



Report on the Land Registration
(Referral to the Adjudicator to
HM Land Registry) Rules - A Land
Registry Consultation Paper



Table of Contents

	Page
Foreword by Chief Land Registrar	5
Introduction	7
Rule 2	11
Rule 3	12
Rule 4	15
Rule 5	16
Conclusion	17
Annex 1 – List of Consultees	18
Annex 2 – List of Respondents	19
Annex 3 – Land Registration (Referral to the Adjudicator to HM Land Registry) Rules 2003 (S.I. 2003 No. 2114)	20



Foreword by the Chief Land Registrar

The Land Registration Act 2002, which came into force on 13 October 2003, completely replaced the Land Registration Act 1925. In doing so, it gave us the framework necessary to take land registration into the twenty-first century. On the same date the Land Registration Rules 2003 also came into force. These rules, together with other supporting statutory instruments, provide the detail of the new framework.

One of those supporting statutory instruments is the Land Registration (Referral to the Adjudicator to HM Land Registry) Rules 2003. These rules deal with the referral to the adjudicator of disputes that have arisen out of an application to Land Registry, where it has not been possible for the parties to reach agreement.

In January 2003 we issued a Consultation Paper in which we sought your views on those rules. This report analyses the responses that we received. It also records the decisions we made following our detailed consideration of those responses.

We are very grateful to all those who took the time and trouble to respond to the Consultation Paper which dealt with a small, but important, aspect of our practice. We have considered all of the views and comments expressed as an essential part of the rule making process. Some have resulted in changes, but all made us examine very carefully each rule and its component parts, which was an extremely useful and worthwhile exercise.

Thank you again for your help.

Peter Collis
Chief Land Registrar



Introduction

This document is an analysis of the responses to the consultation paper – ‘Land Registration (Referral to the Adjudicator to HM Land Registry) Rules 2003 – A Land Registry Consultation Paper’. It includes a detailed analysis of all comments received and our conclusions.

Abbreviations

We refer to the Land Registration Act 2002 as the ‘Act’, the Land Registration Rules 2003 as the ‘main rules’ and to the rules which were the subject of the Consultation Paper as the ‘rules’ or ‘proposed rules’. The rule numbers used in this report are those used in the Consultation Paper. We also refer to the Adjudicator to Her Majesty’s Land Registry (Practice and Procedure) Rules 2003 as the ‘adjudicator’s practice and procedure rules’.

This report

You can obtain further copies of this report by contacting—

Lesley-Teresa Riches
Room 125
Land Registry
Head Office
Lincoln’s Inn Fields
London WC2A 3PH

Tel: 020 7166 4451

Email: Lesley-Teresa.Riches@landregistry.gsi.gov.uk

Or by accessing our website—

www.landregistry.gov.uk

The consultation exercise

The Consultation Paper was published in January 2003. It invited comments from all our customers on the proposed rules relating to the process by which disputes arising from applications to Land Registry would be referred to the Adjudicator to HM Land Registry.

Originally we sent the Consultation Paper to all of the organisations and individuals listed in Annex 1. We also publicised it through our website and a press notice issued to



the media. In addition, everyone who had responded to the consultation paper on the main rules was told about this further consultation process. Those interested could obtain a copy by downloading it from our website or by contacting us directly.

The Consultation Paper asked for responses by 28 March 2003. We received 19 responses and a list of the respondents is set out in Annex 2. We considered all of these responses very carefully. This report is a summary of the responses and our conclusions following consideration of those responses, in accordance with the Code of Practice on Written Consultation issued by the Cabinet Office.

The Rule Committee

The final version of the rules was also influenced by the Land Registration Rule Committee, established under section 127 of the Act to advise and assist the Lord Chancellor in making the rules.

The Rule Committee, which is chaired by a High Court Judge and whose members are representatives of the legal profession, commercial lenders, surveyors, and consumers, had access to the Consultation Paper, a summary of the responses to it and copies of the individual responses. The Rule Committee went through the rules line by line and the various views expressed in the consultation process were taken into account in the Committee's consideration of the rules.

