment, and giving what they described as a generous time

scale to do that, would not offend human rights because that was the state controlling something, rather than state deprivation.

Q45 Mr Chope: Can I ask you about the use of manorial rights on the land that is going to be acquired for HS2? Are there any applications for compulsory purchase of manorial rights in relation to that development and, if so, is there any suggestion as to what the compensation payable might be?

Timothy Troman: I have absolutely no idea whether there is. There have been a few inquiries that have come through. The way compulsory purchase works is that you would look at the market value of that interest now. In the vast majority of cases it would be nil. You cannot attribute a value on compulsory purchase to the actual development itself. I do not think it has—

Q46 Mr Chope: Some of the sporting rights, for example, may be severed by this railway. That is directly relevant to the subject we are discussing, is it not?

Timothy Troman: That is possibly directly relevant, yes; absolutely.

David Towns: Personally, I am not aware of any manorial rights being affected.

Timothy Troman: But on the mineral side, I do not think it will be an issue.

Chair: There may be those who wish to explore this. Thank you very much indeed for your help.

Examination of Witnesses

Witnesses: **Professor Judith Bray**, University of Buckingham, and **Christopher Jessel**, retired solicitor, gave evidence.

Chair: Professor Bray and Mr Jessel, thank you very much for coming this morning and giving us your help and expertise on this issue. We are learning by the minute, and that process will continue during this part of the session. I am going to ask Mr McDonald to begin.

Q47 Andy McDonald: Good morning. Could you tell me what, in your view, were the primary benefits of the provisions in the 2002 Act related to manorial rights and the removal of their overriding status? Would you like to deal with the primary benefits?

Christopher Jessel: Certainty. The Law Commission's intention was that prior to 2003 these were overriding interests and they bound the land, whether people knew about them or not. The general principle of land registration is that you are bound only by things that appear on the register of title, but there is a list of overriding interests, and the Law Commission wanted to reduce that list. One of the purposes therefore was so that people should know more clearly what rights affected their land.

Professor Bray: I would add something there. We have to take overriding rights in the context of the list. We are identifying manorial rights alone. There is a whole raft of

rights affecting landowners. Indeed, on 13 October, there were other rights that had to go on the register, such as the right of chancel—the right vested in the Church to have those who live in the neighbourhood of a church to contribute to the costs of church repair, so we are in danger of just separating them out from this whole list. The list comes from the way our land law has developed; we have accepted that registration is obviously preferable, but it has been contested for centuries as to whether we would have a system of land registration. It was originally introduced, I believe, by Oliver Cromwell as an ideal way of registering land ownership. It seems incredible that it took until 2002 to address the whole issue of whether we should retain overriding rights.

If you go back to the discussions in Parliament, you will see that there was some suggestion that the whole raft of overriding rights should have been abolished, which perhaps would have been preferable, but for individual reasons separate rights were retained. Some were retained in a different form; some were retained totally, such as rights of occupation. This group—I believe it is mending sea walls, rights of chancel and manorial rights—were given this 10-year window in which to bring them on to the register.

Q48 Andy McDonald: Are we having some of these discussions now because of this deadline of October 2013, and do you see that settling down and perhaps some better order taking shape as we go forward?

Professor Bray: Probably land lawyers were having that discussion throughout the 10 years, but for those who own property, it has obviously come into the limelight. They were not aware of it. I have just heard reference to an article written. One of the problems was not highlighting it—not making people aware that a right that existed was now going to be entered on to the register. That was probably a public relations exercise that has really caused many of the problems.

Q49 Andy McDonald: They should have used the PPI salesmen. They seem to be pretty good at getting the message out to people to register their claims.

Do you think anything can be done to improve the law without the abolition of manorial rights, such as shifting the burden of proof? I am sure that you heard our discussion about that, but is there anything that can be done to say to those who are claiming these rights, “You need to do a better job of establishing your case”? How could it be improved without abolition?

Christopher Jessel: It is very difficult. You have the situation now. One of the things you could do is to make it clear who has the rights. In the case of unilateral notices, which has been the recent procedure, somebody has had to put that in and say who they are, and it can be identified from the register. There are these older entries that the Land Registry makes automatically and has been making probably since the 1860s, where there just is a note that the land is subject to manorial rights without any indication of who owns those rights. This is going to be one of the problems in tracing who has the benefit of it.

Professor Bray: I would suggest that a compromise would be that we could introduce a method of contesting the right. There has already been reference to easements and settling covenants. There are well-established ways of contesting a covenant that is

obsolete and anachronistic. I would have thought that it would have been fairly straightforward to introduce a method of challenge in a Lands Tribunal to challenge the existence of a right, because our problem is the vast range of rights that we are discussing. We are discussing rights that are anachronistic, which do really vest in a different world—a mediaeval world.

We are also discussing rights that are very pertinent to people's ownership of land in the 21st century. Our problem is trying to separate those. I would have thought that it should have been a straightforward way of contest for those that are obsolete and anachronistic. The Lands Tribunal would be a very useful forum to contest that.

Q50 Andy McDonald: We are learning a lot this morning. Could you help us a little about the differentiation between rights that may require registration and the continuation of the overriding nature of the mines and minerals aspects to all of this, because that continues? Could you just clarify that for us?

Christopher Jessel: Yes. There is an important difference. In the case of the normal severance of mines and minerals, if somebody sells the surface and retains the minerals, there is a physical division. The surface owner owns the freehold of the surface; the mineral owner owns the freehold underneath. It may be a particular mineral strata, or it could be everything underneath. The surface owner has a right of support, but they do not have the freehold beneath the surface. In the case of copyhold minerals, it is quite different. As was explained in *Eardley v. Granville* in 1876, the copyholder, and therefore the present landowner, has the ownership right the way through. The lord of the manor has a right to the mineral substances but, for example, the important difference is if the minerals are worked and removed—*Eardley v. Granville* turned on this—the question is who owns the void caused by the removal. It was quite important in that case because Lord Granville's people wanted to pass under Mr Eardley's land in order to get from one working to another. The question was whether they had to pay Mr Eardley a wayleave for it. The answer is that in the case of copyhold land, it is the copyholder or the present landowner who owns the void. In the case of severed minerals, it is the mineral owner who owns the void, so there is quite an important distinction.

Q51 Chair: Who has the duty of support?

Christopher Jessel: The mineral owner still has a responsibility to support the surface.

Q52 Mr Llwyd: That has been a live issue in coal mining communities, has it not? Most examples of the current or recent use of manorial rights that we have received have mostly referred to extraction of minerals from non-residential land. What is your understanding of the extent of the use and exercise of current rights to date more widely, and how do they impact on landowners?

Christopher Jessel: They certainly have experience. I was acting for one landowner who had to do a deal with the lady of the manor in order for a gravel pit to be opened. I am aware of cases where it goes on. I do not know how widespread it is.

Professor Bray: I do not have practical experience. It is obvious that we need to have some kind of survey to find the extent of the use of the rights and categorising the rights.

Q53 Mr Llwyd: What is your understanding of whether the consent of a landowner is always required for the exercise of manorial rights? I do not doubt the previous panel. I am just asking for your view and I am sure that it will be consistent, but we will see.

Christopher Jessel: The law in relation to mineral rights is very clear because it was very hard fought in a number of cases from the 17th century onwards. In the general position—the normal position of copyhold land—the stalemate position is assumed to apply. There are quite a lot of cases in which the copyholder had the right to work the minerals, and this was confirmed by the House of Lords on an occasion, and there are several others. There are also some cases—Newcastle-under-Lyme is the best known manor where this happened—where the lord had the right, by underground workings only, to take the minerals provided he did not deprive the surface of support. My impression is that those are fairly rare.

In the case of sporting rights, the position is simply not known. There seem to be virtually no decisions on manorial sporting rights. We simply do not know what the law is. My guess is that the same rules apply as apply to minerals and as used to apply to timber, namely that the lord has no right to come in and exercise sporting rights unless there is a special local custom to the contrary, but we do not know.

Q54 Mr Llwyd: Is there a clear distinction between those cases where manorial rights have real value and can actually be exercised, and those where they simply cannot—for example, in urban residential locations?

Professor Bray: I would say there should not be a distinction. If you own a property right, that should be reserved, and I echo the comments made earlier. Where you have a property right, use should not be the key factor; it should be whether you own the right. I would emphasise that perhaps the introduction of a 10-year period, allowing such rights to come on to the register, has emphasised the value and the proprietary nature of such a right—the fact that it now is acknowledged to be a right that could be entered on the register. To go to your question, I do not think whether it is a useful value should be relevant. It may be relevant in discussion of whether or not it should be abolished, but I do not think to say it has not been used, or that it has minimal value or substantial value, should be the driver as to whether or not the right exists.