The rules

The rules were made on 2 August 2003 (S.I. 2003 No. 2114) and came into force (together with the Act and the main rules) on 13 October 2003. You can access an electronic version of the rules from HMSO's website: www.legislation.hmso.gov.uk, or you can purchase a hard copy from The Stationery Office. Their London details are—

TSO
123 Kingsway
London WC2B 6PQ

Tel: 020 7242 6393 or 020 7242 6410
Fax: 020 7242 6394
e-mail: london.bookshop@tso.co.uk



TSO have additional shops in Belfast, Birmingham, Cardiff, Edinburgh and Manchester. They also offer a mail order and on-line service. You can obtain further details from their website: www.tso.co.uk

The Adjudicator to HM Land Registry

The adjudicator, Edward Cousins, took up his post in September 2003. His office is at:

48/49 Chancery Lane
London
WC2A 1JR
DX 44452 Strand

Tel: (020) 7947 7761

Office manager: Kimberli Marcus-Jones

E-mail: kimberli.marcus-jones@courtservice.gsi.gov.uk

As we mentioned in our Consultation Paper, the rules are not intended to cover the detail of the functions of the adjudicator, nor the procedures that will apply once a matter has been referred to him. Those rules, which were the responsibility of the Department for Constitutional Affairs ('DCA'), were not available in January 2003 and we appreciate that this made it difficult to comment on some of our proposals. Following a separate consultation exercise conducted by DCA later in the year, the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003 (S.I. 2003 No. 2171) were made on 14 August 2003. They are also available from HMSO's website or The Stationery Office.

Summary of Responses

Not surprisingly almost all of the 19 responses were from the legal sector.

The general response was encouragingly positive. Indeed, 6 of the respondents had no comments or suggestions to make on the proposed form of the rules. A few pointed out that they would, understandably, be more interested in the contents of the adjudicator's practice and procedure rules.

The remainder of this report discusses each rule and the responses relating to that rule in turn.



Practice Guides

As Peter Collis, our Chief Land Registrar, has mentioned in his foreword, the rules are part of the detail of the new framework introduced by the Act. To complete the picture, so far as disputes of this nature are concerned, we have published two Practice Guides to assist our customers, which not only contain details of these rules but also our new internal procedures. These are Practice Guide 37, Objections and Disputes – A Guide to Land Registry Practice and Procedures and Practice Guide 38, Costs. Copies are available on our website or from any of our local offices.



Rule 2

We received one comment on this rule suggesting that the definition of 'objection' should reflect s73(4) of the Act more closely. After consideration we decided that this was not necessary as our proposed wording reflected s73(5).



Rule 3

1. This rule raised the greatest number of comments from 12 of the total of 19 respondents. The following paragraphs take each paragraph of this rule in turn.
2. Rule 3(1) generally
 - 2.1. One respondent questioned whether the rule should spell out in more detail the internal process that the registrar should follow before referring a matter to the adjudicator.
 - 2.2. We decided that such matters were best left to practice, details of which can be found in our Practice Guide 37, Objections and Disputes - A Guide to Land Registry Practice and Procedures.
3. Rule 3(1)(a)
 - 3.1. Two respondents pointed out that the registrar may not have a postal address for service when he first prepares the case summary to send to the parties for their comments, as the parties were not obliged to provide this until after receipt of the case summary (proposed rule 4). One suggested that this rule should require the registrar to include such information as is available to him. The other suggested that the registrar should obtain a postal address for service from the parties before preparing the case summary.
 - 3.2. Rule 3(2)(b) only requires the registrar to insert the addresses of the parties, which may or may not be an address that fulfils the criteria in rule 4. However, we decided to take a slightly different approach to the question of a postal address for service. Rule 4 has been changed so that the parties can supply this information at any time. Indeed, the address supplied to Land Registry for the purpose of the application or the objection may well be a postal address in England and Wales. In practice, therefore, the registrar will insert in the case summary such address as he has on the Land Registry files. If the parties then supply a different address that complies with rule 4, this will be noted in the final section of the case summary – ‘anything else that the registrar may consider to be appropriate’.
4. Rule 3(1)(b)
 - 4.1. One respondent suggested that the use of the word ‘send’ meant that we would be limited to postal communications. We do not consider that the word is limited in this way, but covers any method that may be appropriate in order to send the case summary to the parties.