Q55 Mr Llwyd: You referred to the 10-year period for registration. That was quite reasonable and, as I recall in my early years of practice, the 1965 Act had so many years of introduction as well. It seems to me that everybody has left it until the 11th hour. We are in a bit of a calamity at the moment, hence a Member of Parliament and a Member of the National Assembly giving evidence today. Do you think there is a case for extending that period so that people can have a better understanding of what is going on, given that the Land Registration Authority have admitted that they were not transparent or helpful enough in dealing with people who are objecting to these initial notices?

Professor Bray: Are you suggesting the extension would be of benefit to those subject to the rights?

Q56 Mr Llwyd: Perhaps an extension all round so that people could really understand what is going on, because there is a great deal of—I do not mean this pejoratively—ignorance out there about what the process actually entails.

Professor Bray: Personally, I do not think an extension would be beneficial. In everybody's evidence there is an acceptance that the registration has not changed

anything. Those who are critical are saying, “I accept there is a right, but surely that right should be abolished.” Extending it would simply allow greater discussion, but would not address the real issue of whether or not such rights should be reserved and whether or not such rights are valuable.

Q57 Mr Llwyd: I understand that petroleum reserves, for example, are the property of the Crown. Where does all of this discussion lie in terms of the rush to do this fracking that we are all reading about every day?

Christopher Jessel: It is a coincidence. It just so happens that the 10-year period runs out at a time when everybody is aware of fracking, but I do not think there is any link. As you say, oil and gas were nationalised in the 1930s.

Q58 Mr Llwyd: There is no reason to believe, is there, that if a landowner objected to a fracking exercise by somebody exercising his or her manorial rights, that would stop it?

Christopher Jessel: The insertion of a pipe, which is what is normally involved with fracking, is a trespass against the landowner; it is not a trespass against the lord. The lord has the proprietary right in the mineral substance. Provided they are not taking the mineral substance, the lord has no say in that. If the lord has no interest in the mineral value of the gas or oil and has no possessory right to the land, and so cannot bring trespass proceedings, I would be surprised if a lord had a claim just because a pipe was put through.

Q59 Chair: Just to clarify a point, in a previous session we were told that there was no limit of time on challenging the registration. Is that right?

Christopher Jessel: That is my understanding, yes. The time limit for registering has now passed, except you can still do it, provided you are prepared to pay a fee, until the land changes hands. As I understand it, there is no objection and you can challenge the—

Q60 Mr Llwyd: Really an extension would be a red herring, would it not, in effect? Going back to what you said earlier on, Professor, there does need to be some greater clarity in terms of simplifying the system, I understood you to say.

Professor Bray: Yes. Which particular part?

Mr Llwyd: The system of the unilateral notice and then the objection and so on and so on, so that people understand more fully and more easily how they do object and take the matter forward.

Professor Bray: It is just an inherent problem with overriding rights, which was recognised in 2002. The inherent problem is that rights exist that you have no obvious way of discovering on purchase of property. The fact is that they were retained by the 2002 Act in schedules 1 and 3. They were retained in differing ways. Obviously, some had a time limit and some still exist. We have to recognise that there are overriding rights still in existence that may be difficult to discover on purchase of right.

Q61 Mr Llwyd: Do you consider—either or both of you—that this is a matter that should be revisited by the Law Commission?

Professor Bray: I would certainly suggest that the Law Commission has missed an opportunity in their 10th 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. France abolished them.

Q62 Chair: They had a revolution.

Professor Bray: They had a revolution. We don't need a revolution.

Mr Llwyd: They started them.

Chair: On the whole we try to avoid that.

Professor Judith Bray: Dare I say it: Ireland and Scotland have abolished them with comparative ease. It would be unfortunate if this debate were not to then lead to some inquiry, at least, which may lead to abolition, or at least to some change in the system.

Christopher Jessel: To be fair to the Law Commission, they were considering registered land, which is a means of reflecting the existing position and registering what is there. It was slightly beyond their remit to suggest a major change in property law, which would have affected unregistered land as well as registered land. I would agree; there is everything to be said for the Law Commission looking at it, but it would need to be a separate programme.

Q63 John Howell: Picking up the Scottish point that you made there, how analogous do you think the abolition of manorial rights in England and Wales would be to the situation in Scotland?

Professor Bray: It is not the same. We have to accept that the system in Scotland was a feudal structure, where you are looking more at a pyramid of rights. In some ways it was more difficult; in some ways it was more simple. But, certainly, the lessons that we could learn are the way that they looked at compensating the owner of a right, which we would look at as feudal burdens and feudal duties. They found a structure and they gave it a time limit, and it has apparently worked.

Q64 John Howell: Would you like to expand on the issue of compensation in this if we are going down the abolition route? How do you work out the compensation?

Professor Bray: It is very problematic. I have read many different routes in people's evidence. You will know that people are willing to pay a considerable amount for the title, so I do not know whether you would say, "Should we look to that?" That would obviously not recognise the property right; it recognises a sum that people are willing to pay.

The compensation would be for the right that you have lost. The valuation of the right that you have lost would really recognise the potential value as well as the current value, and that will be difficult. That will be, as previously mentioned, the real cost; not necessarily the actual cost, but the cost of valuation.

Christopher Jessel: There is an awful lot of experience in this. The earlier legislation—the Copyhold Acts—contained very detailed provisions for ascertaining

compensation, admittedly for different things. Much of the Scottish reforms reflected what the 1922 Act had already done in England, so it was to some extent catching up. The legislation did contain provisions about how you compensate, how you calculate compensation, and the procedure for doing it. That could probably be adapted without too much difficulty.

Q65 John Howell: Can I pick up the points that I asked the previous panel about the Human Rights Act and the interrelationship with the Human Rights Act, and whether this is going to lead to legal challenges if we go down the route of abolition?

Christopher Jessel: I would repeat what was said. The Law Commission did look at this in their report and they were satisfied that the procedure they had suggested was compliant. If you go further and simply remove these rights without compensation, there could be a possible claim, and not just on human rights. It is 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.

Professor Bray: The article that we are really focusing on is article 1 of protocol 1, which is deprivation of possessions and property. Article 8 would be relevant and there it would be subject to challenge. The danger is, really, the problem of the Human Rights Act and the possibility of constant challenge. Any changes or any attempt at abolition would have to have that in mind so that you acknowledge that there was likely to be a challenge and ensure that challenges are kept to a minimum.

Q66 John Howell: Can I put you on the spot? We are probably near the end of the questions. Do you think that manorial rights should be abolished?

Professor Bray: I personally think that they should be addressed. That is a lawyer's answer.

Chair: A very different word.

Christopher Jessel: It would be difficult to abolish them. They already have functions. People are reliant on them for certain mineral extractions and so on. I do not think it would be practical just simply to abolish them.

Chair: We have a point from Mr Chope.

Q67 Mr Chope: They are part of the rich heritage of England, are they not? Isn't that really what we are talking about? There is a big difference between Scottish land law and English land law. That is why people like me, who did a law degree in Scotland, were unable to get exemptions from the Bar exams in land law in England. Why do we need to change distinctions?

Mr Llwyd: It is not very popular in Wales.

Mr Chope: Anyway, perhaps that is more of a comment, but I have a specific question. It seems, from the evidence that we heard earlier, that there have been quite a lot of incidents of solicitor negligence. Those of us who have argued for the importance of solicitors having expertise in conveyancing have said it is sensible to employ the best solicitor so that you can be absolutely sure that the title you are getting is what you are expecting. It sounds as though

there have been quite a lot of cases where there has been rather a cavalier approach by solicitors in connection with these manorial rights. Are you aware of any cases where people have sought and obtained compensation for negligence against their solicitors?

Professor Bray: I do not know about manorial rights, but certainly rights of chancel. I believe the solicitors were sued in the Cantlow case where, if you know the facts of the case, the people living in a property near a church were presented with a very considerable bill and they were not aware of the fact that they might be subject to these rights. They were overriding rights, and that led to an action. When they failed to challenge the right, they then sued the solicitors. I do not know the outcome. I only know the land law aspect of it. You may know.

Christopher Jessel: I am not aware of any cases that have been brought, but it is early days because we are still quite close to the deadline. It is possibly unlikely. On any purchase, there is a standard procedure of raising preliminary inquiries. One of the standard inquiries is, "Are there any overriding interests affecting this land?" There is a standard answer to that, "The seller is not aware of any, but the sale is subject to any which may exist." Solicitors who knew about any such rights and failed to tell their clients might well be liable, but if they have made reasonable attempts to discover them and there simply was not any information, it is difficult to see how they could be held liable.

Chair: Thank you very much indeed. We are very grateful to both of you, as we are to all our witnesses this morning.