5. Rule 3(1)(c)
 - 5.1. Three respondents commented on the question of time limits for the parties to comment on the case summary. These preferred either a minimum period or a prescribed period. We considered that a prescribed period could operate unfairly in some cases and that it would be better to allow some flexibility. However, the idea of a minimum period has been adopted and incorporated as a new rule 6.
 - 5.2. One respondent questioned the need to allow the parties an opportunity to comment on the case summary as it will include details of the dispute and will not form part of the statements of case in the proceedings before the adjudicator. This respondent mentioned the inevitable legal costs, if the parties are represented, for the time spent considering the case summary and also the possibility of delays in referring the dispute to the adjudicator.
 - 5.3. We had already considered these points at length when drafting the rules and had decided that the parties should be given a limited time in which to comment, although the decision whether or not to incorporate those comments in the case summary should remain with the registrar. The case summary is intended to be a very factual document; it will only include such correspondence and other papers as are necessary to set out the core facts and details of the application and the objection. This recognises the fact that the case summary does not form part of the pleadings, but gives the parties an opportunity to correct any mistakes or misunderstandings. The Rule Committee endorsed our approach.
6. Rule 3(2) generally
 - 6.1. One respondent queried whether the registrar should be required to set out a summary of the differences between the parties.
 - 6.2. We did not think that this would be appropriate, bearing in mind the nature of the proceedings before the adjudicator, as this would require us to summarise the parties' arguments and evidence. The proceedings before the adjudicator are completely independent of Land Registry. They are judicial in nature with both parties presenting their own case as in court. We also wanted to avoid prolonged discussions with the parties over the accuracy of the summary, which would be inevitable if we were to become involved in preparing a summary of this kind.



7. Rule 3(2)(b)
 - 7.1. Two respondents suggested that the word ‘details’ should be expanded to specify precisely what details are required. After consideration, we decided that ‘details’ was more flexible and would probably result in more relevant information being included in the case summary than if we specified certain types of information.
 - 7.2. DCA informed us that the proposed adjudicator practice and procedure rules would allow the parties to choose anyone to represent them, not just a lawyer. We also deal with non-lawyer representatives in Land Registry and so we expanded this paragraph to include ‘other’ representatives.
8. Rule 3(2)(c)
 - 8.1. One respondent felt that we needed an additional section referring specifically to the title number, description and a plan of each parcel of land involved in the dispute. We considered that this was adequately covered by paragraphs (d), (e) and (f). The relevant title numbers and a description of the properties will usually appear in ‘details of the core facts’ and plans will be included where appropriate. The plans will not form part of the parties’ case and it may be more appropriate for the question of plans to be addressed under the adjudicator’s practice and procedure rules.
9. Rule 3(2)(e)
 - 9.1. One respondent considered that this paragraph should specifically refer to the grounds for the objection. We felt that the grounds put forward by the objector will indeed be included as part of the details of the objection. However, this should not be extended to include the evidence to support those grounds as the evidence will be produced in the proceedings before the adjudicator in accordance with his practice and procedure rules. As a result, the phrase ‘details of the objection’ was our preferred choice.
10. Rule 3(2)(f)
 - 10.1. One respondent considered that the registrar should be obliged to send copies of all relevant papers in his possession to the adjudicator. Another suggested that he should be sent copies of all the papers and correspondence on our files.
 - 10.2. As we have explained above, the case summary is designed to be a factual document giving the adjudicator details of the application and the objection. We have tried to ensure that it does not encroach upon the proceedings before the adjudicator which will be governed by his practice and procedure rules. For



these reasons, we do not consider that it would be right to send the adjudicator copies of any papers on our files which are not required to fulfil this limited function.

10.3. Another relevant factor that we took into account was the fact that the parties often involve us in 'without prejudice' correspondence. It would clearly not be appropriate to copy material of that nature to the adjudicator.

10.4. DCA asked us to ensure that details of any known existing court proceedings relating to the matters in dispute are disclosed to the adjudicator in the case summary and queried whether we should have a separate section for this.

10.5. Such details as we have will be included in this general section, but we usually only have brief details on our files. The parties do not always inform us if they have chosen to start their own proceedings and it is even more unlikely that we will have seen copies of the statements of case.

11. Rule 3(4)

11.1. Four respondents mentioned the fact that the registrar does not have to amend the case summary to take account of the parties' comments. One suggested that the registrar should be obliged to take the parties' comments into account. Three thought that the parties should have the right to notify the adjudicator if they are not satisfied with the version of the case summary sent to him. One of these respondents would have limited that right to the question of whether the adjudicator should hear the matter himself or direct one of the parties to start court proceedings. Another said that it should only extend to the basic facts under dispute.

11.2. We think that the concerns of these respondents should be alleviated by the adjudicator's practice and procedure rules, which were not available at the time of our consultation. We also hope that we have explained our view of the role of the case summary and how we see this interlinking with the proceedings before the adjudicator.

11.3. We were pleased to note that a number of respondents supported our approach, as demonstrated by the following comment made by one respondent:

'In individual cases, it is possible that a party may have some difficulty in accepting parts of the case summary and so it is important that, although the registrar has the opportunity to amend the cases

Land Registry

Report on the Land Registration (Referral to the Adjudicator to HM Land Registry) Rules - A Land Registry Consultation Paper



summary if considered appropriate, the final say as to the contents of the case summary must rest with the registrar. Otherwise, there may be an attempt to regard the case summary as part of the battleground.'



Rule 4

1. Four respondents commented on this rule. One comment was on a similar point to that discussed in paragraph 3.1 above, in that the parties were being asked to provide an address for service after the case summary (which is supposed to include that address) has been prepared. (We have already covered that point.) Another queried why the rule assumed the predominant use of paper documents, which will presumably decline in importance in the future. Others felt that it was restrictive.
2. This rule is designed to fit with the adjudicator's practice and procedure rules. We liaised closely with DCA over the final form of the adjudicator's rules relating to addresses for service, and even delayed our own rules to ensure that they matched. The adjudicator may allow other additional forms of address for service, but all parties must provide a postal address in England or Wales.



Rule 5

1. Three respondents commented on this rule. One wanted the forms of the notices referred to in this rule to be prescribed. Another suggested that there should be a time limit for notifying the parties of the referral to the adjudicator. Another pointed out that, as drafted, the registrar would not have to refer the matter to the adjudicator if the parties failed to comment on the case summary.
2. We are grateful to our respondent for pointing out the lacuna in this rule which has been rectified.
3. We have also introduced some form of time limit, albeit a very general one – ‘as soon as practicable’.
4. We were reluctant to prescribe any forms as these will be very simple notices. The main document here is the case summary and its accompanying papers.



Conclusion

Annex 3 sets out the final version of the rules, after consideration of the responses referred to in this report and the advice of the Rule Committee.

Land Registry



Annex 1 - List of consultees

Department for Constitutional Affairs (then known as the Lord Chancellor's Department)	Law Commission
Official Solicitor	Law Society
Bar Council	ILEX
The Council on Tribunals	Council of Mortgage Lenders
Council for Licensed Conveyancers	Association of London Property Support Lawyers
Association of London Property Support Lawyers	British Property Federation
Building Societies Association	Chancery Bar Association
London Property Support Lawyers Group	Northern Chancery Bar Association
Property Litigation Association	Society of Public Teachers of the Law
Legal Services Commission	Abbey National plc
Bond Pearce	Bradford & Bingley plc
Butler & Evans	Clifford Chance
Cobbetts	Davies & Partners
Decherts	Farrer & Co
Funnell & Perring	Lloyds TSB
Lovells	Moss, Solicitors
Palser Grossman	Robert Hitchins Ltd
Simmons & Simmons	Woolwich plc
Wragge & Co	Herbert Smith
Bowling & Co	Cumberland Ellis Peirs
Blackledge & Co	Andrew C Blundy, solicitors
A J Lutley, Solicitor	Greene & Greene
Landmark Information Group	Carter Lemon Camerons
Mr J West	Eddowes, Simm & Waldron
Mr R Lamb	Royds RDW
Royds RDW	Mr T Graham
Castle & Co	Mr N Asprey QC
Reynolds, Parry-Jones & Crawford	Ms C Hutton
Curtis Solicitors	Mr I Wightwick
R. L. Edwards & Partners	Mr G Jones
Mr J C Wroe	Ms Marilyn Kennedy-McGregor
Elliot's Bond & Banbury	National Association of Citizens Advice Bureaux
National Federation of Consumer Groups	Institute for Consumer Affairs
National Consumers Council	Michael King

Land Registry

Report on the Land Registration (Referral to the Adjudicator to HM
Land Registry) Rules - A Land Registry Consultation Paper



Andrew Edwards
John Manthorpe
R. B. Roper
Slaughter & May
Stephenson Harwood
Radcliffes

Charles Harpum
Ian Clarke
Mr A Francis
Trowers & Hamblins
Travers Smith Braithwaite



Annex 2 –Respondents

Chancery Bar Association
Eversheds
Andrew Francis
DCA
The Directorate of the Council for Licensed Conveyancers
Ian Clarke
Duchy of Cornwall
Bob Roper
KB-Law
Iain Wightwick
Eddowes, Simm & Waldron
Farrer & Co
Birketts
Bar Council
Funnell & Perring
Property and Trust Law Team, Law Commission
Asheesh Mehta-Hughes, Legal Adviser, Network Rail
Conveyancing and Land Law Committee, Law Society
Council on Tribunals



Annex 3 –Land Registration (Referral to the Adjudicator to HM Land Registry) Rules 2003

The Lord Chancellor, with the advice and assistance of the Rule Committee appointed in pursuance of section 127 of the Land Registration Act 2002, in exercise of the powers conferred upon him by that section and section 73(8) of the Land Registration Act 2002, and of all other powers enabling him in that behalf, hereby makes the following rules:

Citation and commencement

1. These rules may be cited as the Land Registration (Referral to the Adjudicator to HM Land Registry) Rules 2003 and shall come into force on 13 October 2003.

Interpretation

2. In these rules—

‘the Act’ means the Land Registration Act 2002;

‘business day’ means a day when the land registry is open to the public under rule 216 of the Land Registration Rules 2003;

‘disputed application’ means an application to the registrar under the Act to which an objection has been made;

‘objection’ means an objection made under section 73 of the Act;

‘the parties’ means the person who has made the disputed application and the person who has made an objection to that application.

Procedure for referral to the adjudicator

3.—(1) When the registrar is obliged to refer a matter to the adjudicator under section 73(7) of the Act, he must as soon as practicable—

- (a) prepare a case summary containing the information set out in paragraph (2),
- (b) send a copy of the case summary to the parties,
- (c) give the parties an opportunity to make comments on the contents of the case summary in the manner, to the address, and within the time specified by him, and



- (d) inform the parties in writing that the case summary together with copies of the documents listed in it will be sent to the adjudicator with the notice referred to in rule 5(2).

(2) The case summary must contain the following information—

- (a) the names of the parties,
- (b) the addresses of the parties,
- (c) details of their legal or other representatives (if any),
- (d) a summary of the core facts,
- (e) details of the disputed application,
- (f) details of the objection to that application,
- (g) a list of any documents that will be copied to the adjudicator, and
- (h) anything else that the registrar may consider to be appropriate.

(3) The registrar may amend the case summary as he considers appropriate having considered any written comments made to him by the parties under paragraph (1)(c).

Parties' addresses

4.—(1) If the address of a party set out in the case summary does not comply with paragraph (2), that party must provide the registrar with one that does.

- (2) An address complies with this paragraph if it —
 - (a) is a postal address in England and Wales, and
 - (b) is either that of the party or of his representative.

Notice of referral to the adjudicator

5.—(1) This rule applies—

- (a) when the registrar has considered any written comments made by the parties under rule 3(1)(c), or
- (b) if he has not received any comments from the parties within the time specified under rule 3(1)(c), on the expiry of that period, and
- (c) when he has amended the case summary, if appropriate, under rule 3(3).

(2) The registrar must as soon as practicable—



- (d) send to the adjudicator a written notice, accompanied by the documents set out in paragraph (3), informing him that the matter is referred to him under section 73(7) of the Act,
 - (e) inform the parties in writing that the matter has been referred to the adjudicator, and
 - (f) send the parties a copy of the case summary prepared under rule 3 in the form sent to the adjudicator.
- (3) The notice sent to the adjudicator under paragraph (2)(a) must be accompanied by—
- (g) the case summary prepared under rule 3 amended, if appropriate, by the registrar under rule 3(3), and
 - (h) copies of the documents listed in that case summary.

Specified time periods

6.—(1) For the purposes of rule 3(1)(c), the time specified by the registrar must not end before 12 noon on the fifteenth business day after the date on which the registrar sends the copy of the case summary to the relevant party under rule 3(1)(b) or such earlier time as the parties may agree.

(2) On and after the date specified in any notice given pursuant to rule 216(2) of the Land Registration Rules 2003, paragraph (1) shall have effect with the substitution of the words “eighteenth business day” for the words “fifteenth business day”.